

2019 IL App (1st) 172188  
No.1-17-2188  
Order Filed March 15, 2019

Fifth Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 60039
	)	
DEION ROUNDS	)	Honorable
	)	Nicholas Ford,
Defendant-Appellant.	)	Judge presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The summary dismissal of defendant's postconviction petition at first-stage postconviction proceedings is reversed. Defendant's claim that his guilty plea was involuntary and unknowing and violated his constitutional right to due process of law had an arguable basis in law and fact. Defendant's claim that the trial court's orders were void is rejected.

¶ 2 Defendant Deion Rounds appeals from the summary dismissal of his *pro se* petition for postconviction relief. On appeal, defendant contends that his constitutional rights were violated in that: (1) his plea of guilty was involuntary and unknowing; (2) he was denied his right to

procedural due process; and (3) he was denied the effective assistance of counsel. Defendant also contends that the trial court's orders were void. Since defendant will reach his 21<sup>st</sup> birthday on April 14, 2019, and the relief he seeks may not be available to him after that date, we granted his request for an expedited disposition. See *People v. Hunter*, 2017 IL 121306, ¶ 38.

¶ 3 On January 3, 2015, police officers arrested the then 16-year-old defendant. Under the excluded jurisdiction provision of the Juvenile Court Act of 1987, a minor who was at least 15 years of age and charged with robbery while armed with a firearm “shall be prosecuted under the criminal laws of this State.” 705 ILCS 405/5-130(1)(a) (West 2014) (Juvenile Court Act). Proceedings against defendant commenced in criminal court where he was indicted and charged with the following offenses: armed robbery with a firearm, attempted aggravated vehicular hijacking with a firearm, and several counts of aggravated unlawful use of a weapon. Defendant's bench trial was set for January 21, 2016.

¶ 4 Effective January 1, 2016, the legislature amended section 5-130(1)(a) of the Juvenile Court Act, *inter alia*, raising the age for automatic transfers to criminal court from 15 to 16 and eliminating armed robbery with a firearm as a basis for such a transfer. See Pub. Act 99-258 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130(1)(a)).

¶ 5 On January 21, 2016, pursuant to a negotiated plea, defendant, then age 17, pleaded guilty to a reduced charge of armed robbery with a dangerous weapon, *i.e.*, a bludgeon, in exchange for an 18-year sentence. The trial court informed defendant of the rights he was waiving by pleading guilty. The court found that his plea was voluntary. No reference was made to the amendments to section 5-130 of the Juvenile Court Act. Defendant did not move to withdraw his guilty plea and did not appeal his conviction or sentence. Subsequently, the Illinois

supreme court issued its opinion in *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 35, holding that the amendments to section 5-130 of the Juvenile Court Act were retroactive.

¶ 6 On June 6, 2017, defendant filed his *pro se* petition for postconviction relief. See 725 ILCS 5/122-1 *et seq.* (West 2014). He sought to withdraw his guilty plea because the amendments to section 5-130 were held to be retroactive in *Howard*, and therefore, he was entitled to a transfer hearing.

¶ 7 On July 28, 2017, the circuit court entered an order finding defendant's petition frivolous and without merit and summarily dismissed it. This appeal from that order followed.

¶ 8 ANALYSIS

¶ 9 Defendant contends that the failure of the trial court to conduct a transfer hearing violated his constitutional rights to procedural due process, effective assistance of counsel and rendered his guilty plea involuntary and unknowing. He further contends that the trial court's orders issued after January 1, 2016, the effective date of the amendments to section 5-130 of the Juvenile Court Act, were void for lack of jurisdiction.

¶ 10 I. Constitutional Claims

¶ 11 A. *Standard of Review*

¶ 12 Summary dismissal of a postconviction petition at the first stage of postconviction proceedings is reviewed *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

¶ 13 B. Discussion

¶ 14 At the outset, we note that the circuit court summarily dismissed defendant's petition on the grounds that defendant was 16 years old at the time he committed the offense, and the age-related amendments to section 5-130 did not apply to him. The court did not address the

elimination of robbery while armed with a firearm from the list of eligible offenses requiring automatic transfer to criminal court, which is central to the issue in this appeal. As our review is *de novo*, “[w]e are free to substitute our own judgment for that of the circuit court in order to formulate the legally correct answer.” *People v. Newbolds*, 364 Ill. App. 3d 672, 675 (2006).

¶ 15 The Post-Conviction Hearing Act (Act) provides a method for a criminal defendant to assert that his conviction resulted from a substantial denial of his constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2014). The Act provides for three stages of proceedings. *Hodges*, 234 Ill. 2d at 10. In this case we are concerned with a first-stage proceeding.

¶ 16 Whether a defendant’s claims survive the first-stage of postconviction proceedings depends upon whether the petition conforms to the requirements of the Act. *People v. Reed*, 2014 IL App (1st) 122610, ¶ 38. To survive dismissal at the first stage, the petition need only present the gist of a constitutional claim. *Reed*, 2014 IL App (1st) 122610, ¶ 38. A “gist” means that the section 122-2 pleading requirements are met, even if the petition does not contain formal legal arguments or citations to legal authority. *Hodges*, 234 Ill. 2d at 9.

¶ 17 A postconviction petition must clearly set forth the respects in which a defendant’s constitutional rights were violated. *Reed*, 2014 IL App (1st) 122610, ¶ 39; 725 ILCS 5/122-2 (West 2016). At the first stage of postconviction proceedings, only a limited amount of detail is required in the petition to satisfy the “gist” of a constitutional claim requirement. *Reed*, 2014 IL App (1st) 122610, ¶ 39. The petition need not set forth the claim in its entirety, and the allegations in the petition must be taken as true and liberally construed. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). At the first stage, a petition may be summarily dismissed as frivolous or patently without merit where it has no arguable basis either in law or in fact, *i.e.*, whether it was

based on an indisputably meritless legal theory or a fanciful factual allegation. *Hodges*, 234 Ill. 2d at 17.

¶ 18 Defendant used a preprinted postconviction petition form. On the form, he stated he pleaded guilty to armed robbery and was sentenced to 18 years' imprisonment on January 21, 2016. Defendant was then required to "state all facts known to petitioner that demonstrate that his/her constitutional rights were violated." (Emphasis omitted.) Defendant stated as follows:

"Pursuant to the New Ruling in the Illinois Supreme Court: *People Ex Rel Alvarez v. Howard* 2016 IL 120729 which ruled that the amendments to section 5-130(1)(a) by Public Act 99-258 was [*sic*] retroactive; Petitioner was warranted a Hearing in Juvenile Court before automatic transfer to Adult court. Petitioner wish [*sic*] to withdraw his plea as he was supposed to be afforded a hearing to determine if his case belongs in Adult Court before being able to plea to an adult charge in conformity with this most recent Supreme Court Ruling. Also accord *People v. Patterson* 409 Ill. Dec. 79."

¶ 19 In general, a voluntary guilty plea waives all nonjurisdictional errors or irregularities including constitutional errors. *People v. Townsell*, 209 Ill. 2d 543, 547 (2004). In seeking relief from a guilty plea, either directly or collaterally, a constitutional challenge may be made on the grounds that the plea of guilty was not made voluntarily or knowingly. *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). To be valid under the due process clause, the record must affirmatively show that the plea was entered intelligently and with full knowledge of its consequences. *Whitfield*, 217 Ill. 2d at 184 (citing *Boykin v. Alabama*, 395 U.S. 238 (1969).)

¶ 20 In this case, defendant maintains his guilty plea was involuntary because it was entered following the effective date of the amendments to section 5-130, removing the offense of

robbery while armed with a firearm from the list of offenses requiring automatic transfer to criminal court. The State responds that, while the amendments were effective prior to entry of defendant's guilty plea, neither the legislature nor the existing case law indicated that they applied to defendant's case. The State's argument was rejected in *People v. Price*, 2018 IL App (1st) 161202. While the issue in *Price* was ineffective assistance of counsel, the court's discussion of the foreseeability of the retroactive application of amendments to section 5-130 is instructive.

¶ 21 In *Price*, 15-year-old Rasaan was charged with first degree murder, and his case was automatically transferred to criminal court. In October 2015, Rasaan was tried and convicted of murder but was not sentenced until March 25, 2016. On appeal from his conviction and sentence, Rasaan argued that the amendments to section 5-130 applied to him and that his defense counsel's failure to seek transfer to juvenile court for sentencing under the Juvenile Court Act was ineffective assistance of counsel. See *Price*, 2018 IL App (1st) 161202, ¶ 7.

¶ 22 Initially, this court determined that the amendments applied to Rasaan because "his sentencing was still an 'ongoing proceeding' (internal quotation marks omitted) [citation] and something that 'remained to be done' [citation] at the time the amendment to 5-130 became effective." *Price*, 2018 IL App (1st) 161202, ¶ 22 (quoting *Hunter*, 2017 IL 121306, ¶ 32; *Howard*, 2016 IL 120729, ¶ 28). The court then determined that it was objectively unreasonable for Rasaan's counsel not to have argued that the amendment to section 5-130 of the Juvenile Court Act applied retroactively in his case because the holding in *Howard* "did not spring from thin air. It was based on accepted principles of statutory construction and a well-settled understanding that '[w]hether a defendant is tried in juvenile or criminal court is purely a matter

of procedure[.]’ ” (Emphasis in original.) *Price*, 2018 IL App (1st) 161202, ¶ 23 (quoting *People v. Patterson*, 2014 IL 115102, ¶ 104).

¶ 23 In his postconviction petition, defendant’s factual allegations included the date of the entry of his guilty plea and the charge to which he pleaded guilty. He referred to the decisions in *Howard* and *Patterson* and the amendments to section 5-130 of the Juvenile Court Act. At the time of the effective date of the amendments, defendant had yet to be tried or sentenced. Therefore his case was “an ongoing proceeding.” As the court in *Price* pointed out, “*Howard*’s application of the amendment to pending cases was hardly a surprise. It was based on well-established principles of statutory construction.” *Price*, 2018 IL App (1st) 161202, ¶ 15. The court in *Price* observed that faced with the same amendment, defense counsel in *Howard* sought and was granted a transfer to juvenile court based on its retroactive application prior to the supreme court’s pronouncement in that case. *Price*, 2018 IL App (1st) 161202, ¶ 23.

¶ 24 When he entered his negotiated guilty plea on January 21, 2016, defendant was entitled to a transfer to juvenile court based on the amendments to section 5-130 of the Juvenile Court Act. In juvenile court, the State could request a discretionary transfer hearing to determine whether defendant’s case should be heard in criminal court. 705 ILCS 405/5-805(3)(a) (West 2016). If his case remained in juvenile court, defendant would face confinement only until he reached 21 years of age. See 705 ILCS 405/5-750(3) (West 2016).

¶ 25 Even though they were effective some 21 days prior to entry of defendant’s guilty plea, there was no mention of the amendments to section 5-130 of the Juvenile Court Act at the time he pleaded guilty. Nothing in the record indicates that when he entered his guilty plea and accepted the 18-year sentence, defendant was aware that he was entitled to have a transfer

hearing to determine whether his case remained in criminal court and that he made the conscious choice to proceed on the negotiated plea agreement. We cannot say that this record “affirmatively show[ed] that the plea was entered intelligently and with full knowledge of its consequences.” *Whitfield*, 217 Ill. 2d at 184.

¶ 26 We conclude that defendant’s *pro se* postconviction petition set forth a claim that his constitutional right to due process was violated in that his plea of guilty was not voluntarily or intelligently made and that the claim has an arguable basis in fact and law. Therefore, the circuit court’s summary dismissal of the petition as frivolous or patently without merit was erroneous and must be reversed. Since summary partial dismissals are not permitted under the Act, we do not address defendant’s claims that his constitutional rights to procedural due process and effective assistance of counsel were violated. See *People v. Rivera*, 198 Ill. 2d 364, 374 (2001).

¶ 27 II. Void Orders

¶ 28 Defendant maintains that as of January 1, 2016, the effective date of the amendments to section 5-130 of the Juvenile Court Act, the trial court was without jurisdiction to accept defendant’s plea of guilty and sentencing, rendering those orders void. We disagree.

¶ 29 The supreme court has held that judgment is void only if the court lacked subject matter or personal jurisdiction or because the final judgment was based on a facially unconstitutional statute. *People v. Price*, 2016 IL 118613, ¶ 31 (citing *People v. Thompson*, 2015 IL 118151, ¶¶ 31-33). The court in *Price* noted that the third type of void order, *i.e.* where a judgment of sentence did not conform to a statutory requirement was eliminated by the court’s decision in *People v. Castleberry*, 2015 IL 116916. *Price*, 2016 IL 118613, ¶ 31. Nonetheless, defendant maintains that the decisions in *Price*, *Castleberry* and *Thompson* did not eliminate other types of

void orders. Defendant points out that in *People v. Tate*, 2016 IL App (1st) 140598, this court stated “that when a motion for substitution of judge is improperly denied, all subsequent action by the trial court beyond the transfer of the matter is void.” *Tate*, 2016 IL App (1st) 140598, ¶ 20 (reaffirming the supreme court’s holding in *People v. McDuffee*, 187 Ill. 2d 481, 492 (1999)).

¶ 30 In its supplemental opinion on denial of rehearing, the court in *Tate* noted that “when the term ‘void’ is used in a judicial opinion it is necessary to resort to the context in which it was used to determine precisely the term’s meaning.” *Tate*, 2016 IL App (1st) 140598, ¶ 31 (citing *People v. Davis*, 156 Ill. 2d 149, 155 (1993)). The court noted further that jurisdiction was vested in the courts, not in the judges, and a motion for substitution of judge relates to a perceived bias by the judge, not the court’s jurisdiction. *Tate*, 2016 IL App (1st) 140598, ¶ 31. After reviewing prior decisions of the supreme court on this issue, the court in *Tate* determined that “the *McDuffee* court’s use of the term ‘void’ is not intended to refer to the court’s jurisdiction but instead to the action taken by the trial judge.” *Tate*, 2016 IL App (1st) 140598, ¶ 31. The court in *Tate* concluded that “the *McDuffee* court’s use of the phrase ‘any action taken by the court’ included the judge’s act of entering a judgment. We do not understand it to mean that the trial court was thereby divested of jurisdiction.” *Tate*, 2016 IL App (1st) 140598, ¶ 32.

¶ 31 In the present case, defendant’s voidness claim is a jurisdictional one. Unlike the defendants in *McDuffee* and *Tate*, who were seeking different judges within the circuit court, here defendant is not challenging only his trial judge’s power to enter orders in his case but any circuit judge’s in the criminal court.

¶ 32 The circuit court is a court of general jurisdiction of which the juvenile court is simply a division. See *Castleberry*, 2015 IL 116916, ¶ 19; *People v. Fiveash*, 2015 IL 117669, ¶ 33.

Therefore the trial court had subject matter jurisdiction over defendant's case. Since defendant does not contend that the court lacked personal jurisdiction over him, defendant's voidness claim for lack of jurisdiction fails.

¶ 33 Next, defendant points out that in *Hunter*, the supreme court held that the amendments to 5-130 of the Juvenile Court Act did not apply retroactively to defendant Hunter's case, in part because at age 22, Hunter was "no longer subject to the jurisdiction of the juvenile court\*\*\*." *Hunter*, 2017 IL 121306, ¶ 43. Defendant maintains that by referring to the "jurisdiction of the juvenile court," the supreme court in *Hunter* diverged from its prior holdings that the circuit court is a court of general jurisdiction of which the juvenile court is simply a division. We disagree.

¶ 34 In *People v. Foxx*, 2018 IL App (1st) 162345, this court referred to the supreme court's use of the term "jurisdiction" in *Hunter* as "a poor word choice." *Foxx*, 2018 IL App (1st) 162345, ¶ 44. This court determined that by its use of the term "jurisdiction," the supreme court in *Hunter* was referring to the fact that under the Juvenile Court Act, once a defendant reached the age of 21, the juvenile court had no statutory authority over him. *Foxx*, 2018 IL App (1st) 162345, ¶ 45 (citing 705 ILCS 405/5-105(10) (West 2014)). " 'The age limit on juvenile court adjudication is set solely by the statutory language enacted by the legislature.' [Citation.] Therefore, if, as in this case, 'a defendant's age places him outside the scope of the [Juvenile Court] Act, the court has no authority to proceed under the Act.' " *Foxx*, 2018 IL App (1st) 162345, ¶ 45 (quoting *Fiveash*, 2015 IL 117669, ¶ 33).

¶ 35 In light of the supreme court's own pronouncements on what constitutes a void judgment, we agree with the appellate court in *Foxx* that "authority to act" rather than "jurisdiction" is the

proper construction of the supreme court's statement in *Hunter*. Therefore, we reject defendant's assertion that the supreme court ruled in *Hunter* that the criminal court and juvenile court are separate for purposes of subject matter jurisdiction.

¶ 36 Defendant's contention that the trial court's orders entered after January 1, 2016, the effective date of the amendments to section 5-130 of the Juvenile Court Act are void is meritless.

¶ 37 **CONCLUSION**

¶ 38 We conclude that defendant's *pro se* postconviction petition sets forth a claim that his constitutional right to due process was violated in that his guilty plea was not knowingly or intelligently made and that the claim has a basis in fact or law. We further conclude that the trial court's orders entered after January 1, 2016, were not void.

¶ 39 The circuit court's summary dismissal of defendant's *pro se* postconviction petition was erroneous. The summary dismissal order is reversed, and the case is remanded to the circuit court for second-stage postconviction proceedings.

¶ 40 Reversed and remanded with directions.