

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).

2014 IL App (4th) 130238-U

NO. 4-13-0238

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 31, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
DESHAWNTA L. ROBINSON,)	No. 02CF1277
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment.

¶ 2 In February 2003, defendant, Deshawnta L. Robinson, pleaded guilty to home invasion and two counts of armed robbery. In March 2003, the trial court sentenced him to a total of 50 years in prison.

¶ 3 On appeal, the office of the State Appellate Defender (OSAD) moves to withdraw its representation of defendant pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be frivolous. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In October 2002, the State charged defendant by information with home invasion

(count I) (720 ILCS 5/12-11 (West 2002)), two counts of armed robbery (counts II and III) (720 ILCS 5/18-2(a) (West 2002)), residential burglary (count IV) (720 ILCS 5/19-3 (West 2002)), aggravated battery (count V) (720 ILCS 5/12-4(b)(1) (West 2002)), and two counts of unlawful restraint (counts VI and VII) (720 ILCS 5/10-3(a) (West 2002)).

¶ 6 In February 2003, defendant entered an open guilty plea on counts I, II, and III, and the remaining charges were dismissed. The prosecutor presented the following factual basis:

"Your Honor, the evidence would show that on October 21, 2002, Michael Masters, Angela Masters and their children lived at 1439 North Main. The night before, Michael Masters went to bed upstairs and one of the children joined him. When it was time for Angela Masters to go to bed she didn't want to disturb her husband and child so she went downstairs to the sofa and fell asleep.

About four o'clock she was awakened from a sleep to have a man's hand over her mouth. She awoke, looked up, and saw the man had a ski mask on. She fought with the individual. She ripped off one of the ski masks. There was a second ski mask underneath the first. She continued to struggle with him and her husband came down the stairs. Her husband came down the stairs. The defendant bolted over and punched him in the mouth which caused him to bleed. The defendant got out a roll of duct tape and bound the woman by her ankles, wrists and mouth. He pulled the phone out of the jack, cut the cord and tied up Mr. Masters. Left them both in that position. At one point he went into the kitchen

and got a kitchen knife and had that in his possession.

As the hours whiled away, it took at least four hours or so before this finally came to the attention of the police because one of their sons escaped and ran to a firehouse to report the incident. The police arrived. Caught the defendant exiting the residence. He was identified by a number of police officers as the person exiting.

He took Mr. Masters' billfold, which had three \$1 bills in it, and one of the pocket knives of Mr. Masters. As far as Mrs. Masters, he took some currency which consisted of coins and a ring.

When he was interviewed by police officers he indicated that he in fact had committed these offenses and he gave the following reasoning. He said that he had no real reason for picking out this particular home. He didn't know the people. He didn't even know who would be there. He told Officer Beggs that he really didn't care if he got caught or not. He stated that if he got away with it, it would be fine; and if he got caught for this offense it would be fine just as well. He indicated that he had not been working. He had been sleeping in a garage and that he just wanted to go back to the Department of Corrections."

The trial court found defendant's guilty plea was knowing and voluntary.

¶ 7 In March 2003, the trial court sentenced defendant to a total of 50 years in prison,

which included 30 years in prison on count I; 20 years in prison on count II, to be served consecutively to the sentence on count I; and 20 years in prison on count III, to be served concurrently to the sentences imposed on counts I and II. In April 2003, defendant filed a motion to reconsider sentence and a motion to withdraw his guilty plea, both of which the court denied. On direct appeal, this court affirmed. *People v. Robinson*, No. 4-04-0374 (Jan. 12, 2006) (unpublished order under Supreme Court Rule 23).

¶ 8 In December 2012, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2012)). Defendant claimed his guilty plea for armed robbery must be vacated "because it was the underlying predicate felony for his home invasion" and was imposed in violation of the one-act, one-crime rule.

¶ 9 In January 2013, the trial court dismissed the petition, finding defendant's "claims do not provide a legal basis for relief" under section 2-1401. The court noted the counts were not carved from the same physical act, the sentences were not void, and the petition was not timely filed. This court allowed defendant's late notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum pursuant to *Finley*. Proof of service has been shown on defendant. This court granted defendant leave to file additional points and authorities on or before June 23, 2014. None have been filed.

¶ 12 Section 2-1401 of the Procedure Code sets forth a statutory procedure by which final orders and judgments may be challenged more than 30 days after entry. 735 ILCS 5/2-1401 (West 2012); *People v. Vincent*, 226 Ill. 2d 1, 7, 871 N.E.2d 17, 22 (2007). "A section 2-1401

petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition." *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182 (2000).

¶ 13 Section 2-1401 limits the time in which a defendant may obtain relief, stating "the petition must be filed not later than [two] years after the entry of the order or judgment." 735 ILCS 5/2-1401(c) (West 2012). "The statute further provides for an exception to the time limitation for legal disability and duress or if the ground for relief is fraudulently concealed." *Vincent*, 226 Ill. 2d at 7, 871 N.E.2d at 22. "The two-year limitations period, however, does not apply to petitions brought on voidness grounds." *People v. Moran*, 2012 IL App (1st) 111165, ¶ 13, 977 N.E.2d 801 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 201 (2002)).

¶ 14 In the case *sub judice*, the trial court entered judgment in March 2003. Defendant did not file his petition for relief from judgment until December 2012. Therein, defendant argued his sentence was void because the armed-robbery charge was "the underlying predicate felony for his home invasion" and his conviction violated the one-act, one-crime rule. In count I, the State charged defendant with home invasion for entering the dwelling of Michael Masters when he knew he was present and striking him in the face with his fist. The elements of home invasion require that a defendant enter an occupied dwelling without authority and cause injury to the occupant. 720 ILCS 5/12-11(a)(2) (West 2002). Home invasion does not require a "predicate felony" to be included in the charge. Accordingly, defendant failed to establish his armed-robbery conviction was void to toll the two-year statute of limitations.

¶ 15 Defendant also claimed the counts of home invasion and armed robbery

pertaining to victim Michael Masters violated the one-act, one-crime rule. In *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977), our supreme court declared a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act.

"Decisions following *King* have explained that the one-act, one-crime doctrine involves a two-step analysis. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). First, the court must determine whether the defendant's conduct involved multiple acts or a single act. Multiple convictions are improper if they are based on precisely the same physical act. Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses. If an offense is a lesser-included offense, multiple convictions are improper. *Rodriguez*, 169 Ill. 2d at 186." *People v. Miller*, 238 Ill. 2d 161, 165, 938 N.E.2d 498, 501 (2010).

¶ 16 Here, the home-invasion count required the State to prove defendant entered an occupied dwelling at 1439 North Main Street in Decatur without authority and caused injury to Michael Masters. The armed-robbery count required the State to prove defendant took property while armed with a dangerous weapon, a knife, by threatening the imminent use of force. Entering the home and causing injury is a separate and distinct act from taking property by the use of force. See *King*, 66 Ill. 2d at 566, 363 N.E.2d at 844-45 (stating an "act" is "any overt or outward manifestation which will support a different offense"). Thus, as defendant's convictions are not carved from the same physical act, and as a lesser-included offense is not involved, there

is no violation of the one-act, one-crime rule.

¶ 17 OSAD contends an appeal in this cause would be frivolous, and our review of the record reveals OSAD is correct. As no argument can be made that defendant was entitled to relief on his section 2-1401 petition, we find the trial court did not err in dismissing it.

¶ 18 **III. CONCLUSION**

¶ 19 For the reasons stated, we grant OSAD's motion and affirm the trial court's judgment.

¶ 20 Affirmed.