

2011 IL App (1st) 093096-U  
No. 1-09-3096

**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).

FIRST DIVISION  
FILED: JULY 25, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 89 CR 13008
	)	
PLACIDO LaBOY, JR.,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Lampkin and Rochford concurred in the judgment.

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**O R D E R**

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*HELD:* Dismissal of defendant's section 2-1401 petition was proper where it was untimely filed and not exempt from the two-year limitations period by meritorious issue of voidness.

¶ 1 Defendant Placido LaBoy, Jr., appeals *pro se* from the dismissal of his "petition for relief from a void order or judgment from unconstitutional enacted sentencing statutes affecting the public interest," which he filed pursuant to

section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2008). On appeal, defendant contends that dismissal of his petition violated his rights to due process and equal protection of the law and that the death penalty and life imprisonment statutes are unconstitutional. For the reasons that follow, we affirm.

¶ 2 Following a 1992 jury trial, at which he proceeded *pro se*, defendant was found guilty of three counts of first degree murder. Although the jury found defendant eligible for the death penalty, it did not unanimously find that there were no mitigating factors sufficient to preclude the death sentence. The trial court entered judgment on the verdict and subsequently sentenced defendant to three consecutive life terms.

¶ 3 We affirmed defendant's conviction and sentence on direct appeal. *People v. LaBoy*, No. 1-92-1528 (1995) (unpublished order under Supreme Court Rule 23). In 2008, defendant filed a *pro se* section 2-1401 petition, which was dismissed by the trial court *sua sponte*. On appeal, this court directed the clerk of the circuit court to correct the mittimus to reflect that defendant's life sentences were to be served concurrently. *People v. LaBoy*, No. 1-08-2166 (Nov. 6, 2009) (dispositional order).

¶ 4 In 2009, defendant filed the *pro se* section 2-1401 petition at issue in this appeal. In the petition, defendant argued that the death penalty statute and the natural life

imprisonment statute were unconstitutional because they did not serve the objective of restoring the offender to useful citizenship. According to defendant, his sentence was therefore void, and he was entitled to retroactive relief. More than 30 days after defendant filed the petition, the trial court dismissed it *sua sponte*.

¶ 5 On appeal, defendant contends that dismissal of his section 2-1401 petition without an evidentiary hearing violated his rights to due process and equal protection of the law. He reiterates his contention that the statutes providing for the death penalty and for life imprisonment are unconstitutional because they do not serve the objective of restoring the offender to useful citizenship. Defendant contends that this court must strike down both statutes and grant him relief retroactively.

¶ 6 Section 2-1401 establishes a procedure that permits relief from final judgments more than 30 days after their entry. 735 ILCS 5/2-1401 (West 2008); *People v. Laugharn*, 233 Ill. 2d 318, 322 (2009). Our review of the dismissal of a section 2-1401 petition is *de novo*. *Laugharn*, 233 Ill. 2d at 322. In general, a section 2-1401 petition must be filed within two years of the entry of the judgment. 735 ILCS 5/2-1401(c) (West 2008). However, this time limitation does not apply to petitions brought on voidness grounds. *People v. Wuebbels*, 396 Ill. App. 3d 763, 765 (2009).

¶ 7 Defendant argues that timeliness issues do not bar relief in this case. According to defendant, because the death penalty statute and the life imprisonment statute are unconstitutional, the judgment against him is void and may be challenged at any time under section 2-1401.

¶ 8 We disagree. As an initial matter, defendant was not sentenced to death. Therefore, he may not challenge the constitutionality of the statute establishing the death penalty. *People v. Malchow*, 193 Ill. 2d 413, 425 (2000) (a party lacks standing to raise a constitutional challenge to a statute that does not affect him).

¶ 9 With regard to the constitutionality of a sentence of life imprisonment, our Supreme Court has addressed the issue several times and determined that such a sentence does not violate the Illinois constitution's directive that penalties must be established with the objective of restoring the offender to useful citizenship. See *People v. Wooters*, 188 Ill. 2d 500, 510 (1999); *People v. Dunigan*, 165 Ill. 2d 235, 246 (1995); *People v. Taylor*, 102 Ill. 2d 201, 206 (1984). Moreover, our Supreme Court has held that the statute authorizing natural life imprisonment does not violate due process or equal protection of the law. *People v. LaPointe*, 88 Ill. 2d 482, 499-500 (1981). Accordingly, defendant's argument that his sentence of life imprisonment is unconstitutional and void fails.

1-09-3096

¶ 10 Defendant's section 2-1401 petition for relief was untimely, and is not saved from being time-barred by a meritorious allegation of voidness. In light of our determination, we need not reach defendant's argument that he is entitled to relief retroactively.

¶ 11 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.