

NOTICE
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2012 IL App (4th) 100772-U

Filed 1/10/12

NO. 4-10-0772

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DEBORAH S. GRENKO,)	No. 98CF960
Defendant-Appellant.)	
)	Honorable
)	Jeffrey B. Ford,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The court affirmed the trial court's dismissal of defendant's section 2-1401 petition for postjudgment relief, finding defendant did not exercise due diligence in filing the petition outside the two-year time limit.

¶ 2 In September 1999, a jury convicted defendant, Deborah S. Grenko, of solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 1996)). In October 1999, the trial court sentenced defendant to 30 years' imprisonment. In January 2009, the court dismissed defendant's petition for postjudgment relief. Defendant appeals, arguing the court erred in dismissing her petition because it stated a valid claim her conviction was based on perjured testimony. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 1998, the State charged defendant by indictment with one count of

solicitation of murder for hire (720 ILCS 5/8-1.2(a), (b) (West 1996)), a Class X felony. The indictment alleged defendant hired Burnell Staples in December 1997 to murder her husband, who died January 22, 1998, in exchange for \$2,500 United States currency. Staples and defendant's daughter, Stacy Kincaid, testified against defendant at her trial. Staples and Kincaid also have a son together. In September 1999, a jury convicted defendant, and the trial court sentenced her to 30 years' imprisonment.

¶ 5 Defendant appealed, arguing (1) the State failed to introduce sufficient evidence to prove her guilty of solicitation of murder for hire beyond a reasonable doubt, (2) prosecutorial misconduct denied her a fair trial, and (3) the trial court erred in relying on multiple victim-impact statements during sentencing. In April 2002, this court affirmed the trial court's judgment. *People v. Grenko*, No. 4-99-0892 (April 5, 2002) (unpublished order under Supreme Court Rule 23), *appeal denied*, 201 Ill. 2d 588, 786 N.E.2d 191 (Oct. 2, 2002) (No. 93754).

¶ 6 In December 2002, defendant filed a *pro se* postconviction petition, arguing, *inter alia*, Kincaid had supplied defendant with an affidavit stating portions of her testimony were not truthful. In February 2003, the trial court summarily dismissed defendant's petition, and defendant appealed. In March 2005, this court affirmed the trial court's judgment. *People v. Grenko*, 356 Ill. App. 3d 532, 825 N.E.2d 1222 (2005), *appeal denied*, 216 Ill. 2d 707, 839 N.E.2d 1030 (Sept. 29, 2005) (No. 100508).

¶ 7 In December 2008, defendant filed the instant petition for postjudgment relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)), alleging she had new evidence the State offered perjured testimony against her during her jury trial. In support of her section 2-1401 petition, defendant offered an affidavit signed by Kincaid

in October 2004 stating portions of her testimony at defendant's trial were not entirely truthful and claiming the State coerced her into testifying against defendant by threatening to take her child away. In January 2009, the trial court dismissed defendant's section 2-1401 petition, and defendant appealed. On appeal, this court vacated the trial court's dismissal for failure to comply with Illinois Supreme Court Rule 105(a) (eff. Jan. 1, 1989) and remanded for further proceedings. *People v. Grenko*, No. 4-09-0059 (May 21, 2010) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 8 In September 2010, the trial court again dismissed defendant's section 2-1401 petition. The court found defendant failed to show due diligence in filing her late petition for postjudgment relief where she knew of the alleged "new evidence" since at least 2004.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred in dismissing her section 2-1401 petition. Specifically, defendant argues the two-year time limit for filing a section 2-1401 petition should be relaxed in the interest of justice because she stated a valid claim for relief and offered an affidavit in support of her claim. We disagree.

¶ 12 “[T]he purpose of a section 2-1401 petition for relief from judgment is to bring before the circuit court facts not appearing in the record which, if known to the court at the time judgment was entered, would have prevented the entry of the judgment.” *In re Detention of Morris*, 362 Ill. App. 3d 321, 322, 840 N.E.2d 731, 733 (2005) (quoting *Beauchamp v. Zimmerman*, 359 Ill. App. 3d 143, 147, 833 N.E.2d 877, 881-82 (2005), *overruled on other grounds in O'Casek v. Children's Home and Aid Society of Illinois*, 229 Ill. 2d 421, 892 N.E.2d

994 (2008)). To obtain relief under section 2-1401, the petitioner must show the following three elements: (1) the existence of a meritorious defense or claim, (2) due diligence in presenting the claim or defense to the trial court in the original action, and (3) due diligence in filing the section 2-1401 petition. *Morris*, 362 Ill. App. 3d at 322-23, 840 N.E.2d at 733. "Although a section 2-1401 petition is usually characterized as a civil remedy, its remedial powers extend to criminal cases." *People v. Haynes*, 192 Ill. 2d 437, 460-61, 737 N.E.2d 169, 182 (2000).

¶ 13 In *People v. Harvey*, 196 Ill. 2d 444, 447, 753 N.E.2d 293, 295 (2001), the supreme court stated:

"As a general rule, a petition for relief from judgment under section 2-1401 must be filed within two years after entry of the judgment being challenged. [Citation.] A section 2-1401 petition filed beyond the two-year period will not normally be considered. [Citation.] An exception to the two-year period has been recognized where a clear showing has been made that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed. [Citation.] A person may also seek relief beyond section 2-1401's two-year limitations period where the judgment being challenged is void. [Citations.] In addition, section 2-1401's limitations period may be waived by the opposing party. [Citation.]"

This court has found dismissal for lack of due diligence is proper where the petitioner "fails to demonstrate [she] exercised due diligence in ascertaining and then acting upon [her] rights."

People v. Bramlett, 347 Ill. App. 3d 468, 473, 806 N.E.2d 1251, 1255 (2004). Grounds for dismissal due to lack of due diligence "include the mere failure to offer a reasonable excuse for undue delay in filing the petition." *Id.*

¶ 14 Here, defendant argues she has newly discovered evidence showing the State relied on perjured testimony during her trial. The record refutes defendant's claim on its face. Defendant made the same perjury claim in her 2002 postconviction petition and offered a similar affidavit in support. Further, the affidavit defendant offers as new evidence in the present case was notarized and signed by Kincaid in October 2004. Thus, the record establishes defendant first alleged Kincaid's testimony was perjured in 2002 and has been in possession of the affidavit offered as "new evidence" in the present case since 2004. However, defendant did not file the instant section 2-1401 petition until 2008 and offers no explanation for her lack of due diligence in filing the petition. Because defendant's two-year-filing period has expired and none of the exceptions allowing for late filing apply, we affirm the trial court's judgment dismissing defendant's section 2-1401 petition based on her failure to file it in a timely manner.

¶ 15 III. CONCLUSION

¶ 16 We affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 17 Affirmed.