

NOTICE
Decision filed 02/10/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 130359-U

NO. 5-13-0359

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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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|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Madison County. |
| |) | |
| v. |) | No. 96-CF-2295 |
| |) | |
| JEFFREY EWING, |) | Honorable |
| |) | James Hackett, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant filed his petition for postjudgment relief over 10 years after his conviction, and the circuit court had jurisdiction over the defendant's trial, the circuit court properly dismissed the defendant's postjudgment petition as untimely.

¶ 2 The defendant, Jeffrey Ewing, appeals the dismissal of his petition for postjudgment relief. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other documents supporting

his appeal. The defendant filed a response. We considered OSAD's motion to withdraw as counsel on appeal and the defendant's response. We examined the entire record on appeal and found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of Madison County.

¶ 3

BACKGROUND

¶ 4 Clifton Wheeler shot Dwight Riddlespringer to death December 15, 1996. The defendant was charged with a violation of the Firearm Owners Identification Card (FOID card) Act (430 ILCS 65/0.01 *et seq.* (West 2000)), based on his having given Wheeler the weapon used to shoot Riddlespringer. During the course of the investigation, Demond Spruill contacted the police and prosecutor and informed them that the defendant had confessed to him that on the date of the shooting, the defendant gave Wheeler the weapon used and told Wheeler to "take care of business." Spruill also told the State that the defendant gave him the murder weapon to dispose of. Based on this information, the State obtained a search warrant signed by Judge Romani. A grand jury subsequently indicted the defendant on three counts: first-degree murder, armed violence, and a FOID card Act violation. Spruill contacted the State again and told them that the defendant was attempting to have witnesses against him killed. As a result of this information, the State obtained a warrant to have Spruill wear a wire while speaking with the defendant. This warrant was also signed by Judge Romani. Judge Romani subsequently recused himself from the case. At trial, the defendant argued that Spruill and other witnesses received deals from the State to testify against him, but each of the witnesses denied having made

a deal with the State to testify against the defendant. During the proceedings, the defendant's original counsel withdrew due to a conflict of interest. The defendant was convicted on each count. This court vacated the defendant's armed violence conviction but otherwise affirmed the judgment of the circuit court. *People v. Ewing*, No. 5-01-0154 (Feb. 13, 2003) (unpublished order under Supreme Court Rule 23).

¶ 5 Since his conviction, the defendant has filed numerous appeals and collateral attacks on his conviction, none of which are relevant to this case. On April 11, 2013, the defendant filed a petition for relief of judgment under section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2010). The defendant recognized that his section 2-1401 petition was untimely, but he argued the two-year limitation period was inapplicable because his conviction was void. The defendant raised a number of issues regarding his trial: (1) he was denied a fair trial because Judge Romani had *ex parte* conversations with the State with regards to the warrant requests and never told the defendant about those conversations; (2) Judge Romani was not an impartial magistrate, so it was improper for him to issue the warrants in this case; (3) it was a constitutional violation to allow Spruill to wear a wire while communicating with the defendant because the defendant had retained counsel; (4) he was denied his right to counsel of his choice when his original attorney withdrew due to a conflict; (5) the State obtained an eavesdrop warrant through the use of perjured testimony; (6) the officer requesting the eavesdrop warrant sought, and obtained, a warrant he was not authorized to seek because the crime in question did not occur in his jurisdiction; and (7) the defendant's rights were violated because some of the witnesses against him lied by stating they were not

testifying for the State in exchange for reduced charges and/or sentences in their own cases. The State filed a motion to dismiss the defendant's section 2-1401 petition, arguing that it was untimely. The circuit court granted the State's motion and dismissed the petition, finding in part, that the defendant stated no basis for a claim that the judgment was void. This appeal followed.

¶ 6

ANALYSIS

¶ 7 Section 2-1401 provides a mechanism to collaterally attack a "final judgment older than 30 days." *People v. Vincent*, 226 Ill. 2d 1, 7 (2007) (citing 735 ILCS 5/2-1401(a) (West 2002)). Section 2-1401 replaced the common law writ system. *Id.* A petition filed under section 2-1401 is to be filed in the "same proceeding in which the order or judgment was entered, but it is not a continuation of the original action." *Id.* (citing 735 ILCS 5/2-1401(b) (West 2002)). The petition is to be supported by "affidavit or other appropriate showing as to matters not of record." *Id.* (citing 735 ILCS 5/2-1401(b) (West 2002)). Relief is obtained "upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *Id.* at 7-8 (citing *Smith v. Airoom, Inc.*, 114 Ill. 2d 209 (1986)). "[T]he petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years." 735 ILCS 5/2-1401(c) (West 2010). "Petitions filed beyond the two-year period will not generally be considered." *People v. Gosier*, 205 Ill. 2d 198, 206 (2001) (citing *People v. Caballero*,

179 Ill. 2d 205, 210 (1997)). Nevertheless, attacks on void judgments may be made at any time. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). "[O]ur supreme court has 'consistently held that a judgment is void if and only if the court that entered it lacked jurisdiction.'" *People v. Moran*, 2012 IL App (1st) 111165, ¶ 15 (quoting *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 16). "Generally, once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired. Accordingly, a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law or both." *People v. Davis*, 156 Ill. 2d 149, 156 (1993) (citing 22 C.J.S. *Criminal Law* § 176 (1989)). At least since the 1970 Constitution, the jurisdiction of a circuit court in criminal matters "is derived from the state constitution ***." *People v. Kliner*, 2015 IL App (1st) 122285, ¶ 11 (citing *People v. Hughes*, 2012 IL 112817, ¶ 20; Ill. Const. 1970, art. VI, § 9; *People v. Benitez*, 169 Ill. 2d 245, 256 (1996)). *People v. Williams*, 79 Ill. App. 3d 806, 807 (1979). Even constitutional violations do not deprive a circuit court of jurisdiction. *People v. Raczkowski*, 359 Ill. App. 3d 494, 498-99 (2005). While section 2-1401 is a civil remedy, it applies to criminal cases as well as to civil cases. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007) (citing *People v. Sanchez*, 131 Ill. 2d 417, 420 (1989)).

¶ 8 We review the dismissal of the defendant's section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 14 (2007) (citing *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005)).

¶ 9 Since the defendant's section 2-1401 petition was filed well outside the two-year limitation period, it was only viable if the circuit court which entered the judgment of

conviction lacked jurisdiction over the defendant's case. The relevant question is: did the circuit court have jurisdiction?

¶ 10 The defendant made many arguments concerning his conviction, including assertions that he was denied constitutional rights and that various portions of the State's case against him were based on void actions, such as warrants that were void due to various improper actions by the State. The defendant cited numerous cases to support his claims. None of those cases stand for the proposition that the alleged errors the defendant complains of deprived the circuit court of jurisdiction. Even if the allegations of error made by the defendant are true, a proposition we need not address, they would not render his conviction void. The circuit court had jurisdiction by virtue of the Illinois Constitution of 1970. The defendant had two years from the time of judgment to bring his section 2-1401 petition. Even assuming that there was fraudulent concealment, as claimed by the defendant, it ended in 2003 when he learned of the eavesdropping warrant, roughly a decade prior to the defendant's filing his petition.

¶ 11 CONCLUSION

¶ 12 Because the defendant's allegations of error did not implicate the circuit court's jurisdiction, his section 2-1401 petition was required to have been brought within two years of his conviction. Since he did not file his petition within the two-year period required by section 2-1401, his petition was untimely, and the circuit court properly dismissed it.

¶ 13 Motion granted; judgment affirmed.