

APPENDIX

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or a disposition of the same.

No. 1-18-0883

Order filed March 4, 2020

Third Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.
JEROME ADAMS,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Cook County.
)
) No. 12 CR 19150
)
) Honorable
) James M. Obbish,
) Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Cobbs concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant Jerome Adams appeals from an order of the circuit court of Cook County denying *sua sponte* his *pro se* petition for relief from judgment filed under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2018)).

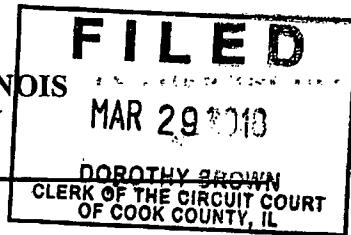
¶ 2 Following a 2014 bench trial, defendant was convicted of attempted first degree murder for shooting Michael Gray in the head (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)). The trial court sentenced defendant to 10 years' imprisonment for attempted murder, plus an additional 25-year sentencing enhancement for personally discharging the firearm that caused great bodily

Office of the State Appellate Defender to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirmed the circuit court's judgment. *People v. Adams*, No. 1-16-1407 (2018) (unpublished summary order under Supreme Court Rule 23(c)).

¶ 6 On January 24, 2018, defendant filed the instant *pro se* petition for relief from judgment under section 2-1401 of the Code, again challenging the constitutionality of the firearm sentencing enhancement statute. Defendant asserts that the claims in his current petition differ from the grounds set forth in his prior pleadings. Defendant alleges that the sentencing enhancement statute violates the proportionate penalties clause of the Illinois Constitution as found by our supreme court in *People v. Morgan*, 203 Ill. 2d 470 (2003), *overruled by People v. Sharpe*, 216 Ill. 2d 481 (2005). Defendant acknowledges that *Sharpe* overruled *Morgan*, but argues that *Sharpe* was poorly reasoned, wrongly decided, and must be overruled. Defendant also alleges that the sentencing enhancement statute violates the due process clause of the United States and Illinois Constitutions because it applies to offenders who merely choose to use a firearm to commit attempted first degree murder, and as such, is an invalid exercise of the state legislature's police power. Defendant argues that the legislature's purpose and objective to deter the use of firearms in the commission of felony offenses has not been achieved or accomplished since the enhancement statute became effective. Therefore, he argues, because the enhancement is not reasonably designed to remedy the evil which the legislature determined was a great threat to the public, it is in contravention of the legislature's intent, and thus, violates due process.

¶ 7 The circuit court found that defendant previously raised his constitutional challenges to the firearm sentencing enhancement in his petitions for declaratory judgment and his 2016 postconviction petition, and therefore, his claims are barred by *res judicata*. The court further

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**



PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff-Respondent,)
v.) Post-conviction
JEROME ADAMS,) 12-CR-1915001
Defendant-Petitioner.) Hon. James M. C.
) Judge Presiding

ORDER

Petitioner, Jerome Adams, seeks relief from the judgment of conviction entered against him on May 19, 2014. Following a bench trial, the court found petitioner guilty of attempt murder, 720 ILCS 5/8-4(A) (LEXIS 2012). The court sentenced petitioner to 35 years of imprisonment in the Illinois Department of Corrections. Petitioner's sentence includes a 25-year mandatory enhancement for personally discharging a firearm. As grounds for relief, petitioner contends that: (1) his 25-year enhancement violates the proportionate penalties clause of the Illinois Constitution. For the following reasons, the petition is DENIED.

PROCEDURAL HISTORY

On May 19, 2014, petitioner filed a notice of appeal. On February 25, 2016, the appellate court granted his motion to dismiss his appeal. On August 21, 2014, petitioner filed a document entitled, "Petition for Declaratory Relief," asserting that 720 ILCS 5/8-4(c)(1)(B),(C), and (D), which directs mandatory sentence enhancements based on use of a firearm in the commission of an offense, was unconstitutional because the statute: (1) violated his due process rights; (2) was unconstitutionally vague; (3) constituted an impermissible double enhancement; and (4) violated

the proportionate penalties clause. On September 30, 2014, this court denied his petition as frivolous, based on well-established Illinois law that the mandatory sentencing enhancement has been held constitutional on all aforementioned grounds.

On November 6, 2014, petitioner filed a notice of appeal; however, his notice of appeal was denied due to its untimeliness. On October 22, 2014, petitioner filed another document entitled, "Petition for Declaratory Relief," pursuant to 735 ILCS 5/2-701, again asserting that his 25-year mandatory sentence enhancement was unconstitutional. On January 2, 2015, this court denied his petition.

On April 30, 2015, petitioner filed a petition which he entitled, "Petition to Quash Complaint & Dismiss Indictment / Relief of Judgment," seeking relief pursuant to section 2-1401 of the Code of Civil Procedure. Petitioner asserted that his indictment was void because: the complaint against him was forged; his indictment was not signed by the foreman of the grand jury in compliance with 725 ILCS 5/111-3; and that, because of these cumulative defects, the court lacked both personal and subject matter jurisdiction. This court denied his petition.

On August 10, 2015, petitioner again filed a petition seeking relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure, 735 ILCS 5/2-1401 (LEXIS 2015). He asserted, *inter alia*, that: (1) the complaint filed against him did not comply with 725 ILCS 5/111-3(b) in that it was not signed by the complainant or attested to by a witnessing judge or court clerk; and (2) his indictment was based upon said defective complaint and was unsupported by testimony from the complainant or occurrence witnesses. This court denied his petition. On January 20, 2016, petitioner filed a post-conviction petition, subsequently amended on February 19, 2016, pursuant to Section 2.1 of the Post-Conviction Hearing Act (the Act), 725 ILCS 5/122-2.1 (LEXIS 2016), contending: (1) the firearm enhancement applied to his sentence was

unconstitutional and was not included within his indictment; (2) there were various issues concerning trial testimony; (3) his trial counsel rendered ineffective assistance; and (4) his appellate counsel rendered ineffective assistance. On April 1, 2016, this court summarily dismissed the post-conviction petition and assessed filing fees and court costs pursuant to 735 ILCS 5/22-105 (LEXIS 2016) for frivolous and unnecessary filings. It appears petitioner filed a notice of appeal of the summary dismissal, and it is currently pending. No. 1-16-1407. On December 23, 2017, petitioner filed a section 2-1401 petition for relief from judgment. On January 24, 2018, filed another section 2-1401 that appears to be a more complete filing of the December 23, 2017, filing. The court will address those petitions here.

ANALYSIS

² Section 2-1401 is a civil remedy that extends to criminal cases and is a comprehensive statutory procedure “by which final orders and judgments may be vacated more than 30 days after their entry.” *People v. Shinaul*, 2017 IL 120162, ¶ 8. While usually a petition “must be filed not later than 2 years after the entry of the order of judgment,” *People v. Matthews*, 2016 IL 118114, ¶ 7 (internal citations omitted), a petitioner may also use Section 2-1401 to attack a void judgment. 735 ILCS 5/2-1401(f) (LEXIS 2017). A judgment is void (1) if the court lacked personal or subject matter jurisdiction or (2) the judgment is based on a facially unconstitutional statute that is void *ab initio*. *People v. Thompson*, 2015 IL 118151, ¶¶ 31-32. In a criminal case, section 2-1401 is the forum to bring facts to the attention of the court, which, if known at the time of judgment, would have precluded its entry. *People v. Haynes*, 192 Ill. 2d 437, 463 (2000). A section 2-1401 petition does not address errors of law. *People v. Lawton*, 335 Ill. App. 3d 1085, 1087 (1st Dist. 2002). Moreover, alternative dispositions are available in section 2-1401 proceedings. The trial judge may (1) dismiss the petition; (2) enter judgment on the pleadings; or

(3) grant or deny relief after holding an evidentiary hearing. *People v. Vincent*, 226 Ill.2d 1, 9 (2007).

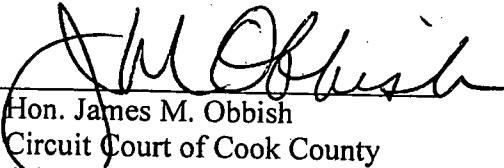
Petitioner contends that the 25-year enhancement for personally discharging a firearm resulting in great bodily injury violates the proportionate penalties clause of the Illinois Constitution. He claims that it shocks the conscience that the enhancement is more than the possible sentencing range for second degree or attempted second degree murder.

As an initial matter, petitioner has raised this proportionate penalties claim in his "Petition for Declaratory Relief" filed on August 21, 2014, and his initial post-conviction petition filed on January 20, 2016. The court already denied those claims on September 30, 2014, and April 1, 2016, respectively, and therefore *res judicata* bars consideration here.

In its April 1, 2016, order dismissing the post-conviction petition, the court thoroughly and comprehensively addressed this issue, noting that the mandatory sentencing enhancement statute has been challenged and upheld. See Order, April 1, 2016, at 8; see *People v. Bloomingburg*, 346 Ill. App. 3d 308 (1st Dist. 2004); *People v. English*, 353 Ill. App. 3d 337 (3rd Dist. 2004); *People v. Thompson*, 2013 IL App (1st) 113105; *People v. Hale*, 2012 IL App (4th) 100949. The law has not changed regarding the constitutionality of the mandatory sentencing enhancement, and petitioner has not set forth additional grounds on which this court should consider his claim. Accordingly, petitioner's claim is meritless.

CONCLUSION

The court finds that petitioner has failed to state a cognizable claim under section 2-1401. Accordingly, the section 2-1401 petition for relief from judgment is hereby dismissed. Likewise, petitioner's motion to proceed *en forma pauperis* and motion for appointment of counsel are denied.

ENTERED: 

Hon. James M. Obbish
Circuit Court of Cook County
Criminal Division

DATED: 3-28-18

ENTERED

MAR 29 2018

JUDGE JAMES M. OBBISH
CIRCUIT COURT - 1752



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

Jerome Adams
Reg. No. R-56070
Menard Correctional Center
P.O. Box 1000
Menard IL 62259

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

May 27, 2020

In re: People State of Illinois, respondent, v. Jerome Adams, petitioner.
Leave to appeal, Appellate Court, First District.
125895

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 07/01/2020.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Gosboll".

Clerk of the Supreme Court

APPENDIX - C