

No. 2-19-1055
Summary Order filed November 5, 2021

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 17-CM-1331
)	
ERIC ERICSON,)	Honorable
)	Bradley P. David,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant, Eric Ericson, appeals an order revoking his probation and sentencing him to a jail term upon conviction of violating the Stalking No Contact Order Act (Act) (740 ILCS 21/1 *et seq.* (West 2016)). We affirm.

¶ 2 In 2017, defendant posted signs on his property expressing displeasure with his next-door neighbor's home renovations. The neighbor obtained a stalking no contact order (SNCO) against defendant pursuant to the Act. Among other things, the SNCO directed defendant to remove the signs and to refrain from "harassing anyone by any means, including written signs." Defendant did not file an appearance in the SNCO action, nor did he appeal the SNCO.

¶3 When defendant failed to remove the signs, the State charged him with six counts of violating the SNCO. 740 ILCS 21/125 (West 2016). Defendant represented himself in the criminal action, and a jury found him guilty of all six charges. The court originally sentenced defendant to 24 months of probation, along with a 160-day jail sentence that was stayed pending his compliance with the terms of his probation.

¶4 Defendant represented himself on direct appeal from his criminal convictions. Among his arguments were that both the SNCO and the Act violated the first amendment. We affirmed the judgment. *People v. Ericson*, 2019 IL App (2d) 180306-U, ¶ 2 [*Ericson I*]. Addressing defendant's argument that the SNCO was unconstitutional insofar as he was ordered to remove certain yard signs, we reasoned that, "if defendant believed that the SNCO violated his constitutional rights, it was incumbent upon him to appear in the civil proceeding and challenge the order there rather than simply ignore it." *Ericson I*, 2019 IL App (2d) 180306-U, ¶ 22. With respect to defendant's challenge to the constitutionality of the Act, we held that defendant forfeited his argument by failing to present a cogent analysis. *Ericson I*, 2019 IL App (2d) 180306-U, ¶ 28. Forfeiture aside, we determined that defendant's argument lacked merit. *Ericson I*, 2019 IL App (2d) 180306-U, ¶¶ 29-36.

¶5 The trial court found that defendant violated the terms of his probation multiple times. As it pertains to this appeal, on October 30, 2019, the court granted one of the State's petitions to revoke probation and resentenced defendant to jail time, requiring 45 days to be served instanter. Defendant, who is now represented by counsel, appeals. Defendant does not challenge the sufficiency of the evidence supporting either the revocation of his probation or his resentencing. Instead, defendant argues that, because the State charged him with violating the SNCO based on engaging in constitutionally protected conduct, he could not be prosecuted or punished for such

conduct. Thus, he reasons, his convictions for violating the SNCO were void, as were the probation revocation proceedings. The State maintains that we lack jurisdiction to consider defendant's contentions.

¶ 6 We begin with the State's jurisdictional argument. Defendant filed a timely notice of appeal from the order revoking his probation. However, he uses this appeal to challenge the constitutionality of his convictions, an issue that we addressed in *Ericson I*. Specifically, defendant argues that "his convictions for violation of a SNCO were void *ab initio* and could not provide a basis upon which to order that he serve a term of probation."

¶ 7 Void judgments are unique in that they "may be challenged 'at any time, either directly or collaterally, and the challenge is not subject to forfeiture or other procedural restraints.' " *People v. Price*, 2016 IL 118613, ¶ 30 (quoting *People v. Castleberry*, 2015 IL 116916, ¶ 15). One reason a judgment could be void is where it was "based on a statute that is facially unconstitutional and void *ab initio*." *Price*, 2016 IL 118613, ¶ 31. A facial challenge alleges that a statute "is unconstitutional under any set of facts." *People v. Thompson*, 2015 IL 118151, ¶ 36. By contrast, an as-applied challenge alleges that "the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *Thompson*, 2015 IL 118151, ¶ 36. Importantly, our supreme court has made clear that "the void *ab initio* doctrine does *not* apply to an as-applied constitutional challenge." (Emphasis in original). *Thompson*, 2015 IL 118151, ¶ 32; see also *People v. Jackson*, 199 Ill. 2d 286, 300 (2002) ("The void *ab initio* doctrine only applies to facially unconstitutional statutes."). Accordingly, when a person is erroneously convicted under a facially valid statute, the error merely renders the judgment voidable. See *People v. Johnson*, 2021 IL App (1st) 200912, ¶ 15, *appeal allowed*, 2021 WL 4592185 (Sept. 29, 2021).

¶ 8 Defendant's assertion that his convictions are void *ab initio* is incorrect, as he raises an as-applied constitutional challenge rather than a facial challenge to the Act. Accordingly, we lack jurisdiction to consider defendant's constitutional challenge, as the time has long passed to appeal either the SNCO or the convictions. *People v. Swenson*, 2020 IL 124688, which defendant cites, does not compel a different result, as that case did not extend the void *ab initio* doctrine to as-applied constitutional challenges. Defendant's reliance on *In re N.G.*, 2018 IL 121939, is also misplaced, as that case involved a statute that was facially unconstitutional.

¶ 9 Even if defendant's constitutional challenge were properly before us, the doctrine of *res judicata* would prohibit him from relitigating an issue that is virtually identical to what he argued in *Ericson I*. See *People v. Ryan*, 283 Ill. App. 3d 165, 170 (1996) (in an appeal from an order revoking a defendant's probation, *res judicata* barred the defendant from raising an argument that could have been raised on direct appeal). To avoid this result, defendant asks that we not strictly enforce the doctrine of *res judicata*, as this case involves an important constitutional right and defendant failed to provide a complete record of the proceedings in his *pro se* direct appeal. Defendant relies on *Flood v. Wilk*, 2019 IL App (1st) 172792, ¶ 29, a case where the reviewing court overlooked a procedural forfeiture in a direct appeal from the entry of a SNCO. Here, however, the problem is not simply that defendant forfeited his arguments by failing to raise them below; he instead wants us to reconsider an issue that we addressed in his prior appeal. Defendant cites no authority supporting his position that litigants who once proceeded *pro se* are immune from *res judicata*.

¶ 10 In closing, we wish to comment on defendant's correct observation that one of the cases that we relied on in *Ericson I* subsequently was vacated on grounds that were unrelated to the points for which we cited it. See *People v. Berrios*, 2018 IL App (2d) 150824, vacated on other

grounds, 135 N.E.3d 541 (Nov. 26, 2019). This does not call our analysis in *Ericson I* into question, as multiple other cases support our conclusion in *Ericson I* that, if defendant believed that the SNCO violated his constitutional rights, it was incumbent upon him to appear in the civil proceeding and challenge the order there rather than simply ignore it. See *People v. Soskin*, 2021 IL App (2d) 191017, ¶ 34 (“[A]n erroneous order of a court must be obeyed until it is properly vacated.”)¹; *People v. Nance*, 189 Ill. 2d 142, 145 (2000) (“Unless it has been overturned or modified by orderly processes of review, an injunction must be obeyed, even if it is erroneous.”); *People ex rel. Watson v. Spinka*, 58 Ill. App. 3d 729, 733 (1978) (“It is clear that when an Illinois Circuit Court with jurisdiction over the subject matter and the persons issues an injunction, that injunction, however erroneous it may be, must be obeyed until it is set aside; disobedience of it is properly punishable as a contempt. *** The injunction must be obeyed even though the alleged error concerns a deprivation of constitutional rights.”).

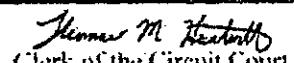
¶ 11 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed in accordance with Illinois Supreme Court Rule 23(c)(2) (eff. Jan. 1, 2021).

¶ 12 Affirmed.

¹ We grant the State’s unopposed motion to cite *Soskin* as additional authority.

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 17CM001331

Plaintiff(s) People of Illinois	Defendant(s) ERICSON ERIC E		 Clerk of the Circuit Court Kane County, Illinois 10/30/19 FILED/IMAGED
Kinsella	Tilmon		
Plaintiff(s) Atty. Bradley David Judge	Defendant(s) Atty. Court Reporter		SLY Deputy Clerk
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent <input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____			
File Stamp			

ORDER

- * No plea entered
- * Petition to Revoke Probation is granted. Conviction to stand.
- * Defendant Sentenced to Incarceration in Kane County Jail for a period of

Sentence Years: 0 Months: 0 Days: 150

Sent Status: _____ Sentence in force _____

- * Good Time to Apply
- * Defendant to receive Credit for Time Served in the amount of:

Sentence Years: 0 Months: 0 Days: 30

* Other:

Matter before the court for PTR hearing. State answers ready. Defense counsel answers ready. Defendant objects and answers not ready, indicating that he believes that a different Public Defender should be representing him in this matter. The court informs the defendant that the public defender's office is one body, and that is objection is overruled given that defendant requested that the public defender represent him just last week and the case was continued to today's date to ensure representation. Defendant makes oral motion to discharge the public defender. Motion denied, the court again citing that defendant requested that the public defender represent him just last week.

State asks the court to take judicial notice of all orders entered in this matter. The court takes judicial notice of all previously entered court dates.

State calls Ms. Kollwelter, defendant's probation officer. Ms. Kollwelter testifies that she is defendant's probation officer and that she explained all terms of probation to defendant; one such term being that defendant to report to Ms. Kollwelter as often as she requires; Ms. Kollwelter testifies that defendant was informed that he must meet with her after his release from custody on 12/28/2018. Ms. Kollwelter testifies that he did not appear on that date. She further testifies that defendant was informed that he must meet with her several times thereafter; again, defendant did not attend any of these meetings. Ms. Kollwelter indicates that she sent meeting notices to defendant at 1409 S. 4th Street, St. Charles, IL 60174, the address that she received from defendant. Ms. Kollwelter testifies that on 9/3/2019 defendant appeared in the lobby of Adult Court Services and that when she went to meet with him in the lobby he began to run away; further, that she

had an appointment scheduled to meet with defendant on 9/4/2019 and that, as the defendant was running away and before he was out of her sight, she yelled to the defendant that he had an appointment to meet with her on the following day. Ms. Kollwelter testifies that a condition of defendant's probation is that he is not to put up any harassing signs on his property. Ms. Kollwelter testifies that she went to the residence of defendant and observed signs posted in defendant's backyard. Ms. Kollwelter received permission from neighbor to enter his property and thereafter observed 4 signs posted on defendant's property; 2 signs being located on trees, and 2 signs hanging from another tree. State admits People's Exhibits 1-6 into evidence, without objection from defense counsel, and publishes said exhibits to the court (all being photographs of the signs that Ms. Kollwelter observed to be hanging on defendant's property). Ms. Kollwelter testifies that she attempted to speak with defendant about these signs; that she repeatedly knocked on defendant's door and that there was no answer. Ms. Kollwelter testifies that she has had occasion to speak with neighbor, Mr. Case, and has knowledge regarding the business owned by the Case family, registered in Mrs. Case's name, called Caronel Enterprises.

Defendant cross-examines Ms. Kollwelter. Ms. Kollwelter testifies that she knows that defendant has checked in with his pretrial services officer, and that the pretrial services and probation offices are in the same building. Ms. Kollwelter testifies that she would leave letters in the mail slot of defendant's front door when she got no answer after knocking on defendant's door during house visits; that she does not know whether defendant actually got those letters. She testifies that she does not send letters via certified mail when she sent letters to her house. That on 9/3/2019 when she saw defendant in the lobby and tried to tell defendant about the 9/4/2019 appointment, that she followed the defendant to the edge of the lobby but did not leave the lobby; that she does not know whether defendant heard her regarding the appointment. That regarding the signs on his property, she does not know whether defendant hung those signs himself and did not observe anyone actually posting the signs; that she never talked to defendant regarding the posting of these signs, but that she tried to talk to him about the posting.

State re-directs. Ms. Kollwelter testifies that pretrial services is different from probation. That she advised defendant that she is his probation officer and that she advised him that he needed to report to her. Ms. Kollwelter testifies that she verified defendant's address with defendant. That one of the conditions of probation is that defendant inform Ms. Kollwelter of any change in his address, and that defendant has not informed of any changes. That defendant did not attend the appointment with probation on 9/4/2019.

Defendant re-crosses. Ms. Kollwelter testifies that she has nothing indicating that defendant has moved from the address noted above; just that she has not been successful in contacting defendant.

State calls Mr. Robert Surratt who testifies that he is a code enforcement officer with STC and that he patrols the city to find violations. That he came to inspect the property located at 1409 S. 4th Street, STC IL 60174. That he went to that address and was able to observe the residence at that address from the public right-of-way. That he first went to that address around 2017. That he has been to that residence in the past month on 10/3/2019. That on that date, he observed 4-5 signs on the property mentioned above. State shows witness people's exhibits 1-6. Witness testifies that he took these photos from Mr. Case's property. That on 10/23/2019 the signs were posted; that he went to the property on today's date, 10/30/2019, and that the signs depicted in people's exhibits 1-6 were still hanging and visible from Mr. Case's property. That these signs are between the residence of 1409 S. 4th Street and 1415 S. 4th Street, STC IL 60174 (that being Mr. Case's property).

Defense counsel cross examines. Witness testifies that he took close-ups of most of the signs. Defense shows people's exhibit's 4; witness testifies that he does not have a close-up of the signs depicted in people's exhibit 4.

State rests.

Defendant does not present any evidence and rests.

Both sides argue.

Re-sentencing instanter per above.

* Other:

Court's finding:

As to allegation #1 - Posting harassing signs in his yard: Evidence that Defendant resides at address of 1409 S. 4th Street, STC 1L; no evidence that anyone else resides there; Defendant accurately argues that there is no evidence that an eye witness indicated that he's posted the signs himself; however, given that there is no evidence that anyone else lives there and that these signs have been up for a significant period of time without any complaint or action about the signs, the court finds that defendant hung these signs. The more difficult question in the court's mind is what rises to the level of "harrassing." The court finds that there is no question that based on the defendant's criminal record, the court can restrict the defendant's first amendment speech rights. As to whether these signs are harassing, the court finds that the messages in some of the signs are not harassing. However, the fact that some signs are located directly between 1409 and 1415 S. 4th street, and the fact that the sign specifically mentions the company that the victim owns, and given that the signs use profanities, the court finds that the state has met its burden on this allegation.

Allegation #2 - Failing to report to ACS/failing to permit probation officer to meet at defendant's home:

With regard to the home visits: there is no evidence suggesting that the defendant was home when the probation officers attempted to make contact during these home visits, and therefore the state has not met its burden in showing that the defendant has failed to allow probation to make home visits.

With regard to defendant's responsibility to report in person: Defendant argues that there is no proof that he received any of the letters from the probation office. However, there is a presumption that notice via United States Mail is received. There is testimony that Ms. Kollweiter sent notice via US mail, and thus there is a presumption that defendant received the mail. There is no evidence that there is anything wrong with defendant's mail that would prevent him from receiving it. Finally, prior court orders requiring the defendant to engage in meaningful meetings with probation officers indicates that the court entering that order was concerned that defendant was not taking his responsibility to meet with his probation officer seriously, so much so that it felt the need to include that language. The court therefore finds that the state meet its burden in failing to report to adult court services as ordered.

* Other:

Defendant is to serve 45 actual days starting today's date (10/30/2019)

* Defense Attorney is present in court

* Defendant present in open court

* Other:

This matter to close after defendant serves jail time.

* Send case to collections

* Original Terms to Apply for Fines and Costs Only

Anything written below this line with the exception of the Judges signature is not considered part of the official court record



SUPREME COURT OF ILLINOIS

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

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

January 26, 2022

In re: People State of Illinois, respondent, v. Eric Ericson, petitioner.
Leave to appeal, Appellate Court, Second District.
127953

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 03/02/2022.

Very truly yours,

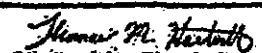
A handwritten signature in black ink that reads "Cynthia A. Grant".

Clerk of the Supreme Court

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 17OP265

Consolidated with Case No. _____

Steve Case Petitioner	Eric E. Ericson Respondent	 Clerk of the Circuit Court Kane County, Illinois 5/19/17 FILED/IMAGED
SERVE THIS RESPONDENT AT: Name: <u>Eric E. Ericson</u> Address, City, State, Zip & County: <u>1409 S. 4th Street, St. Charles, IL 60174, Kane</u>		File Stamp
<input type="checkbox"/> Service out of County		

Independent Petition Criminal Proceeding Matrimonial Other _____

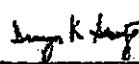
STALKING NO CONTACT STATUS ORDER

The Court having jurisdiction of the subject matter, it is hereby ordered that:

The Plenary Stalking No Contact Order is modified as follows:

Paragraph 5 of the Plenary Stalking No Contact Order entered on 05/11/2017 shall be amended to add the following: Respondent is prohibited from harassing anyone by any means, including written signs or verbal abuse, on the property located at 1415 S. 4th Street, St. Charles, IL 60174. Respondent is to remove all signs from his property (1409 S. 4th Street, St. Charles, IL 60174) which face the Petitioner's property including signs which state: "Warning illegal tear down," "House made with staples, sawdust, glue," "House made by illegal alien labor," "POS House," "Carpet baggers suck get lost," "Pick up the shit fucking asshole," "Pick up the shit," and "Pick up the shit asshole," "You will be sued \$50,000 for tree damage."

Respondent received in open court _____

Attorney/ProSe: Pro Se Date: 5/19/17
 Atty. Registration No.: _____
 Address: _____ 
 City, State, Zip: _____
 Telephone No.: _____
 Attorney E-mail: _____

F. 43