

Appendix - A

APPELLATE COURT ORDER

NO. 4-20-0520
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
January 28, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
CORNELIUS L. JONES,)	No. 08CF1053
Defendant-Appellant.)	
)	Honorable
)	Jeffrey S. Geisler,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

SUMMARY ORDER

In May 2020, defendant, Cornelius L. Jones, filed pro se a petition to vacate a void judgment under section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2020)). In his petition, defendant sought relief from his first degree murder conviction (720 ILCS 5/9-1(a)(1) (West 2008)), which was related to his actions on July 23, 2008. Defendant asserted his conviction was void under *People v. Ringland*, 2017 IL 119484, 89 N.E.3d 735, because he was arrested by Steven Gudgel, who was an investigator with the Sangamon County State's Attorney's office, which led to the discovery of firearms and the charges in this case. On June 25, 2020, the Macon County circuit court sua sponte dismissed defendant's section 2-1401 petition.

Defendant filed a notice of appeal from the circuit court's dismissal, and the Office of the State Appellate Defender (OSAD) was appointed to represent him. On appeal, OSAD moves to withdraw its representation of defendant, contending "an appeal in this case

would be without arguable merit.” OSAD provided proof of service of its motion on defendant, and this court granted defendant until December 1, 2021, to file additional points and authorities. Defendant filed a response. The State then filed a brief asserting this court lacked jurisdiction of defendant’s appeal and agreeing with OSAD’s assessment of the merits of defendant’s appeal. Defendant filed a reply to the State’s brief, asserting this court has jurisdiction of his appeal. After reviewing the record and the parties’ arguments, we agree with the State this court lacks jurisdiction of defendant’s appeal.

“The timely filing of a notice of appeal is both jurisdictional and mandatory.” *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009). Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008). The time for filing a notice of appeal is governed by Illinois Supreme Court rules. See *Chand v. Schlimme*, 138 Ill. 2d 469, 476, 563 N.E.2d 441, 444 (1990). We note our supreme court has emphasized “the appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals.” *Secura Insurance Co.*, 232 Ill. 2d at 217-18, 902 N.E.2d at 667.

In this case, defendant sought relief under section 2-1401(f) of the Code (735 ILCS 5/2-1401(f) (West 2020)), which provides a civil remedy that has been extended to criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 8, 871 N.E.2d 17, 22-23 (2007). As such, the usual rules of civil practice apply to actions brought under section 2-1401. *Vincent*, 226 Ill. 2d at 8, 871 N.E.2d at 23. Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017) requires a notice of appeal be filed within 30 days after the circuit court’s entry of the final judgment appealed from. Here, the circuit court entered its final judgment on June 25, 2020, and thus, defendant’s

notice of appeal had to be filed on or before July 27, 2020. See 5 ILCS 70/1.11 (West 2020) (governing the construction of Illinois Supreme Court rules and providing “the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday” which shall also be excluded). Defendant’s notice of appeal has a file stamped date of July 30, 2020, which was beyond the 30-day deadline.

In his reply brief, defendant notes the circuit court mailed the June 25, 2020, order on July 13, 2020, and he did not receive the order until July 21, 2020. However, defendant did not file a motion for leave to file a late notice of appeal based on the circuit court’s actions under Illinois Supreme Court Rule 303(d) (eff. July 1, 2017). He also did not provide a proper proof of mailing. Illinois Supreme Court Rule 373 (eff. July 1, 2017) contains the mailbox rule, which provides, if a notice of appeal is received after the due date, the time of mailing by an incarcerated, self-represented litigant shall be deemed the time of filing. The rule further states “Proof of mailing shall be as provided in Rule 12.” Ill. S. Ct. R. 373 (eff. July 1, 2017). Illinois Supreme Court Rule 12(b)(6) (eff. July 1, 2017) addresses a self-represented litigant residing in a correctional institution and requires proof by certification under section 1-109 of the Code (735 ILCS 5/1-109 (West 2020)) of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered. With his reply brief, defendant provided a Department of Corrections offender authorization for payment form, which was dated July 21, 2020. The form indicates defendant requested payment for postage of legal mail and includes the following handwritten notes in the margins: (1) “Notice Of Appeal 2-1401” and (2) “First District Appellate Office.” We find defendant’s authorization form fails to comply with the applicable Illinois Supreme Court rules

needed to invoke the mailbox rule, and thus the file stamped date is the date of filing.

Accordingly, we lack jurisdiction to address defendant's appeal.

Therefore, in accordance with Illinois Supreme Court Rule 23(c)(1) (eff. Jan. 1, 2021), we dismiss defendant's appeal and note OSAD's motion to withdraw is moot.

Appeal dismissed.

APPENDIX - B

Appellate Court Order: (modified upon rehearing)

NO. 4-20-0520

Rule 23 filed January 28, 2022

IN THE APPELLATE COURT

Modified upon denial of
Rehearing February 22, 2022

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

CORNELIUS L. JONES,

Defendant-Appellant.

) Appeal from the

) Circuit Court of

) Macon County

) No. 08CF1053

) Honorable

) Jeffrey S. Geisler,

) Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.

Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

SUMMARY ORDER

In May 2020, defendant, Cornelius L. Jones, filed pro se a petition to vacate a void judgment under section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2020)). In his petition, defendant sought relief from his first degree murder conviction (720 ILCS 5/9-1(a)(1) (West 2008)), which was related to his actions on July 23, 2008. Defendant asserted his conviction was void under *People v. Ringland*, 2017 IL 119484, 89 N.E.3d 735, because he was arrested by Steven Gudgel, who was an investigator with the Sangamon County State's Attorney's office, which led to the discovery of firearms and the charges in this case. On June 25, 2020, the Macon County circuit court sua sponte dismissed defendant's section 2-1401 petition.

Defendant filed a notice of appeal from the circuit court's dismissal, and the Office of the State Appellate Defender (OSAD) was appointed to represent him. On appeal,

OSAD moves to withdraw its representation of defendant, contending “an appeal in this case would be without arguable merit.” OSAD provided proof of service of its motion on defendant, and this court granted defendant until December 1, 2021, to file additional points and authorities. Defendant filed a response. The State then filed a brief asserting this court lacked jurisdiction of defendant’s appeal and agreeing with OSAD’s assessment of the merits of defendant’s appeal. Defendant filed a reply to the State’s brief, asserting this court has jurisdiction of his appeal. OSAD did not file a reply to the State’s argument, but defendant filed a pro se reply asserting he timely mailed his notice of appeal and the circuit court erred by dismissing his section 2-1401 petition.

Since our supreme court has instructed reviewing courts to be certain of their jurisdiction prior to addressing an appeal (see *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008)), we begin by addressing the State’s argument. “The timely filing of a notice of appeal is both jurisdictional and mandatory.” *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009). In this case, defendant sought relief under section 2-1401(f) of the Code (735 ILCS 5/2-1401(f) (West 2020)), which provides a civil remedy that has been extended to criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 8, 871 N.E.2d 17, 22-23 (2007). As such, the usual rules of civil practice apply to actions brought under section 2-1401. *Vincent*, 226 Ill. 2d at 8, 871 N.E.2d at 23. Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017) requires a notice of appeal be filed within 30 days after the circuit court’s entry of the final judgment appealed from. However, our supreme court extended the deadline to 60 days in *In re Illinois Courts Response to COVID-19 Emergency* (Ill. S. Ct., M.R. 30370 (eff. Mar. 24, 2020)). Here, the circuit court entered its final judgment on June 25, 2020, and thus, defendant’s notice of appeal had to be filed on or before August 24, 2020. Defendant’s

notice of appeal has a file stamped date of July 30, 2020, which is within the deadline. Thus, we have jurisdiction of defendant's appeal.

In his petition to vacate, defendant suggested his conviction and sentence for first degree murder were void and should be vacated because Gudgel exceeded the scope of his authority. Even if Gudgel lacked authority, defendant's conviction and sentence are not void. A judgment is only void if the court that entered the final judgment lacked personal or subject matter jurisdiction or the final judgment was based on a facially unconstitutional statute which is void ab initio. *People v. Thompson*, 2015 IL 118151, ¶¶ 31-32, 43 N.E.3d 984. Our supreme court has held "[t]he failure to comply with a statutory requirement or prerequisite does not negate the circuit court's subject matter jurisdiction or constitute a nonwaivable condition precedent to the circuit court's jurisdiction." (Internal quotation marks omitted.) *People v. Castleberry*, 2015 IL 116916, ¶ 15, 43 N.E.3d 932.

In his pro se reply brief, defendant acknowledges the circuit court had jurisdiction but asserts section 2-1401 relief is available for final judgments that are not void. However, in his section 2-1401 petition, defendant argued the two-year period for filing contained in section 2-1401(c) did not apply because his sentence and conviction were void. We note the only other exception to the two-year deadline is the exclusion of time during which the person seeking relief was under legal disability or duress or the ground for relief was fraudulently concealed. 735 ILCS 5/2-1401(c) (West 2020). Defendant did not allege any of those bases for exclusion of time from the two-year period in his petition. Thus, under defendant's new argument, his section 2-1401 petition would be untimely.

Regardless, Gudgel's actions are distinguishable from the special investigator's in Ringland. There, the special investigator independently conducted a traffic stop against each

defendant. Ringland, 2017 IL 119484, ¶ 4. The supreme court noted the investigator's conduct was in stark contrast to other cases where "a State's Attorney special investigator truly acted in concert with local law enforcement officials after it was learned that a specific crime had been, or was about to be, committed." Ringland, 2017 IL 119484, ¶ 30. In this case, defendant's supporting evidence indicates an area wide communication was made to law enforcement agencies about a specific crime and a vehicle description was given. Gudgel heard the description and located a vehicle matching the description. Gudgel did not immediately make the traffic stop but instead waited for an Illinois state trooper to arrive before the vehicle was stopped. Gudgel approached the vehicle with the trooper and assisted with the investigation. Gudgel did not act independently like the special investigator in Ringland.

Therefore, in accordance with Illinois Supreme Court Rule 23(c)(2), (c)(4) (eff. Jan. 1, 2021), we allow OSAD's motion to withdraw and affirm the Macon County circuit court's judgment.

Affirmed.

APPENDIX - C

TRIAL COURT ORDER

FILED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

JUN 25 2020

LOIS A. DURBIN
CIRCUIT CLERK

People of the State of Illinois

Plaintiff,

vs.

Cornelius L. Jones

Defendant

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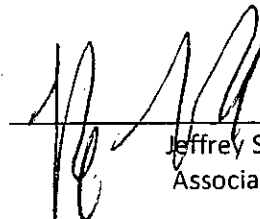
No. 08-CF-1053

ORDER DISMISSING PETITION FILED UNDER 735 ILCS 5/2-1401

Now comes this Court, and hereby dismisses the above captioned petition for reasons as follows:

1. Defendant filed his Petition for Relief from Judgment May 12, 2020 alleging that he was improperly stopped by a Special Investigator for the Sangamon County State's Attorney's Office.
2. A proceeding under 735 ILCS 5/2-1401 is a remedy to bring facts to the Court, if known at the time, that would have precluded entry of judgment. People v. Haynes, 192 ILL.2d 437 (IL S.C. 2000).
3. The People of the State of Illinois have not responded to the motion.
4. On January 15, 2009 the Defendant was convicted of first degree murder after a trial.
5. The Appellate Court affirmed on direct appeal.
6. The limitation period is no later than two years after the entry of the order or judgment on a 2-1401 motion.
7. A void judgment may be challenged at any time.
8. There are two void judgment challenges that have been accepted by the Court of Appeals. One is the Court waived subject matter or personal jurisdiction. Two, if the statute is unconstitutional.
9. The Defendant's allegations do not allege facts sufficient to state grounds for relief therefore his motion is dismissed.

Entered: 6/25/20



Jeffrey S. Geisler
Associate Judge

APPENDIX-D

Illinois Supreme Court order



SUPREME COURT OF ILLINOIS

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

Cornelius L Jones
Reg. No. S08870
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

September 28, 2022

In re: People State of Illinois, respondent, v. Cornelius L. Jones,
petitioner. Leave to appeal, Appellate Court, Fourth District.
128369

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 11/02/2022.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court