



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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November 26, 2025

In re: People State of Illinois, respondent, v. Hezekiah Hamilton,
petitioner. Leave to appeal, Appellate Court, Second District.
132150

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 12/31/2025.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

No. 2-24-0504
Summary Order filed July 9, 2025

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. 07-CF-3445
)	
HEZEKIAH HAMILTON,)	Honorable
)	Alice C. Tracy,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

SUMMARY ORDER

¶ 1 On March 11, 2010, after a bench trial, defendant, Hezekiah Hamilton, was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2006)) and sentenced to 55 years' imprisonment. The evidence presented at trial was strong, especially the forensic evidence. The latter revealed that (1) footprints matching defendant's work boots were found at the scene, (2) blood found on the boots and in defendant's truck matched the victim's DNA profile, and (3) defendant's cell phone pinged off a cell tower near the victim's apartment within 40 minutes of the victim's death. The victim's time of death was established by stipulated evidence, which included the autopsy report, coroner's report, and coroner's death certificate.

EXHIBIT H-B
(1-7)

¶ 2 Defendant appealed, arguing that, because he was going to be deported, sentencing him to 55 years' imprisonment could not be justified. We affirmed. See *People v. Hamilton*, 2011 IL App (2d) 100739.

¶ 3 On February 14, 2013, defendant petitioned for postconviction relief, arguing, among other things, that (1) his arrest was illegal because the police failed to first obtain a warrant, (2) trial counsel was ineffective for failing to move to suppress evidence based on the illegal arrest, and (3) appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness. The trial court summarily dismissed the petition, defendant appealed, and we affirmed. *People v. Hamilton*, 2014 IL App (2d) 130313-U.

¶ 4 On April 2, 2015, defendant moved to have a pair of pants tested for DNA, contending that the results of such a test would support his claim of actual innocence. On November 18, 2015, the trial court denied the motion, and defendant appealed. Thereafter, the appellate defender, who had been appointed to represent defendant, moved to withdraw. Defendant responded by asking to proceed *pro se*. We granted the motion to withdraw and allowed defendant to proceed *pro se*. We ultimately affirmed the denial of defendant's motion for testing. *People v. Hamilton*, 2018 IL App (2d) 160202-U.

¶ 5 On September 21, 2018, defendant moved for leave to file a successive postconviction petition. He sought to raise claims of actual innocence and ineffective assistance of counsel. He claimed that, because of disciplinary actions taken against several police officers involved in his case (which actions he learned of after trial), testimony from those officers should be discredited. He further claimed that, without the officers' testimony, the outcome of his trial would have been different. He also asserted that his ineffective assistance claim (which was based on counsel's failure to obtain the information regarding the officers) satisfied the cause-and-prejudice test. The

trial court denied defendant leave to file the successive petition, and defendant appealed. We allowed the appellate defender to withdraw as counsel on appeal and affirmed the trial court's order denying defendant leave to file a successive petition. *People v. Hamilton*, No. 2-18-0886 (2020) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 6 On March 16, 2020, and September 3, 2020, defendant filed two separate motions for leave to file a successive postconviction petition. He attached a proposed petition to each motion. In his March motion, he claimed that he met the cause-and-prejudice threshold for filing a successive petition, based on *People v. Bass*, 2019 IL App (1st) 160640, ¶ 71, *aff'd in part and vacated in part*, 2021 IL 125434, which held that a warrantless arrest based on an investigative alert is unconstitutional. In his September motion, defendant claimed that he satisfied the cause-and-prejudice test because the State failed to disclose the autopsy and coroner reports. Defendant argued that a 40-minute discrepancy between the cell tower pings referenced at trial and the coroner's established time of the victim's death would have provided him with a defense. The trial court denied defendant leave to file the successive petitions, and defendant appealed. We allowed the appellate defender to withdraw as counsel and affirmed the trial court's order denying defendant leave to file the successive petitions. *People v. Hamilton*, No. 2-21-0146 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 7 On May 26, 2023, defendant filed a petition under section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2020)), seeking relief from his conviction, which he claimed was void. Defendant argued that, despite the two-year limitations period for section 2-1401 petitions (see *id.* § 2-1401(c)), his petition was timely because he was challenging a void judgment. Defendant argued that he was not indicted within 30 days of his arrest, in violation of section 109-3.1(b) of the Code of Criminal Procedure of 1963 (Criminal Code) (725

ILCS 5/109-3.1(b) (West 2006)). He further argued that the State “prejudice[d]” him when it allowed false testimony to be presented to the grand jury. He claimed that, as a result, “the court [l]acked [p]ersonal and [s]ubject [m]atter [j]urisdiction to enter the final judgment,” thereby rendering his conviction void. The State filed a “Motion to Dismiss and/or Grant Summary Judgment.” The State argued that the petition must be dismissed because it was untimely and, alternatively, lacked merit. On August 7, 2024, the trial court granted the State’s motion and dismissed the petition. The court found that, because defendant failed to establish that the judgment was void, his petition was untimely under section 2-1401(c) of the Code. Alternatively, the court found that defendant’s arguments failed even if the petition was timely. The court explained that ~~***~~ (1) defendant caused the delay in filing the indictment and, thus, it was not untimely; and (2) defendant “waived” his argument regarding improper grand jury testimony. Defendant timely appealed, and the trial court appointed the Office of the State Appellate Defender.

¶ 8 Per *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), the appellate defender moves to withdraw as counsel. In his motion, counsel states that he read the record and found no issue of arguable merit. Counsel further states that he advised defendant of his opinion. Counsel supports his motion with a memorandum of law providing a statement of facts, a potential issue, and argument as to why that issue lacks arguable merit. We advised defendant that he had 30 days to respond to the motion. Defendant responded.

¶ 9 The sole potential issue counsel discusses is whether defendant’s section 2-1401 petition raised a meritorious and timely claim. We agree with counsel that this potential issue lacks arguable merit.

¶ 10 “Section 2-1401 of the [Civil Code] constitutes a comprehensive statutory procedure authorizing a trial court to vacate or modify a final order or judgment in civil and criminal

proceedings.” *People v. Thompson*, 2015 IL 118151, ¶ 28. “Relief under section 2-1401 is predicated 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.” *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). Generally, a section 2-1401 petition “must be filed not later than 2 years after the entry of the order or judgment.” 735 ILCS 5/2-1401(c) (West 2020). Although there are several exceptions to the two-year deadline, defendant invoked only the exception for void judgments. See *id.* § 2-1401(c), (f); *Thompson*, 2015 IL 118151, ¶ 29.

¶ 11 Defendant’s petition was filed on May 26, 2023, almost 13 years after the judgment was entered against him. Thus, for the petition to be deemed timely, defendant must establish that the judgment from which he seeks relief is void. Our supreme court “recognizes only two circumstances in which a judgment will be considered void: (1) when it is entered by a court that lacked personal or subject-matter jurisdiction or (2) when it is based on a statute that is facially unconstitutional and void *ab initio*.” *People v. Smollett*, 2024 IL 130431, ¶ 65.

¶ 12 Counsel’s motion to withdraw focuses primarily on the petition’s lack of substantive merit. Counsel asserts that, because defendant agreed to a continuance at the initial court date, it is not arguable that the indictment did not comply with section 109-3.1(b) of the Criminal Code. See 725 ILCS 5/109-3.1(b)(1) (West 2006) (time limit for filing an indictment does not apply “when delay is occasioned by the defendant”). Further, counsel asserts that, contrary to defendant’s claim, the indictment was not based on false grand jury testimony. Finally, counsel asserts that the petition was untimely because defendant gave no reason for failing to file the petition within two years of the judgment.

¶ 13 However, regardless of the substantive merit of defendant's arguments, it is not arguable that the judgment was void. As a result, it is not arguable that the petition was timely. Thus, although counsel's motion does not address voidness as an exception to the two-year deadline, we agree with counsel's ultimate conclusion that it is not arguable that the petition was timely.

¶ 14 Defendant's petition made no argument that the judgment was based on a facially unconstitutional statute. Rather, the petition claimed that the trial court lacked subject matter and personal jurisdiction. This claim was based on defendant's assertions that (1) he was not indicted within 30 days of his arrest, in violation of section 109-3.1(b) of the Criminal Code (*id.* § 109-3.1 (b)); and (2) the indictment was based on false testimony. Neither argument, even if meritorious, would render the judgment void.

¶ 15 Illinois trial courts have jurisdiction over all justiciable matters, and the Illinois Constitution confers that jurisdiction. *People v. Castleberry*, 2015 IL 116916, ¶ 15. A justiciable matter is simply a controversy that is definite and concrete, not moot or hypothetical. *Id.* Subject-matter jurisdiction is the court's authority to hear the general class of cases to which the proceeding belongs. *Id.* ¶ 12. Criminal prosecutions are indisputably among the classes of cases that courts have the power to hear. See *People v. Hughes*, 2012 IL 112817, ¶ 21. It is well-settled in Illinois that an invalid indictment does not deprive a trial court of jurisdiction. See, e.g., *People v. Benitez*, 169 Ill. 2d 245, 256 (1996) (“[J]urisdiction is not conferred by information or indictment, but rather by constitutional provisions.”); *Hughes*, 2012 IL 112817, ¶ 29 (noting the constitutional right to be charged by a grand jury indictment (Ill. Const. 1970, art. I, § 7) “is a personal privilege to be distinguished from the power of the court to adjudicate a controversy”). Thus, it is not arguable that the trial court did not have subject-matter jurisdiction over defendant's case.

¶ 16 Further, in a criminal case, a trial court obtains personal jurisdiction over a defendant when he appears before it. *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005). Thus, because defendant submitted to the court's jurisdiction when he appeared in the underlying proceedings, it is not arguable that the court did not have personal jurisdiction over defendant.

¶ 17 Defendant's response to the motion to withdraw says nothing to dissuade us from agreeing with counsel that the section 2-1401 petition was properly dismissed.

¶ 18 After examining the record, the motion to withdraw, the memorandum of law, and the response, we agree with counsel that this appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Kane County.

¶ 19 Affirmed.

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

James P. Bennis
Clerk of the Circuit Court
Kane County, IL
AUG 07 2024
FILED 87
ENTERED _____

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff/Respondent,)
)
vs.)
)
HEZEKIAH HAMILTON,)
)
Defendant/Petitioner.)

General No. 2007CF3445

ORDER

This cause coming before the Court for rule on Petitioner's Petition for Relief from Judgment pursuant to 735 ILCS 5/2-1401(f). In response, the State filed a Motion to Dismiss and/or requested summary judgment regarding the 2-1401(f) Petition. The Court has examined and considered Petitioner's Petition, the State's Motion, Petitioner's reply, the court file and trial transcripts in this matter, action taken by the Second District Appellate Court in this matter, applicable statutes and case law, the Court finds and rules as follows:

Procedural History

1. On March 11, 2010 Petitioner was found guilty of first-degree murder and sentence to 55 years of imprisonment. Petitioner moved for a reduction of his sentence which was denied. As a result, Petitioner appealed his sentence, however, the sentence was affirmed on appeal. *People v. Hamilton*, 2011 IL App (2d) 100739 (2d Dist. 2011).
2. Petitioner then filed for postconviction relief arguing that his arrest was illegal due to the lack of a warrant and both his trial and appellate counsel was ineffective. His postconviction petition was dismissed at the first stage and the dismissal was affirmed on appeal. *People v. Hamilton*, 2014 IL App (2d) 130313-U (2d Dist. 2014).
3. On April 2, 2015, Petitioner filed a motion for forensic or biological testing of the work pants that he allegedly wore on the day of the murder. On November 18, 2015, the trial court denied Petitioner's motion and the denial was affirmed on appeal. *People v. Hamilton*, 2018 IL App (2d) 160202-U (2d Dist. 2018).
4. Petitioner sought leave to file a successive postconviction petition, however, the trial court denied the request for leave to file a successive postconviction petition. The denial was affirmed on appeal. *People v. Hamilton*, 2020 IL App (2d) 190401-U (2d Dist. 2020).
5. On March 16, 2020 and September 3, 2020, Petitioner filed two separate motions for leave

to file a successive postconviction petition. The motions were denied by the trial court and affirmed on appeal. *People v. Hamilton*, No. 2-21-0146, summary order (2d Dist. 2022).

6. On May 26, 2023, Petitioner filed a Petition for Relief from Judgment under 735 ILCS 5/2-1401(f). In his petition, Petitioner argues that the State violated 735 ILCS 5/109.1.1(B) when the indictment was not issued within 30-days of the Petitioner's arrest. As a result, Petitioner argues the indictment is void. Petitioner also raises an argument that some of the grand jury testimony was false or misleading.

7. On June 1, 2023, the State filed a Motion to Dismiss and/or Grant Summary Judgment as to Petitioner's 2-1401(f) Petition. The State argues the Petition is untimely as it was not filed within 2 years after judgment was entered. Additionally, the State argues that each of Petitioner's arguments lacks legal and factual merit.

Applicable Law

8. Section 2-1401 provides the statutory procedure for defendants to challenge final orders and judgments more than 30 days after their entry. 735 ILCS 2-1401. While a section 2-1401 petition must generally be filed within 2 years after the entry of an order or judgment, section 2-1401(f) provides that where a defendant challenges a judgment as being void, he may seek relief beyond the two-year limitations period. 735 ILCS 5/2-1401(f). A judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally. *Sarkissian v. Chi. Bd. of Educ.*, 201 Ill. 2d 95, 103 (2002). When a petitioner seeks to vacate a final judgment as void, the allegations of voidness substitute for and negate the need to allege a meritorious defense and due diligence. *People v. Laugharn*, 233 Ill. 2d 318, 324 n. 2 (2009).

9. Here, Petitioner was sentenced, and final judgment was entered on June 15, 2010. Petitioner did not file his section 2-1401 petition for relieve from that judgment until May 26, 2023. Almost 13 years elapsed between the time of the final judgment in this case and the section 2-1401 petition attacking it. Clearly, Petitioner missed the two-year limitations period by a substantial amount of time.

10. To overcome this untimeliness, Petitioner argues the judgment against him was void. Although a challenge to void a sentence can be raised at any time, the Illinois Supreme Court recognizes only two circumstances in which a judgment will be considered void: (1) when it is entered by a court that lacked personal or subject-matter jurisdiction or (2) when it is based on a statute that is facially unconstitutional and void *ab initio*. *People v. Stoecker*, 2020 IL 124807 (2020).

11. Petitioner does not argue the statute is facially unconstitutional, but that the State failed to comply with the requirements regarding issuing an indictment. Thus, in order for Petitioner's voidness claims to have merit, Petitioner must demonstrate that the court lacked personal or subject-matter jurisdiction. *People v. Hubbard*, 2012 Ill. App. (2d) 101158, ¶12 (2d Dist. 2012) (finding voluntariness or involuntariness of a guilty plea has no bearing on jurisdiction, so that an

involuntary plea cannot render a conviction void).

12. Here, Petitioner only argues that the circuit court lacked “jurisdiction to try, convict, and sentence the petitioner for the Commission of the criminal offence after the indictment was issued because it is invalid and therefore void” due to the alleged violation of 735 ILCS 5/109.1.1(B). Petition at 2-3. However, the alleged violation of 735 ILCS 5/109.1.1(B) has no bearing on the court’s jurisdiction in this case. *People v. Castleberry*, 2015 IL 116916, ¶15 (2015) (failure to comply with a statutory requirement does not negate the circuit court’s subject matter jurisdiction).

13. Subject matter jurisdiction is the court’s power to hear and determine cases of the general class to which the proceeding in question belongs. *Bellville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 199 Ill.2d 325, 334 (2002). With the exception of the circuit court’s power to review an administrative action, which is conferred by statute, a circuit court’s subject matter jurisdiction is conferred entirely by the Illinois constitution. *Id.* at 334-335. Under Section 9 of Article VI of the Illinois constitution, the circuit court’s jurisdiction extended to all justiciable matters. Ill. Const. 1970, art. VI, §9. The court’s authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition. *Bellevue Toyota*, 199 Ill. 2d at 334-335. A justiciable matter is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interest. *Id.* at 335. In this case, the Court obtained subject matter jurisdiction when the State created a justiciable controversy by filing first degree murder charges against Petitioner.

14. Furthermore, a court acquires personal jurisdiction over a defendant when the defendant appears before the court. *People v. Sharifpour*, 402 Ill. App. 3d 100, 121 (2d Dist. 2010). In this case, Petitioner first appeared before the Court on November 24, 2007 after he was arrested and charged with first degree murder. Petitioner continued to appear before the court through the duration of his case. Thus, the Court had personal jurisdiction in this matter.

15. As a result, there is no credible evidence that the judgment in this case was void as the Court had both subject matter and personal jurisdiction in this matter. The law in Illinois is clear, “a circuit court does not lose jurisdiction because it made a mistake in determining the facts, the law or both.” *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 524 (2001). Petitioner fails to meet his burden to demonstrate the judgment was void. As a result, his 2-1401 petition is untimely.

16. Even if Petitioner’s 2-1401 petition was timely, the Court finds Petitioner’s arguments are limited by the rule of waiver or the doctrine of *res judicata*. *People v. Harris*, 206 Ill. 2d 1, 13 (2002). The appellate court stated in a past appeal “the evidence was so overwhelming that, even under the standard that would have applied if the issue had arisen in a jury case, the admission of all the other-crimes evidence at issue here would not have amounted to reversible error.” *People v. Hamilton*, 2014 IL App (2d) 130313-U (2d Dist. 2014). Petitioner has waived any argument that some of the testimony at the grand jury was false or misleading.¹

¹ Petitioner attaches a police report supplement and a grand jury transcript to his petition. Given that this information was available at the time of trial, the Court cannot consider this newly discovered evidence for the purposes of a 2-1401(f) petition. *People v. Hallom*, 265 Ill. App. 3d 896, 906 (1st Dist. 1994).

17. Furthermore, Petitioner's arguments which form the basis of his petition are meritless. First, Petitioner argues the State violated 725 ILCS 5/109-3.1 which provides a defendant in custody for the alleged commission of a felony shall receive either a preliminary examination or an indictment by grand jury within 30 days of being taken into custody. However, there are several exceptions where the 30-day timeframe do not apply, which includes "when delay is occasioned by the defendant[.]" 725 ILCS 5/109-3.1(b)(1). Additionally, the statute provides that any delay occasioned by the defendant shall temporarily suspend, for the time of the delay, the period within which the preliminary examination must be held. 725 ILCS 5/109-3.1(c). A defendant causes a delay when he requests a continuance, agrees to a continuance, or when his actions otherwise cause or contribute to a delay. *People v. Clay*, 167 Ill. App. 3d 628, 633 (2d Dist. 1988); *People v. Bivins*, 97 Ill. App. 3d 386, 392 (5th Dist. 1991). The facts in the record are undisputed, Petitioner agreed to continue the case therefore resetting the time on which an indictment or preliminary examination needs to happen. As a result, since Petitioner caused the delay, the State did not violate 725 ILCS 5/109-3.1.

IT IS HEREBY ORDERED that:

- (a) State's Motion to Dismiss Petitioner's Petition for Relief from Judgment under 735 ILCS 5/2-1401(f) is granted;
- (b) Petitioner's Petition for Relief from Judgment under 735 ILCS 5/2-1401(f) is dismissed with prejudice;
- (c) The Kane County Circuit Clerk's Office shall send a copy of this Order to Kane County Assistant State's Attorney Greg Sams and:

Hezekiah Hamilton
IDOC Inmate # R26458
Menard Prison
P.O. Box 1000
Menard, IL 62559

Entered: August 7, 2024

Judge: _____

Alice E. Tracy

**Additional material
from this filing is
available in the
Clerk's Office.**