

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
COUNTY OF DU PAGE

PEOPLE OF THE STATE OF ILLINOIS,)

VS)

DEFENDANT.)

No. _____

ORDER

This matter is before the Court for the Defendant _____
“PETITION FOR RELIEF FROM JUDGMENT PURSUANT TO 735 ILCS 5/2-1401 ET SEQ.” The Court has considered the applicable case and statutory law, and the relevant portions of the Illinois Criminal Code.

The Court hereby finds:

1. The Defendant has filed this Petition on _____.
2. Section 2–1401 provides that relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition. People v. Johnson, 352 Ill.App.3d 442, 444 (2004).
3. A section 2–1401 petition’s purpose is to bring before the trial court facts not appearing in the record that, if known at the time the court entered judgment, would have prevented the judgment’s entry. In re Estate of Barth, 339 Ill.App.3d at 662, 275 Ill.Dec. 84, 792 N.E.2d at 323–24.
4. In criminal proceedings, a petition filed pursuant to section 2–1401 seeks to correct all errors of fact occurring in the prosecution of a case that were unknown to the petitioner and the court at the time of trial which, if then known, would have prevented the judgment being entered. People v. Johnson, 352 Ill.App.3d 442, 444 (2004).

5. In a section 2–1401 petition, the petitioner must set forth specific factual allegations that support the following three elements:
 - (1) the existence of a meritorious claim or defense;
 - (2) due diligence in presenting this claim or defense to the trial court in the original action; and
 - (3) due diligence in filing the section 2–1401 petition. *Barth*, 339 Ill.App.3d at 662, 275 Ill.Dec. 84, 792 N.E.2d at 324.
6. A section 2–1401 petition is not designed to provide a general review of all trial errors, nor is it designed to substitute for direct appeal.
7. 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 2012).
8. Exceptions to the time limitation apply where the defendant shows he was under legal disability or duress, or that his alleged ground for relief is fraudulently concealed. *People v. Vincent*, 226 Ill.2d 1, 7–8, 871 N.E.2d 17, 22 (2007).
9. “The two-year limitations period does not apply to petitions brought on voidness grounds. An order is void where the court that entered the judgment lacked (1) jurisdiction of the (a) parties or (b) subject matter or (2) the inherent power to make or enter the order.” *People v. Wuebbels*, 396 Ill.App.3d 763, 919 N.E.2d 1122, (2009).
10. A section 2–1401 motion cannot be used to relitigate questions already validly adjudicated. *In re J.D.*, 317 Ill.App.3d 445, 449 (2000).
11. The purpose of post-judgment review is not to relitigate matters that were or could have been raised on direct appeal, but rather to resolve arguments that new or additional matters, if they had been known at the time of trial, could have prevented a finding that the defendant was guilty of the crimes charged. *People v. Burrows*, 172 Ill.2d 169, 216 Ill.Dec. 762, 665 N.E.2d 1319 (1996).
12. A trial court may dismiss a section 2–1401 petition if the petitioner fails to demonstrate it exercised due diligence in ascertaining and then acting upon its rights. The grounds available to a court for dismissing for lack of due

diligence include the mere failure to offer a reasonable excuse for undue delay in filing the petition. National Underground Construction Co. v. E.A. Cox Co., 273 Ill.App.3d 830, 837, 210 Ill.Dec. 132, 652 N.E.2d 1108, 1113 (1995)

13. In People v. Laugharn, 233 Ill.2d 318, 323 (2009), the Supreme Court pronounced a bright-line rule that a section 2–1401 petition may not be dismissed before the passage of the usual 30–day period to answer or otherwise plead.
14. There is no statutory basis for the appointment of counsel in a section 2–1401 proceeding. People v. Gaines, 335 Ill.App.3d 292, 295–96, 269 Ill.Dec. 350, 780 N.E.2d 822 (2002). However, neither is the appointment of counsel expressly prohibited. See People v. Pinkonsly, 207 Ill.2d 555, 280 Ill.Dec. 311, 802 N.E.2d 236 (2003).
15. This Court denies the Defendant’s request for appointed counsel.
16. Where the trial court is neither required to, nor prohibited from, taking an action, the court will be said to have discretion to do or not do that action. “A trial court commits error when it refuses to exercise discretion based on the erroneous belief that it does not have discretion.” People v. Pinkston, 2013 IL App (4th) 111147, ¶ 14, 370 Ill.Dec. 910, 989 N.E.2d 298.

17. _____

Wherefore, the Court denies this “PETITION FOR RELIEF FROM JUDGMENT PURSUANT TO 735 ILCS 5/2-1401 ET SEQ.” filed by the defendant as _____.

The Circuit Clerk is directed to send copies of this Order to the Defendant.

Date: _____

Judge