

**NOTICE**

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2025 IL App (4th) 240907-U  
NOS. 4-24-0907, 4-24-1003 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 27, 2025  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
BRANDON MASON,	)	No. 11CF500
Defendant-Appellant.	)	
	)	Honorable
	)	Christopher G. Perrin,
	)	Judge Presiding.

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JUSTICE DOHERTY delivered the judgment of the court.  
Justices Zenoff and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* We grant the Office of the State Appellate Defender's motions to withdraw as counsel and affirm the trial court's judgments as no issue of arguable merit could be raised on appeal.

¶ 2 In these consolidated appeals, defendant Brandon Mason appeals the trial court's first-stage dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)) in appeal No. 4-24-1003 and dismissal of his petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2022)) in appeal No. 4-24-0907. In each case, this court appointed the Office of the State Appellate Defender (OSAD) to represent defendant. OSAD moved to withdraw as counsel, arguing defendant's appeals present no potentially meritorious issues for review. We grant the motions and affirm the court's dismissals of defendant's postconviction and section 2-1401 petitions.

¶ 3

## I. BACKGROUND

¶ 4

In June 2011, the State charged defendant with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)), two counts of aggravated unlawful use of a weapon (*id.* § 24-1.6(a)(1), (a)(3)(C), (a)(3)(E)), and possession of a controlled substance (720 ILCS 5/70/402(c) (West 2010)). In particular, count II alleged defendant, having previously been convicted of a felony under the law of Illinois, knowingly carried or possessed a firearm on or about his person or in a vehicle, at a time when he was not on his own land, or in his own abode, or fixed place of business, and defendant had not been issued a currently valid firearm owners identification (FOID) card, in violation of section “24-1.6(a)(1)(3)(C)” of the Criminal Code of 1961 (Criminal Code). See 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2010).

¶ 5

On May 8, 2012, defendant entered a negotiated guilty plea to count II in exchange for seven years’ incarceration and a boot-camp recommendation. The trial court admonished defendant of the charge and read that charge to defendant. Defendant stated he understood. The State confirmed counts I, III, and IV were dismissed under the plea agreement. It then provided a factual basis for the plea consistent with count II. The court sentenced defendant in accordance with the plea agreement, and defendant did not file any postplea motions or an appeal.

¶ 6

On January 5, 2024, defendant filed a motion to vacate his conviction. Although defendant did not cite section 2-1401 of the Code, and the trial court did not specifically construe the motion as a section 2-1401 petition, the parties proceeded as if the motion was made pursuant to section 2-1401. On March 1, 2024, defendant also filed a postconviction petition.

¶ 7

In his motion to vacate, defendant argued section 24-1.6(a)(1) of the Criminal Code (*id.* § 24-1.6(a)(1)) was found unconstitutional in *People v. Aguilar*, 2013 IL 112116. He requested that his conviction be vacated, his arrest record expunged, and a certificate of innocence be issued.

Likewise, in his postconviction petition, defendant requested that his conviction be vacated because section 24-1.6(a)(1) was found facially unconstitutional, rendering his conviction void.

¶ 8 The State filed a response to the motion to vacate, arguing that section 24-1.6(a)(1), (a)(3)(A) (*id.* § 24-1.6(a)(1), (a)(3)(A)) had been held unconstitutional, but defendant pleaded guilty to section 24-1.6(a)(1), (a)(3)(C) (*id.* § 24-1.6(a)(1), (a)(3)(C)), which had been upheld as constitutional in *People v. Mosley*, 2015 IL 115872. The State did not file a response to the postconviction petition.

¶ 9 On April 2, 2024, the trial court filed a written order dismissing the postconviction petition because defendant did not state a constitutional violation unrebutted by the record and the petition was not supported by affidavits. On May 22, 2024, the court held a hearing on defendant's motion to vacate and denied it.

¶ 10 These appeals followed.

¶ 11 II. ANALYSIS

¶ 12 Counsel for OSAD moves to withdraw, stating he (1) read the record on appeal, (2) reviewed the facts and applicable law, and (3) discussed the case with another attorney. OSAD concludes an appeal in this case would be without arguable merit. We granted defendant leave until February 28, 2025, to file a response; none was filed. For the following reasons, we agree with OSAD that this appeal presents no nonfrivolous issues.

¶ 13 A. Section 2-1401 Petition for Relief From Judgment

¶ 14 OSAD first submits that the parties properly construed defendant's motion as a section 2-1401 petition, and the trial court followed proper procedure in addressing it. OSAD then submits that the petition lacked merit.

¶ 15 A party may not simply file a freestanding motion to challenge a void order entered

by the trial court because such a motion does not initiate an action over which the court has jurisdiction. *People v. Needham*, 2016 IL App (2d) 130473, ¶ 13. Rather, a party must file a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2022)). Where a party files a section 2-1401 petition, the petition constitutes a new proceeding rather than a continuation of the original cause. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002).

¶ 16 When the party filing a postjudgment motion fails to specifically invoke section 2-1401 as the basis for review, the trial court is left to decide whether the motion can be properly construed as a section 2-1401 petition. When called upon to determine the nature of a motion, the substance of the motion rather than its caption dictates the result. *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 81 (2006). Whether a motion was properly construed as a section 2-1401 motion is a question of law subject to *de novo* review. *People v. Helgesen*, 347 Ill. App. 3d 672, 675 (2004). In addition, “we may construe an order denying a motion to vacate a void judgment as the dismissal of a section 2-1401 petition, even though the trial court did not explicitly recharacterize it as such.” *Needham*, 2016 IL App (2d) 130473, ¶ 13.

¶ 17 “Section 2-1401 of the 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. “As a general rule, petitions brought pursuant to section 2-1401, to be legally sufficient, must be filed within two years of the order or judgment, the petitioner must allege a meritorious defense to the original action, and the petitioner must show that the petition was brought with due diligence.” *Sarkissian*, 201 Ill. 2d at 103. However, a section 2-1401 petition raising a voidness claim that the judgment was based on a facially unconstitutional statute is not required to be filed within the two-year period and need not allege a meritorious defense or due diligence. *Id.* at 104; *Thompson*, 2015 IL 118151, ¶ 32.

¶ 18 Here, OSAD first correctly notes the trial court followed proper procedures when addressing the petition. OSAD also argues that defendant can make no colorable argument that the court erred by allowing the parties to construe his motion as a section 2-1401 petition. We agree.

¶ 19 Defendant sought to challenge what he contended was a void order. While the trial court did not specifically state it viewed the motion as a section 2-1401 petition, we construe its order denying defendant's motion to vacate a void judgment as the dismissal of a section 2-1401 petition.

¶ 20 Counsel next submits there is no meritorious argument the trial court erred in dismissing the petition because defendant did not plead guilty to the section of the Code that was found unconstitutional. We agree.

¶ 21 In *Aguilar*, our supreme court held the "Class 4 form" of section 24-1.6(a)(1), (a)(3)(A), (d) of the Criminal Code (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)), which prohibited carrying on one's person or in any vehicle, outside the home, a firearm which was uncased, loaded and immediately accessible, was a comprehensive ban that categorically prohibited possession and use of a firearm for self-defense outside of the home. *Aguilar*, 2013 IL 112116, ¶ 21. Accordingly, the court held that subsection was facially unconstitutional because it violated the second-amendment right to keep and bear arms. *Id.* ¶ 22; see *People v. Burns*, 2015 IL 117387, ¶ 25 (clarifying that section 24-1.6(a)(1), (a)(3)(A) was facially unconstitutional without limitation as to the class of felony).

¶ 22 However, the *Aguilar* court noted that the second-amendment right to carry firearms was not unlimited. *Aguilar*, 2013 IL 112116, ¶ 26. Subsequently, in *Mosley*, 2015 IL 115872, ¶ 36, the court expressly upheld the validity of the FOID card requirement in section 24-1.6(a)(1), (a)(3)(C) as a reasonable regulation on the possession of firearms.

¶ 23 Here, defendant pleaded guilty to count II of the indictment, which alleged that he possessed a firearm without a valid FOID card, in violation of section 24-1.6 (a)(1), (a)(3)(C). Under *Mosely*, that section of the Criminal Code is not unconstitutional. Accordingly, defendant's conviction is not void, and the trial court properly dismissed his petition.

¶ 24 B. The Postconviction Petition

¶ 25 OSAD next submits that the trial court followed proper procedure in dismissing defendant's postconviction petition. OSAD further submits that defendant lacked standing to file a postconviction petition and that all underlying claims in the *pro se* postconviction petition are frivolous and patently without merit. Finally, OSAD notes the petition was not supported by affidavits.

¶ 26 The Act provides a remedy to criminal defendants who demonstrate a violation of their constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2022). At the first stage of a postconviction proceeding, the trial court must determine whether the petition is frivolous or patently without merit. *Id.* § 122-2.1(a)(2). “[A] *pro se* petition seeking postconviction relief under the Act for a denial of constitutional rights may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact.” *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). A petition lacks an arguable legal basis when it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Id.* at 16. The petition must be both (1) verified by affidavit (725 ILCS 5/122-1(b) (West 2022)) and (2) supported by “affidavits, records, or other evidence supporting its allegations,” or, if not available, the petition must explain why (*id.* § 122-2). *People v. Collins*, 202 Ill. 2d 59, 65 (2002). If a postconviction petition is found to be frivolous or patently without merit, a court may summarily dismiss it within 90 days of its filing. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001).

Our review of the first-stage dismissal of a postconviction petition is *de novo*. *People v. Dunlap*, 2011 IL App (4th) 100595, ¶ 20.

¶ 27 The Act applies to “any person imprisoned in the penitentiary.” *People v. Johnson*, 2021 IL 125738, ¶ 22; 725 ILCS 5/122-1(a)(1) (West 2022). A petitioner loses standing to seek relief under the Act if he completes his sentence and is thus no longer “imprisoned in the penitentiary.” (Internal quotation marks omitted.) *Johnson*, 2021 IL 125738, ¶ 37. If a postconviction petitioner clearly lacks standing, the petition is necessarily frivolous and patently without merit. *Id.* ¶ 50.

¶ 28 Here, OSAD correctly notes the trial court dismissed the petition within the 90-day period. The petition was also frivolous and patently without merit because at the time defendant filed his petition, he had completed his sentence. Thus, he lacked standing to seek postconviction relief. Further, as previously discussed, defendant could not state a constitutional claim. Accordingly, the court correctly dismissed the petition.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we agree with OSAD that there are no nonfrivolous matters to be raised on appeal. Accordingly, we grant OSAD’s motion to withdraw as counsel and affirm the trial court’s judgment.

¶ 31 Affirmed.