

NOTICE

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2025 IL App (5th) 240565-U

NO. 5-24-0565

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Champaign County.
)	
v.)	No. 11-CF-1525
)	
JERMAINE L. DAVIS,)	Honorable
)	Chad S. Beckett,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Moore and Sholar concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in dismissing the defendant's fourth petition for relief from judgment where the petition was untimely and the defendant's voidness argument for lack of jurisdiction failed. Additionally, the defendant's claim that he never entered a plea of not guilty in the underlying proceedings lacks merit. Therefore, the judgment of the circuit court is affirmed.

¶ 2 The defendant, Jermaine Davis, was found guilty of first degree murder and was sentenced to 60 years in the Illinois Department of Corrections. He appeals from the circuit court's dismissal of his fourth petition for relief of judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2022)). For the following reasons, we affirm.

¶ 4 In the underlying case, the defendant was charged with two counts of first degree murder for the death of Russell Stokes on September 19, 2011. While the record on appeal does not include a transcript of the initial preliminary hearing, the circuit court's docket entries indicate that a preliminary hearing took place on October 7, 2011, the defendant appeared with counsel, a plea of not guilty was entered, and a trial by jury was requested. Subsequently, a jury found the defendant guilty of first degree murder on February 16, 2012. The defendant's motion for a new trial was denied, and he was sentenced to 60 years' imprisonment.

¶ 5 On direct appeal, the defendant argued that the circuit court failed to conduct a preliminary *Krankel* inquiry into his posttrial claims of ineffective assistance of counsel and that the circuit court abused its discretion in sentencing him to 60 years in the Department of Corrections because it failed to apply two statutory mitigating factors. *People v. Davis*, 2013 IL App (4th) 120486-U. The Fourth District Appellate Court found that the defendant forfeited his ineffective assistance claims by failing to bring them before the circuit court, and that he forfeited his sentencing claim by failing to support it with legal authority on appeal. *Davis*, 2013 IL App (4th) 120486-U, ¶¶ 17, 21.

¶ 6 The defendant filed his first section 2-1401¹ petition on March 28, 2014. He argued that the manner in which he was charged was improper because he was charged "with two different crimes, under the same docket number," and the information was not file-stamped by the clerk, signed, or dated. The circuit court dismissed the petition for failing to state a cause of action and for lacking merit. On June 8, 2015, the defendant filed a petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)), alleging ineffective assistance of counsel.

¹735 ILCS 5/2-1401 (West 2014).

The circuit court dismissed this petition as frivolous and patently without merit. The Fourth District Appellate Court affirmed the dismissal in a summary order. *People v. Davis*, No. 4-15-0580 (2017) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 7 The defendant filed a second section 2-1401 petition on June 12, 2017. In this second petition for relief from judgment, he claimed that he had not been given the opportunity to enter a plea at his September 19, 2011, arraignment. He further contended that, because he had not been given this opportunity to enter a plea, the circuit court never had “jurisdiction to act in the case, which makes the judgment entered void.” The circuit court granted the State’s motion to dismiss the petition on the grounds that it was meritless and time-barred.

¶ 8 The defendant appealed, and the Fourth District Appellate Court affirmed the dismissal. *People v. Davis*, 2019 IL App (4th) 170579-U (granting appointed counsel’s motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987)). The appellate court found that the circuit court had jurisdiction over both the case and the defendant; and the defendant’s claim that jurisdiction was lacking because he did not enter a plea at his arraignment was therefore without merit. *Davis*, 2019 IL App (4th) 170579-U, ¶ 12. The appellate court further commented that section 113-4(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-4(b) (West 2010)) indicates that defendants are not required to enter a plea at the preliminary hearing and that section 113-6 of the Code (725 ILCS 5/113-6 (West 2010)) provides that an irregularity at an arraignment will not impact the validity of the proceedings if a defendant proceeds to trial without objecting to that failure or irregularity. *Davis*, 2019 IL App (4th) 170579-U, ¶ 12. The appellate court added that it had already ruled on this same question in the defendant’s appeal from the circuit court’s

dismissal of his *habeas corpus* petition. *Davis*, 2019 IL App (4th) 170579-U, ¶ 13 (citing *People v. Davis*, 2018 IL App (4th) 170866-U, ¶ 11).²

¶ 9 The defendant filed a *habeas corpus* petition pursuant to the Code of Civil Procedure (735 ILCS 5/10-102 *et seq.* (West 2018)) while the above appeal on the second section 2-1401 petition was pending. In this *habeas* petition, the defendant again argued that he was challenging the circuit court’s personal jurisdiction because he had not been given the opportunity to enter a plea at his arraignment on murder charges on September 19, 2011. The defendant also included in his petition an allegation that the circuit court “trie[d] to fabricate the record” by including in the docket entry that he had pled not guilty. The circuit court dismissed the defendant’s *habeas corpus* petition as facially and patently without merit.

¶ 10 The defendant appealed, and the Fourth District Appellate Court affirmed the dismissal of the *habeas* petition. *People v. Davis*, 2018 IL App (4th) 170866-U, ¶ 14. The court noted that although the defendant alleged that the circuit court had fabricated his plea at the preliminary hearing, the issue he argued on appeal was that a circuit court cannot acquire personal jurisdiction over a defendant without that individual entering a plea. *Davis*, 2018 IL App (4th) 170866-U, ¶ 11. The court found no merit to the defendant’s argument, additionally noting that the record in this case indicated the defendant entered a plea of not guilty at the preliminary hearing on October 7, 2011. *Davis*, 2018 IL App (4th) 170866-U, ¶¶ 11-12.

¶ 11 The defendant filed a third section 2-1401 petition on August 1, 2019. He argued that his first degree murder conviction was void because he was charged with murder at a time when the prosecution did not have probable cause to believe he committed that offense, and the circuit court

²As noted hereafter, the defendant filed a petition for *habeas corpus* while the second section 2-1401 appeal was pending. The decision on the *habeas* petition was issued before the appeal related to this section 2-1401 petition.

therefore lacked subject matter jurisdiction. The circuit court dismissed the petition as meritless. The Fourth District Appellate Court vacated the circuit court's dismissal order and remanded for further proceedings because the State had not been given the requisite 30 days to respond. *People v. Davis*, 2020 IL App (4th) 190609-U, ¶¶ 8-9.

¶ 12 The defendant filed an amended *pro se* section 2-1401 petition on June 22, 2020. In this petition, he argued that the circuit court proceeded on September 19, 2011, in the absence of a justiciable matter, as the autopsy on the victim and, therefore, the evidence of a homicide, was not available to support a murder charge. The State filed a motion to dismiss, arguing that the petition was untimely, that the defendant's claim was barred by *res judicata*, and that he had failed to state a recognizable claim under section 2-1401. The court granted the State's motion, finding that the amended petition was untimely, barred by waiver and *res judicata*, and failed to make an appropriate and meritorious claim.

¶ 13 The defendant appealed the dismissal of his third section 2-1401 petition. The Fourth District Appellate Court affirmed the circuit court, finding that the defendant forfeited his arguments by failing to cite appropriate supporting authority; that his conviction was not void; and that the circuit court had jurisdiction over the case and the defendant. *People v. Davis*, 2021 IL App (4th) 200456-U, ¶¶ 15-18.

¶ 14 On October 18, 2023, the defendant filed a fourth section 2-1401 petition, which is at issue in the present appeal. In this petition, the defendant claimed that he did not enter a plea at the September 19, 2011, arraignment, nor did he enter a plea at the October 7, 2011, preliminary hearing. The defendant further contended that the docket entry for October 7, 2011, indicated that he had entered a plea of not guilty, which was not true; therefore, he claimed that the court had falsified that statement, which rendered the final judgment void. He argued that the falsified not

guilty plea was used to deceive him, create injury to him, “and to conceal the courts [*sic*] lack of authority to proceed with this particular judgment.” The defendant alleged that the court knew the not guilty plea was “jurisdictional and essential to the formation of a justiciable matter,” and absent a justiciable matter, the circuit court had no authority to proceed.

¶ 15 The State filed a motion to dismiss, arguing that the petition was untimely and that it was barred by *res judicata* and waiver because the claim could have been raised previously. The State also argued that the defendant failed to state a recognizable claim under section 2-1401, noting that the defendant was afforded every procedural protection and right afforded to a criminal defendant in the underlying case, and that he proceeded toward trial without ever objecting or trying to plead to the charges that were going to trial. The State also contended that the defendant’s claim was without merit because the absence of a formal plea would not have resulted in reversal.

¶ 16 On March 11, 2024, the circuit court dismissed the defendant’s petition, finding it to be untimely, as it was filed well after the two-year limitations’ period. Furthermore, after setting forth the history of the defendant’s various appeals, the circuit court found that the defendant’s conviction was not void, and the voidness exception to the limitations’ period did not apply. In making this finding, the circuit court cited to the Fourth District Appellate Court’s prior decision, which arrived at the same conclusion. See *Davis*, 2021 IL App (4th) 200456-U, ¶¶ 17-18. The circuit court added that the docket entry from October 7, 2011, showed that the defendant entered a not guilty plea on that date. And the circuit court concluded that, even assuming *arguendo* that the defendant had not entered a plea, our supreme court has rejected the argument that a trial court’s jurisdiction hinges on the entry of a plea; the supreme court has further held that the absence of a formal plea does not necessitate overturning a conviction if a defendant’s rights were protected

during the proceedings. *People v. Hill*, 17 Ill. 2d 112 (1959); *People v. Brokowski*, 25 Ill. 2d 497 (1962).

¶ 17 The circuit court went on to observe that the defendant's rights were protected just as if he had entered no plea at all. Citing *Hill*, the circuit court found the defendant's situation would not have been any different if a formal not guilty plea had been entered. The circuit court added that its jurisdiction did not depend on a defendant's plea. Rather, "subject matter jurisdiction was established *** when *the State presented this Court with a justiciable matter* under the Illinois Criminal Code." (Emphasis in original.) Further, the circuit court found that personal jurisdiction was obtained over the defendant "*when he appeared before this Court and was arraigned.*" (Emphasis in original.)

¶ 18 The defendant now appeals from this judgment. The defendant was appointed counsel on appeal, but asked that counsel withdraw so that the defendant could proceed *pro se*. We granted counsel's motion to withdraw. On appeal, the defendant argues that the circuit court erred in dismissing his fourth section 2-1401 petition, dated October 18, 2023. Without citing to authority, the defendant argues that "[w]here there is no plea, there is no issue, there is nothing to be tried, and nothing upon which the verdict of a jury or judgment and sentence of the court can properly be predicated." The defendant argues that a plea is "critical to the court's final judgment."

¶ 19 Just as he claimed in his fourth section 2-1401 petition, the defendant contends on appeal that the circuit court knowingly falsified his not guilty plea as it appears in the court's docket entry, and that the circuit court did so to deceive him, cause him injury, and to conceal the void judgment. The defendant argues the alleged falsification of his plea "amounts to jurisdictional failure," which excuses his inability to comply with the limitations' period for a section 2-1401 petition.

¶ 20 In response, the State argues that the circuit court properly dismissed the defendant’s petition, because it was untimely and because the defendant’s claim lacks merit.

¶ 21 ANALYSIS

¶ 22 A petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2022)) is intended to correct errors of fact that were unknown to the petitioner and the circuit court at the time of the judgment, and which, if known, would have prevented the rendition of that judgment. *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003). A section 2-1401 petition is “not designed to provide a general review of all trial errors nor to substitute for direct appeal.” (Internal quotation marks omitted.) *People v. Haynes*, 192 Ill. 2d 437, 461 (2000). In order to be entitled to relief under this section, the petitioner must set forth: (a) a meritorious claim or defense, (b) due diligence in presenting the claim or defense in the original action, and (c) due diligence in filing the petition. *People v. Coleman*, 206 Ill. 2d 261, 289 (2002). The petition must also “be supported by an affidavit or other appropriate showing as to matters not of record.” 735 ILCS 5/2-1401(b) (West 2022).

¶ 23 When the circuit court’s ruling on a section 2-1401 petition involves a fact-dependent challenge, we review the circuit court’s decision for abuse of discretion. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 50-51. However, as in the present matter, when the court’s dismissal of a section 2-1401 petition is based solely on a legal challenge, we review its decision *de novo*. *Walters*, 2015 IL 117783, ¶¶ 43-47 (examining the decision in *People v. Vincent*, 226 Ill. 2d 1 (2007), which applied *de novo* review to the dismissal of a section 2-1401 petition without the benefit of responsive pleadings and without giving the petitioner notice and an opportunity to be heard, *sua sponte*).

¶ 24 Section 2-1401 petitions must be filed within two years of the entry of the challenged judgment. 735 ILCS 5/2-1401(c) (West 2022). This time limitation is mandatory, and petitions filed after the two-year period will generally not be considered. *People v. Gosier*, 205 Ill. 2d 198, 206 (2001) (citing *People v. Caballero*, 179 Ill. 2d 205, 210 (1997)). However, the Code of Civil Procedure provides that the “[t]ime during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.” 735 ILCS 5/2-1401(c) (West 2022); see also *Pinkonsly*, 207 Ill. 2d at 563-64.

¶ 25 The statutory limitations period does not apply if the opposing party has waived it, or if the judgment being challenged is void. *Gosier*, 205 Ill. 2d at 206-07. Illinois recognizes two types of void judgments. *People v. Thompson*, 2015 IL 118151, ¶¶ 31-32. First, a final judgment is void where the court that entered it lacked personal or subject matter jurisdiction. *Thompson*, 2015 IL 118151, ¶ 31. Second, a judgment is void where it is based upon a facially unconstitutional statute, which is void *ab initio*. *Thompson*, 2015 IL 118151, ¶ 32.

¶ 26 The defendant was found guilty on February 16, 2012. He filed his fourth petition on October 18, 2023, well past the two-year limitations’ period. He did not allege that any of the factors that would toll the applicable two-year period apply here. Furthermore, there are no facts in the record that would support an argument that the defendant was under a legal disability or duress, or that his grounds for relief had been fraudulently concealed from him. Instead, he claims that his conviction is void because he never entered the not guilty plea that appears in the court’s docket entries, and the circuit court therefore lacked jurisdiction to enter its final judgment.

¶ 27 The defendant has already raised his jurisdictional challenge several times, in prior section 2-1401 petitions, his *habeas* petition, and appeals therefrom. On appeal from the dismissal of the

defendant's second section 2-1401 petition, the Fourth District Appellate Court determined that the circuit court had both subject matter and personal jurisdiction in the underlying case, stating:

“The trial court clearly had subject matter jurisdiction over charges related to a murder in Champaign County pursuant to our state constitution which grants general subject-matter jurisdiction to our circuit courts. Ill. Const. 1970, art. VI, § 9. Further, the trial court acquired personal jurisdiction over defendant when he appeared before the court. *People v. Speed*, 318 Ill. App. 3d 910, 915 (2001).” *Davis*, 2019 IL App (4th) 170579-U, ¶ 12.

In its decision affirming the dismissal of his third section 2-1401 petition, the Fourth District Appellate Court again found that the circuit court had both subject matter and personal jurisdiction in the underlying case, explaining:

“A circuit court has subject matter jurisdiction over criminal charges alleging the existence of a justiciable matter under the Criminal Code (720 ILCS 5/1-1 *et seq.* (West 2010)). [Citation.] First degree murder charges fall within the class of cases over which circuit courts have subject matter jurisdiction. [Citation.] The trial court acquired personal jurisdiction over defendant when he appeared before the court and was arraigned on the first degree murder charges. [Citation.]” *Davis*, 2021 IL App (4th) 200456-U, ¶ 17.

On the basis of this jurisdictional finding, the court concluded that the defendant's conviction was not void. *Davis*, 2021 IL App (4th) 200456-U, ¶ 18.

¶ 28 “The preclusion doctrines of *res judicata*, collateral estoppel, and law of the case prevent a defendant from ‘taking two bites out of the same appellate apple.’ ” *People v. Tenner*, 206 Ill. 2d 381, 395 (2002) (quoting *People v. Partee*, 125 Ill. 2d 24, 37 (1988)). Under the law of the case doctrine, “rulings made on points of law by a reviewing court are binding in the trial court upon remand and on subsequent appeals to the same reviewing court unless a higher court has changed

the law.” *People v. Anderson*, 2015 IL App (2d) 140444, ¶ 27 (citing *Relph v. Board of Education of DePue Unit School District No. 103*, 84 Ill. 2d 436, 443 (1981)); see also *People v. Klepper*, 234 Ill. 2d 337 (2009) (the supreme court’s prior decision rejecting defendant’s jurisdictional challenge premised on an allegedly invalid circuit court order was the law of the case and applied to the defendant’s subsequent jurisdictional challenge on the same grounds).

¶ 29 Here, the Fourth District Appellate Court has previously determined that the circuit court had both subject matter and personal jurisdiction in the underlying matter, and provided its reasoning and supporting authority for its respective conclusions. See *Davis*, 2021 IL App (4th) 200456-U, ¶¶ 15-18; *Davis*, 2019 IL App (4th) 170579-U, ¶ 12. There is no argument by the defendant that a higher court than our appellate court has changed the law in this area since then. We are therefore bound by the law of the case, which states that the circuit court had jurisdiction to enter the underlying conviction. Therefore, just as it has on multiple occasions throughout the procedural history of this case, the defendant’s argument that his conviction was void due to lack of jurisdiction fails.

¶ 30 While the defendant does not apply his allegation of a falsified plea to argue fraudulent concealment and a tolling of the limitations period, the State responds that such an argument would also fail. We agree. Even if the defendant could sufficiently present a claim that the court improperly input a docket entry stating that the defendant pled not guilty, he cannot argue that this was fraudulently concealed from him. As the State now notes, the defendant had access to the record, including the docket entries, since his original, direct appeal. Notice of that appeal was filed in May of 2012. The defendant specifically referenced the docket entries in his October 2017, *habeas corpus* petition, and attached a copy of the portion of the docket showing the October 7, 2011, entry indicating that he pled not guilty.

¶ 31 Furthermore, as the Fourth District Appellate Court noted, the defendant did not raise the alleged falsified plea issue on appeal from the dismissal of his *habeas* petition. See *Davis*, 2018 IL App (4th) 170866-U, ¶ 11. The circuit court found that the record in this case showed that the defendant entered a not guilty plea at the preliminary hearing on October 7, 2011. *Davis*, 2018 IL App (4th) 170866-U, ¶ 12. We find that the defendant has forfeited this argument where he could have previously raised it on appeal. See *Pace Communications Services Corp. v. Express Products, Inc.*, 2014 IL App (2d) 131058, ¶ 26 (“when a question could have been raised on a prior appeal but was not, that question is deemed forfeited”).

¶ 32 Even if the defendant had properly preserved his falsification argument, we further agree with the Fourth District Appellate Court that there is no support in the record for his claim that the circuit court falsified his not guilty plea, or that the defendant did not actually enter the not guilty plea indicated in the court’s docket entries. The record on appeal does not include a transcript of the preliminary hearing reflected in the October 7, 2011, docket entry. Therefore, we do not have any evidence in the record before us that contradicts or calls into question the circuit court’s docket entries. Moreover, it is an appellant’s duty to present a record on appeal that sufficiently supports his claims of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 318-19 (2003). If the hearing at issue was not transcribed, then the defendant was obligated to file a bystander’s report or an agreed statement of facts. *Rogers*, 204 Ill. 2d at 319; Ill. S. Ct. R. 323(c), (d) (eff. July 1, 2017). We “resolve any doubts arising from the incompleteness of the record against the appellant.” *Rogers*, 204 Ill. 2d at 319; see also *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 33 The only evidence in the record regarding what took place at the October 7, 2011, preliminary hearing is the circuit court’s docket entry, and we have not been presented with any reason to question it. Additionally, the defendant was represented by counsel at this hearing, as

well as throughout the underlying criminal proceedings. The case proceeded to trial without any objections by the defense relating to the trial proceedings, and there is nothing in the report of proceedings that was made a part of the record on appeal that indicates the defendant did not want to go forward with a trial. Indeed, the record includes defense counsel's filing of affirmative defenses, arguing that the prosecution could not prove the defendant's guilt beyond a reasonable doubt, and motion for a new trial. In addition to his right to be represented by counsel, the defendant retained all of his rights before, during, and after trial, as if he had pled not guilty. He exercised his right to a trial by jury, and his counsel moved for a directed verdict at the close of the State's evidence. He also filed a posttrial motion, a direct appeal, and several subsequent petitions and motions requesting relief. None of his actions taken before trial, during trial or posttrial, prior to the entry of the judgment of conviction, suggested that the circuit court lacked jurisdiction over the proceedings or the defendant.

¶ 34 Moreover, regardless of whether the defendant's allegations have any factual basis, the Illinois Code of Criminal Procedure does not require the entry of a formal not guilty plea—as noted by the Fourth District Appellate Court in its 2019 decision. *Davis*, 2019 IL App (4th) 170579-U, ¶ 12. Section 113-4(b) provides that if a defendant “stands mute a plea of not guilty shall be entered for him and the trial shall proceed on such plea.” 725 ILCS 5/113-4(b) (West 2022). Section 113-6 states that an irregularity in the arraignment will not affect the validity of the proceedings “if the defendant pleads to the charge *or proceeds to trial without objecting to such failure or irregularity*.” (Emphasis added.) 725 ILCS 5/113-6 (West 2022). As discussed above, even if some irregularity occurred at this preliminary hearing, nothing in the record supports a finding that the defendant's case would have proceeded any differently had there been a formal, recorded plea of not guilty.

¶ 35 In summary, as his conviction was not void and no tolling provision or exception applies, the defendant is not excused from the two-year statutory limitations period for filing a petition for relief from judgment, and his petition is untimely. Additionally, his claim of a falsified plea, fraudulently attributed to him by the circuit court, is unsupported by the record or relevant authority, and lacks merit. Therefore, dismissal of his fourth section 2-1401 petition was proper.

¶ 36 Finally, as discussed at length herein, the defendant has filed multiple appeals related to the claim that the circuit court lacked both subject matter and personal jurisdiction over the original action in his case. The majority of his arguments relate to the docket entries on either September 19, 2011, or October 7, 2011. The issue of subject matter jurisdiction and personal jurisdiction has been resolved against the defendant by this appeal and several prior appeals. Therefore, we caution the defendant regarding Illinois Supreme Court Rule 375(b) which relates to the filing of frivolous appeals. Specifically, should an appeal be determined to be frivolous, not be taken in good faith, or for an improper purpose, this court may impose sanctions on the party filing such an appeal. For purposes of the rule, “[a]n appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994).

¶ 37 CONCLUSION

¶ 38 For the reasons stated herein, the circuit court did not err in granting the State’s motion to dismiss the defendant’s fourth section 2-1401 petition for relief from judgment. The judgment of the circuit court is affirmed.

¶ 39 Affirmed.