

NOTICE

Decision filed 09/08/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250486-U

NO. 5-25-0486

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,	)	St. Clair County.
	)	
v.	)	No. 20-CF-274
	)	
SHANE A. KITTERMAN,	)	Honorable
	)	Jeffrey K. Watson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CLARKE delivered the judgment of the court.
Justices Vaughan and Sholar concurred in the judgment.

ORDER

- ¶ 1 *Held:* This court grants appellate counsel leave to withdraw and affirms the circuit court’s dismissal of the defendant’s petition for relief from judgment.
- ¶ 2 The defendant, Shane A. Kitterman, pursuant to a fully negotiated plea agreement with the State, pleaded guilty to burglary and was sentenced to eight years in the Illinois Department of Corrections (IDOC). The defendant did not appeal from the judgment of conviction and sentence. However, he filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2022)). In the petition, the defendant argued that the State deprived him of the benefit of their bargain when it failed to “facilitate” the return of his personal property, which had been seized by police, even though the defendant’s guilty plea had been “induce[d]” by the State’s promise that it would facilitate the property’s return. On motion of the

State, the circuit court dismissed the section 2-1401 petition. The defendant now appeals from that dismissal. On appeal, the defendant's appointed appellate counsel, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit and, on that basis, has filed a motion to withdraw as counsel, along with a supporting memorandum of law. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Although this court granted the defendant adequate time to respond to the *Finley* motion, he has not done so. This court agrees with OSAD's assessment of this appeal, and it hereby grants OSAD's motion to withdraw as counsel and affirms the circuit court's dismissal of the defendant's section 2-1401 petition.

¶ 3 I. BACKGROUND

¶ 4 In February 2020, the defendant was charged with two felony counts—burglary (720 ILCS 5/19-1(a) (West 2018)) and being a child sex offender in a school zone (*id.* § 11-9.3(a)). At first, the defendant proceeded *pro se*. In April 2021, an attorney entered her appearance on behalf of the defendant.

¶ 5 A. Plea of Guilty

¶ 6 On April 17, 2023, the defendant, defense counsel, and the State appeared before the circuit court. The State informed the court of the terms of a plea agreement, as follows. The defendant would plead guilty to burglary, a Class 2 felony, and would be sentenced to imprisonment for a term of eight years. He would receive presentence custody credit against the sentence. Upon his release from prison, the defendant would serve two years of mandatory supervised release (MSR). The other felony count in this case would be dismissed, along with all the other felony, misdemeanor, and traffic counts against the defendant in all the other St. Clair County cases pending against him, including case No. 22-CF-1549.

¶ 7 The defendant told the court that he understood the plea agreement exactly as the State had explained it and confirmed that there was no part of the agreement they did not understand. The defendant indicated that he understood he had the right to continue to plead not guilty and to require the State to prove him guilty beyond a reasonable doubt, but he also had the right to plead guilty. He indicated that he was pleading guilty to burglary. He also indicated his understanding that he had a right to a trial, whether by a jury of 12 or by the court alone, as he chose, and that the jury or court would determine his guilt, but that by pleading guilty, he was waiving the right to a trial. He also indicated that he understood his right to confront and cross-examine the witnesses against him and to present witnesses on his own behalf, and that by pleading guilty, he was waiving those rights.

¶ 8 When the court asked the defendant whether he was pleading guilty freely and voluntarily, he answered, “Yes, Your Honor.” When the court asked him whether any threats, force, or “promises of any kind aside from this plea offer” were causing him to plead guilty, he answered, “No, Your Honor.” After all those admonishments, the defendant again indicated that he was pleading guilty to burglary.

¶ 9 The State presented a factual basis for the plea, which explained that surveillance video showed the defendant taking a computer from inside a church. After the defendant was arrested, the defendant’s wife handed over to the police a computer with the same serial number as the one taken from the church. Defense counsel said that she would stipulate to the factual basis. The court determined that there was a factual basis for the plea agreement. The court accepted the defendant’s guilty plea to burglary. The court scheduled the cause for sentencing on April 19, 2023. The parties waived a presentence investigation report.

¶ 10

B. Sentencing

¶ 11 On April 19, 2023, the parties appeared for a sentencing hearing. The circuit court began by asking the defendant whether his ability to understand the proceedings was affected by any mental or physical disability, any medication, or any drugs or alcohol, and the defendant answered in the negative. The defendant also indicated that he had had an opportunity to prepare for the sentencing hearing and to discuss with his attorney any plea offers and the possible penalties he faced, and that he was satisfied with his attorney's performance. The court stated its intention to "abide by the negotiations," and it imposed the agreed-upon sentence of eight years in prison and two years of MSR, with the other count in this case dismissed. Several other cases also were dismissed as part of the plea.

¶ 12 Finally, the court fully admonished the defendant about his right to appeal, including the need to file a written motion to withdraw guilty plea, and the defendant indicated his understanding.

¶ 13

C. Motions to Withdraw Guilty Plea

¶ 14 On May 4, 2023, the defendant filed a *pro se* motion to withdraw his guilty plea. The defendant alleged that he did not receive the benefit of his bargain with the State. According to the defendant, the State had promised him a certain number of days of presentence credit, but the IDOC had recently informed him that he would receive only a fraction of that number. On May 15, 2023, the defendant filed a *pro se* amended motion to withdraw guilty plea, which had essentially the same gravamen as the original motion.

¶ 15 Also on May 15, 2023, the defendant filed a *pro se* "motion to withdraw all motions to set aside defendant's plea agreement." According to the motion, the defendant had now received the benefit of his plea bargain with the State, because the IDOC had "corrected its errors" by awarding

him the correct number of days of presentence credit. On June 9, 2023, the defendant filed a *pro se* motion to withdraw the motion to withdraw his guilty plea. The defendant explained that the IDOC had recently “corrected its calculation sheet” and stated that it would give the full presentence credit to which he was entitled.

¶ 16 On August 2, 2023, the defendant appeared before the circuit court remotely, via Zoom, and defense counsel and the State appeared in person. The defendant informed the court that he wished to withdraw his *pro se* motions to withdraw his guilty plea and requested that the court strike the motions. He acknowledged that he would be forever barred from filing another motion to withdraw his guilty plea. The court ordered that all pending motions to withdraw guilty plea be stricken, pursuant to the defendant’s request.

¶ 17 D. Petition for Relief from Judgment: The Subject of the Instant Appeal

¶ 18 1. *Pleadings*

¶ 19 On December 11, 2023, the defendant filed the pleading that is the subject of the instant appeal—a *pro se* petition for relief from judgment, pursuant to section 2-1401 of the Code of Civil Procedure. The defendant alleged, *inter alia*, that an investigator with the St. Clair County Sheriff’s Department “frame[d]” him for a residential burglary by “planting evidence” in his automobile and house, which led to the defendant being charged with residential burglary in St. Clair County case No. 22-CF-1549. That case was brought “for the sole purpose” of “forcing” the defendant to plead guilty to burglary in the instant case. The defendant asserted a “meritorious defense” to the charge of burglary in this case, in that he would not have pleaded guilty to burglary and would have demanded a jury trial but for his being framed for residential burglary in St. Clair County case No. 22-CF-1549. To induce the defendant to plead guilty to burglary, the State promised him, off the record, that it would “facilitate the return” of all the personal property seized

from the defendant by the police. However, the defendant further alleged that after the defendant had pleaded guilty and the judgment of conviction and sentence had been entered, the State failed to abide by its promise to facilitate the property's return. The defendant sought vacatur of the judgment of conviction and sentence that was entered in this case.

¶ 20 Attached to the petition for relief from judgment were three documents. Those documents were (1) a copy of a transcript of the hearing, held on January 18, 2023, on the defendant's motion to suppress physical evidence; (2) a copy of the order entered by the circuit court on February 8, 2023, that denied the defendant's motion to suppress physical evidence; and (3) a 10-page affidavit hand-written by the defendant. In the affidavit, the defendant described, *inter alia*, how he had been framed for the crime of residential burglary by an investigator for the St. Clair County Sheriff's Department, which led to the defendant being charged with residential burglary in case No. 22-CF-1549. The defendant asserted, *inter alia*, that an assistant state's attorney had promised him, during off-the-record conversations, that if he pleaded guilty to burglary in this case, the State would see to it that the defendant's personal property, which had been seized from him by the sheriff's department in case No. 22-CF-1549, would be returned to him. That promise was made to "induce" the defendant to accept the plea agreement in this case. However, after the defendant pleaded guilty to burglary, the State "renege" on its promise to aid in the property's return. Without that promise, the defendant would not have pleaded guilty to burglary; he would have demanded a trial.

¶ 21 On January 10, 2024, the State filed a combined motion to dismiss the defendant's section 2-1401 petition, under both section 2-615 ("Motions with respect to pleadings") and section 2-619 ("Involuntary dismissal based upon certain defects or defenses") of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2022)). According to the State, the petition warranted dismissal

because it consisted of nothing but “conclusory and accusatory statements which also fail to state a cause of action.” Also, because the defendant’s plea of guilty to burglary was voluntary, it waived all nonjurisdictional errors, defects, and irregularities.

¶ 22 On March 5, 2024, the defendant filed a response to the State’s motion to dismiss his petition for relief from judgment. The response repeated much of the material from the petition for relief from judgment. The defendant asked that the circuit court deny the State’s motion to dismiss his petition.

¶ 23 *2. Hearing on State’s Motion to Dismiss*

¶ 24 On September 26, 2024, the circuit court held a hearing on the State’s motion to dismiss the defendant’s section 2-1401 petition for relief from judgment. The State argued, *inter alia*, that the defendant had failed to present facts unknown to the court that would have prevented it from accepting his guilty plea, and that he had failed to present a meritorious claim or to exercise due diligence in filing the petition.

¶ 25 In his own argument, the defendant stated that he pleaded guilty to burglary because the State had promised him that if he did so, his personal property, which had been seized from him in case No. 22-CF-1549, would be returned to him. It was only after he pleaded guilty to burglary that the State broke its promise and refused to cooperate in the return of his property. The State promised to help him to recover the property that caused the defendant to accept the plea agreement, and without that promise, the defendant “would have fought every one [of] these cases.” The court took the matter under advisement.

¶ 26 *3. Ruling on the State’s Motion to Dismiss*

¶ 27 On October 24, 2024, four weeks after the hearing on the State’s motion, the court entered a written order that granted the State’s section 2-619 motion to dismiss the defendant’s section 2-

1401 petition. The court found, *inter alia*, that the defendant's plea was voluntary, as evidenced by the court record.

¶ 28 The defendant filed *pro se* a timely motion to reconsider the order dismissing the section 2-1401 petition. On May 1, 2025, the circuit court entered an order that denied the defendant's motion to reconsider the denial of his section 2-1401 petition. According to the court, the defendant's benefit-of-the-bargain assertions were "totally contradicted by the transcript of his agreed upon plea of guilty."

¶ 29 The defendant perfected the instant appeal. This court appointed OSAD as appellate counsel for the defendant.

¶ 30 II. ANALYSIS

¶ 31 This appeal is from the circuit court's order that granted the State's motion to dismiss the defendant's section 2-1401 petition for relief from judgment. The judgment that the defendant challenged was the judgment of conviction and sentence, which the court entered after accepting the defendant's guilty plea to burglary. The defendant's attorney on appeal, OSAD, has filed a *Finley* motion to withdraw as counsel. OSAD accompanies its *Finley* motion with a supporting memorandum of law, wherein it raises two potential issues: (1) whether the circuit court erred in granting the State's motion to dismiss the section 2-1401 petition, and (2) whether the circuit court complied with the procedural requirements of section 2-1401 in dismissing the defendant's petition.

¶ 32 Section 2-1401 "provides a comprehensive statutory procedure by which final orders, judgments, and decrees may be vacated after 30 days from their entry." *People v. Haynes*, 192 Ill. 2d 437, 460 (2000). In a criminal case, a section 2-1401 petition for relief from judgment is "the forum *** in which to correct all errors of fact occurring in the prosecution of a cause, unknown

to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition.” *Id.* at 461.

¶ 33 To obtain relief under section 2-1401, the defendant “must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim, (2) due diligence in presenting this defense or claim to the circuit court in the original action, and (3) due diligence in filing the section 2–1401 petition for relief.” *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). “That is, in order to obtain relief under section 2-1401, the defendant must show both a meritorious defense to the charges against him and due diligence in presenting it.” *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003). A section 2-1401 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). A section 2-1401 petition requires the circuit court to determine whether facts exist that were unknown to the court at the time of trial and would have prevented entry of the judgment. *Pinkonsly*, 207 Ill. 2d at 566.

¶ 34 This court reviews *de novo* the dismissal of a section 2-1401 petition without an evidentiary hearing. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). Dismissal may be affirmed on any basis supported by the record, regardless of the reasoning or the grounds relied upon by the circuit court. *People v. Harvey*, 379 Ill. App. 3d 518, 521 (2008).

¶ 35 In the first of its two potential issues on appeal, OSAD considered arguing that the circuit court erred in granting the State’s motion to dismiss the defendant’s section 2-1401 petition. Here, the defendant alleged in his petition that he did not receive an important benefit of his April 2023 plea agreement with the State. Specifically, the defendant alleged that the State had induced him to plead guilty to burglary in this case through its off-the-record promise to facilitate the return of his personal property associated with case No. 22-CF-1549, but after he had pleaded guilty to

burglary, the State reneged on its promise, and he did not receive the benefit thereof. He further alleged that he would not have pleaded guilty without the State's promise. See *Santobello v. New York*, 404 U.S. 257, 262 (1971) (due process is violated when the prosecutor fails to fulfill a promise that was part of the inducement for the defendant to plead guilty).

¶ 36 However, any cause of action the defendant presented was defeated by something outside the four corners of his petition, namely, the transcript of the April 17, 2023, guilty-plea hearing, which contradicts the defendant's allegations about an off-the-record promise by the State. When the circuit court asked the defendant whether he was pleading guilty freely and voluntarily, the defendant answered unequivocally in the affirmative. When the court asked him whether any threats, force, or "promises of any kind aside from this plea offer" were causing him to plead guilty, he answered unequivocally in the negative. Afterward, the court accepted the defendant's plea of guilty to burglary.

¶ 37 Due process requires an affirmative showing, in the record of the court that takes a defendant's guilty plea, that the defendant pleaded guilty knowingly and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). In conformity with the mandate of *Boykin*, Illinois Supreme Court Rule 402(b) (eff. July 1, 2012) specifically addresses the determination of whether a guilty plea is voluntary. The rule requires the circuit court to question the defendant personally in open court and to "determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea." Ill. S. Ct. R. 402(b) (eff. July 1, 2012). Unless the court first determines that the plea is voluntary, the court shall not accept the plea of guilty. *Id.*

¶ 38 When the defendant had the opportunity, through Rule 402(b) to inform the circuit court of the State's alleged off-the-record promise, he said nothing about it. Instead, he gave every indication that his plea was voluntary. Thus, the record rebuts the allegation about the State's

promise to the defendant. The circuit court did not err in granting the State's motion to dismiss the defendant's section 2-1401 petition for relief from judgment. Any argument to the contrary would lack merit.

¶ 39 In its second potential issue on appeal, OSAD considered arguing that the circuit court, in dismissing the defendant's petition, did not comply with the procedural requirements of section 2-1401. The defendant filed his petition on December 11, 2023, and the State filed its motion to dismiss the petition on January 10, 2024. That is, the State's motion to dismiss was filed within the usual 30 days to answer or otherwise plead. See *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009). The court did not *sua sponte* dismiss the petition before the conclusion of the 30 days, which would have been premature. See *id.* On October 24, 2024, the court granted the State's motion to dismiss. The defendant's timely motion to reconsider the dismissal was denied on May 1, 2025. Therefore, as OSAD acknowledges in its *Finley* memorandum, the circuit court complied with the procedural requirements of section 2-1401, and no argument to the contrary would have merit.

¶ 40 III. CONCLUSION

¶ 41 The circuit court did not err, whether substantively or procedurally, in dismissing the defendant's section 2-1401 petition for relief from judgment. No contrary argument would have merit. Accordingly, OSAD's motion to withdraw as appellate counsel is granted, and the circuit court's judgment dismissing the defendant's petition is affirmed.

¶ 42 Motion granted; judgment affirmed.