2026 IL App (1st) 250539-U

No. 1-25-0539

Order filed October 6, 2026

Second Division

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 2429
	)	
PRINCE PATTERSON,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice D.B. Walker and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's appeal is dismissed for lack of jurisdiction because his notice of appeal and motion for leave to file a late notice of appeal were untimely. The order allowing leave to file the late notice of appeal is vacated as improvidently granted.

¶ 2 Defendant Prince Patterson appeals from the denial of his motion to reconsider the partial denial of his *pro se* "Motion to Vacate Void Judgment/Vacate Conviction for Unconstitution[ality]," which sought relief from his conviction for unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(2) (West 2012)). On appeal, defendant

contends that the statute under which he was convicted is facially unconstitutional under *New York State Rifle & Pistol Ass'n, Inc., v. Bruen*, 597 U.S. 1 (2022). He also contends that two provisions of the aggravated unlawful use of a weapon statute, under which he was found guilty but not sentenced, are facially unconstitutional under *Bruen*. Where defendant's notice of appeal and motion for leave to file a late notice of appeal were untimely, we dismiss the appeal. Our order allowing leave to file the late notice of appeal is vacated as improvidently granted.

¶ 3 Defendant was charged with five offenses arising from events of January 17, 2012. Count I charged unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(2) (West 2012)) and alleged that defendant knowingly possessed a firearm in a vehicle and had not been issued a currently valid firearm owner's identification (FOID) card. Count II charged aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(A) (West 2012)) and alleged that he knowingly carried in a vehicle a firearm that was uncased, loaded, and immediately accessible. Count III charged AUUW (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012)) and alleged that he knowingly carried in a vehicle a firearm and had not been issued a currently valid FOID card. Count IV charged AUUW (720 ILCS 5/24-1.6(a)(2), (3)(A) (West 2012)) and alleged that he knowingly carried on or about his person upon a public street a firearm that was uncased, loaded, and immediately accessible. Count V charged AUUW (720 ILCS 5/24-1.6(a)(2), (3)(C) (West 2012)) and alleged that he knowingly carried on or about his person upon a public street a firearm and had not been issued a currently valid FOID card.

¶ 4 Prior to trial, the court allowed the State to amend counts II and III to include language that defendant had a prior conviction for aggravated vehicular hijacking.

¶ 5 Following a 2013 bench trial, the trial court found defendant guilty on all counts. The court subsequently merged all the counts into count I (unlawful possession of a firearm by a street gang member), imposed 10 years' imprisonment thereon, and denied defendant's motion to reconsider sentence.

¶ 6 On August 19, 2024, defendant filed the *pro se* pleading underlying this appeal, which he titled "Motion to Vacate Void Judgment/Vacate Conviction for Unconstitution[ality]." In the motion, defendant argued that his "conviction" for AUUW was unconstitutional and void under *People v. Aguilar*, 2013 IL 112116, and *People v. Mosley*, 2015 IL 115872.

¶ 7 On September 20, 2024, the circuit court entered a written order disposing of defendant's motion, stating that "counts 2 & 4 are vacated *nunc pro tunc* to 8-28-2013," but that counts "1, 3 & 5 are not affected by *Aguilar* and thus remain valid." The half-sheet for September 20, 2024, indicated that defendant's motion to vacate void judgment was "granted in part and denied in part."

¶ 8 On October 18, 2024, according to a certificate of service, defendant placed a motion to reconsider in the institutional mail of the correctional center where he was incarcerated. The circuit court denied the motion to reconsider on November 22, 2024. On January 15, 2025, the circuit court clerk mailed a letter to defendant advising him that the court had denied his motion to reconsider.

¶ 9 On January 28, 2025, according to a "Notice of Filing/Affidavit of Service," defendant placed a notice of appeal in the institutional mail of the correctional center where he was incarcerated, specifying that he was appealing the denial of his motion for reconsideration of the partial denial of his "petition for a relief from judgment pursuant to 735 ILCS 5/2-1401 *et seq.*" The notice of appeal was file-stamped by the circuit court clerk as received on February 5, 2025.

On February 14, 2025, the circuit court entered an order directing the clerk to transmit the notice of appeal to this court and directing the Office of the State Appellate Defender (OSAD) to assist defendant with the filing of a late notice of appeal.

¶ 10 On March 24, 2025, OSAD filed a motion for leave to file a late notice of appeal, which this court granted on March 31, 2025.

¶ 11 Before reaching the merits of defendant's contentions on appeal, this court has an independent duty to consider jurisdiction. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). The filing of a notice of appeal "is the jurisdictional step which initiates appellate review." (Internal quotation marks omitted.) *Id.* Absent a timely filed notice of appeal, this court lacks jurisdiction to consider issues relating to any part of the ruling (*People v. Love*, 2013 IL App (2d) 120600, ¶ 32), and we must dismiss the appeal (*Smith*, 228 Ill. 2d at 104).

¶ 12 In order to determine whether defendant's motion for leave to file a late notice of appeal was timely, we must establish the nature of the underlying filing. Defendant titled his *pro se* pleading "Motion to Vacate Void Judgment/Vacate Conviction for Unconstitution[ality]." He did not identify any statutory authority as a basis for the motion. In his *pro se* notice of appeal, defendant stated that he had filed the motion pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 *et seq.* (West 2024)). OSAD, in the motion for leave to file a late notice of appeal, referred to the *pro se* motion as a "Post-Conviction Petition (styled Motion to Vacate Void Judgment)," without any statutory citation. Similarly, in defendant's appellant's brief, OSAD references "[t]he instant post-conviction proceedings" but does not cite any statute. The State refers to defendant's motion by the title he gave it.

¶ 13 While a party may attack a void judgment at any time, he may not file a freestanding motion to challenge an order as void because such a motion does not initiate an action over which the circuit court has jurisdiction. *People v. Needham*, 2016 IL App (2d) 130473, ¶ 13. Rather than a freestanding motion, a party may file a section 2-1401 petition to challenge a judgment as void. See *People v. Mason*, 2025 IL App (4th) 240907-U, ¶ 15; Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025) (nonprecedential orders entered on or after January 1, 2021, may be cited for persuasive purposes). A section 2-1401 petition claiming that a judgment is void because it was based on a facially unconstitutional statute need not be filed within two years of the judgment, allege a meritorious defense to the original action, or show that the petition was brought with due diligence. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002).

¶ 14 When a party files a postjudgment motion but fails to specifically invoke section 2-1401 as the basis for review, the circuit court must decide whether the motion may be construed as a section 2-1401 petition. *Mason*, 2025 IL App (4th) 240907-U, ¶ 15. In such cases, the substance of the motion, and not its caption, determines the result. *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 81 (2006). Whether a circuit court properly construed a motion as a section 2-1401 petition is a question of law subject to *de novo* review. *People v. Helgesen*, 347 Ill. App. 3d 672, 675 (2004). In addition, this court "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.

¶ 15 Here, defendant's motion claimed that his "conviction" for AUUW was void because it was based on an unconstitutional statute. As discussed, such a claim may be raised in a section 2-1401 petition. Although the circuit court did not specifically state that it viewed the motion as a

section 2-1401 petition, we construe its order granting the motion in part and denying the motion in part as disposing of a section 2-1401 petition. See *Mason*, 2025 IL App (4th) 240907-U, ¶ 19.

¶ 16 Relevant to this determination, we note that, had the circuit court considered the motion to be a postconviction petition filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)), it would have been obliged to warn defendant of this characterization and its consequences in accordance with *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005), which it did not do. Moreover, the circuit court granted the motion in part and denied it in part, a disposition which is not permitted in first-stage proceedings under the Act. See *People v. Griffin*, 2024 IL 128587, ¶ 68. For these reasons, we conclude that the circuit court properly treated defendant's filing as a section 2-1401 petition. We construe it as such for purposes of this appeal.

¶ 17 Section 2-1401, though it extends to criminal cases, provides a civil remedy for obtaining relief from final judgments. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). While a section 2-1401 petition must be filed in the same proceeding in which the final order or judgment was entered, it is not a continuation of the original action. 735 ILCS 5/2-1401(b) (West 2022). Thus, our supreme court has "consistently held that proceedings under section 2-1401 are subject to the usual rules of civil practice." *Vincent*, 226 Ill. 2d at 8 (citing *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 279 (1982)).

¶ 18 Article III of the Illinois Supreme Court Rules governs civil appeals and sets forth the requirements for perfecting civil appeals in Rule 303 (eff. July 1, 2017). Rule 303(a) requires a notice of appeal to be filed within 30 days after the entry of a final judgment. *People v. Tapp*, 2012 IL App (4th) 100664, ¶ 4. A party seeking to appeal the final judgment after the expiration of the 30-day period may file a motion for leave to file a late notice of appeal "within 30 days after

expiration of the time for filing a notice of appeal." Ill. S. Ct. R. 303(d) (eff. July 1, 2017). Weekends and holidays are excluded as the last day from the computation of any time requirement fixed by a statute in force in Illinois. 5 ILCS 70/1.11 (West 2024).

¶ 19 Here, defendant appeals from the circuit court's November 22, 2024, denial of his motion to reconsider the partial denial of his section 2-1401 petition. The time frame to file a notice of appeal from that order expired on Monday, December 23, 2024, and the last date defendant could have timely filed a motion for leave to file a late notice of appeal was January 22, 2025. Defendant's *pro se* notice of appeal was received by the clerk on February 5, 2025, over six weeks after its due date, and OSAD's motion for leave to file a late notice of appeal was filed on March 24, 2025, over eight weeks after its due date.

¶ 20 When a notice of appeal is received by the clerk after the due date, "the time of mailing by an incarcerated, self-represented litigant shall be deemed the time of filing." Ill. S. Ct. R. 373 (eff. July 1, 2017). The sole method for proving the time of mailing is for the incarcerated *pro se* litigant to submit a "certification under section 1-109 of the Code of Civil Procedure *** stating the time and place of deposit and the complete address to which the document was to be delivered." Ill. S. Ct. R. 12(b)(6) (eff. July 1, 2017); see also *People v. English*, 2023 IL 128077, ¶¶ 29, 36. Here, defendant submitted a "Notice of Filing/Affidavit of Service" with his *pro se* notice of appeal, stating that he deposited it in the mail on January 28, 2025. We need not determine whether this submission constitutes a certificate substantially in the form required by section 1-109 (see *People v. Shunick*, 2024 IL 129244, ¶¶ 45-46), because the date of mailing was over five weeks after the due date for a notice of appeal and six days after the due date for a late notice of appeal.

¶ 21 Defendant's *pro se* notice of appeal and OSAD's motion for leave to file a late notice of appeal were both untimely under Rule 303. Accordingly, we hold that leave to file the late notice of appeal was improvidently granted and we vacate the order granting leave to file a late notice of appeal. See *People v. Sledge*, 2026 IL App (1st) 230933-U, ¶¶ 15, 17 (vacating improvidently granted order permitting late notice of appeal); *In re Parentage of S.D.D.*, 2026 IL App (1st) 251004-U, ¶ 15 (same); Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025) (nonprecedential orders entered on or after January 1, 2021, may be cited for persuasive purposes).

¶ 22 Our supreme court has stressed that "the appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 217-18 (2009). As such, we lack jurisdiction over defendant's appeal of the denial of his motion to reconsider the partial denial of his section 2-1401 petition. See *Tapp*, 2012 IL App (4th) 100664, ¶¶ 7, 8 (dismissing appeal for lack of jurisdiction because the defendant failed to comply with the time limitations of Illinois Supreme Court Rules); *In re K.A.*, 335 Ill. App. 3d 1095, 1100 (2003) (dismissing untimely appeal for lack of jurisdiction even though the parties "had no actual notice of [the final order's] entry for well over 60 days" and acknowledging dismissal in such circumstances is "a harsh result"). We are obliged to dismiss defendant's appeal. *Smith*, 228 Ill. 2d at 104.

¶ 23 For the reasons explained above, we vacate our order granting leave to file a late notice of appeal and dismiss defendant's appeal.

¶ 24 Dismissed.