

No. 132018

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 1-24-0121.
	)	
Respondent-Appellee,	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois , No.
-vs-	)	01 CR 2943802.
	)	
MICHAEL SMITH,	)	Honorable
	)	Thomas Joseph Hennelly,
	)	Judge Presiding.
Petitioner-Appellant.	)	

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

Michael Smith, Petitioner-Appellant, appeals from a judgment dismissing his petition for relief from judgment pursuant to 735 ILCS 5/2-1401.

No issue is raised concerning the charging instrument. However, an issue is raised concerning the sufficiency of the petition for relief from judgment's pleadings.

ISSUE PRESENTED FOR REVIEW

Whether, pursuant to *People v. Brown*, 225 Ill. 2d 188 (2007), Michael Smith is entitled to a new transfer hearing because his transfer from juvenile court was based on a facially unconstitutional and void *ab initio* statute.

STATUTES INVOLVED

705 ILCS 405/5-4(3)(a) (West 1994). Discretionary transfer.

If a petition alleges commission by a minor 13 years of age or over of an act that constitutes a crime under the laws of this State and, on motion of the State's Attorney, a Juvenile Judge designated by the Chief Judge of the Circuit to hear and determine those motions, after investigation and hearing but before commencement of the adjudicatory hearing, finds that there is probable cause to believe that the allegations in the motion are true and that it is not in the best interests of the minor or of the public to proceed under this Act, the court may enter an order permitting prosecution under the criminal laws.

705 ILCS 405/5-4(3.3)(a) (West 1996). Presumptive transfer.

If the State's Attorney files a motion under subsection 3(a) to permit prosecution under the criminal laws and the petition alleges the commission by a minor 15 years of age or older of: (i) a class X felony other than armed violence *** and, if the juvenile judge designated to hear and determine motions to transfer a case for prosecution in the criminal court determines that there is probable cause to believe that the allegations in the petition and motion are true, there is a rebuttable presumption that the minor is not a fit and proper subject to be dealt with under the Juvenile Court Act of 1987, and that, except as provided in paragraph (b), the case should be transferred to the criminal court.

STATEMENT OF FACTS

Overview

On January 21, 1998, 16-year-old Michael Smith was charged with aggravated battery, unlawful use of a weapon, aggravated discharge of a firearm, and unlawful possession of a firearm. (C. 41). The State petitioned to transfer Smith from juvenile court to criminal court pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/5-4 (3.3) (West 1996), as enacted by Public Act 88-680 (P.A. 88-680, eff. January 1, 1995). (C. 42). The court granted the State's petition. (C. 42). On April 7, 1999, Smith pled guilty in criminal court to attempt murder, and he was sentenced to seven years' imprisonment in case number 98 CR 1990401. (C. 42).

On December 5, 2001, Smith was charged in the instant case with unlawful use of a weapon by a felon (UUWF) under case number 01 CR 2943802, with his attempt murder conviction serving as the predicate felony offense. (C. 27). On March 19, 2002, Smith pled guilty and was sentenced to three years' imprisonment. (C. 33; R. 25, 29).

In 2004, Smith was charged with first degree murder in case number 04 CR 1410701 and armed robbery in case number 04 CR 1410802. (Sup. C. 13). He was convicted of both charges in 2007. (Sup. C. 13). His prior convictions for attempt murder and UUWF were presented as evidence in aggravation at sentencing, and the convictions were cited by the trial court in its sentencing determination. (Sup. R. 1276, 1291-93, 1297-99, 1301-03). Smith was sentenced to 40 years' imprisonment for first degree murder, to be served consecutively to a 25-year term for armed robbery. (Sup. C. 13).

Instant Petition for Relief From Judgment

On May 30, 2023, Smith filed a petition for relief from judgment pursuant to 735 ILCS 5/2-1401, which is the subject of the instant appeal. (C. 38-52). Therein, Smith argued that his transfer from juvenile court in case number 98 CR 1990401 was void. (C. 45-46). He asserted that the transfer was void because the statute authorizing his transfer was enacted under Public Act 88-680, which was deemed unconstitutional and void *ab initio* in *People v. Cervantes*, 189 Ill. 2d 80 (1999). (C. 45-46). Smith asserted that, because his void transfer led to his attempt murder conviction in criminal court, his attempt murder conviction was also void and must be vacated. (C. 49). Further, Smith argued that his UUWF conviction in the instant case (01 CR 2943802) should be vacated because it was predicated on his void attempt murder conviction. (C. 44).

In case number 98 CR 1990401, Smith had previously raised this same argument in a petition for certificate of innocence and in another section 2-1401 petition, both of which had been dismissed. (C. 113-18, 54-58; Sup. C. 6-8). In that case, the circuit court dismissed Smith's petition for a certificate of innocence largely because he presented no evidence that he was innocent of the challenged convictions. (C. 56). The court dismissed Smith's section 2-1401 petition in case number 98 CR 1990401 because it believed the issue was moot, as Smith had completed his sentences for his attempt murder and UUWF convictions. (Sup. C. 12-15).

In the instant matter, the State filed a motion to dismiss Smith's section 2-1401 petition on September 21, 2023. (C. 104-09). The State claimed that *res judicata* barred Smith's claim because he had already raised the issue in a prior petition, and further, a section 2-1401 petition was "not the proper legal vehicle"

for Smith's claim. (C. 107-08). Though the State acknowledged that void *ab initio* challenges were not subject to the two-year statute of limitations for section 2-1401 petitions, it asserted that Smith's claim did not fall within this category. (C. 106-07).

A hearing on the State's motion to dismiss was held on December 15, 2023. (R. 44). Without elaboration, the State asserted that Smith's "argument is not void *ab initio*," nor did he claim that the trial court had lacked personal or subject matter jurisdiction over him. (R. 46). Therefore, the State argued, Smith did not "demonstrate a cognizable 2-1401 claim," and his petition must be dismissed because he filed it well after the two-year statute of limitations. (R. 46). Smith argued that "the statutory provision pursuant to my transfer from Juvenile Court was part of an Act that was declared unconstitutional by the Supreme Court; Public Act 88-680." (R. 47). Relying on *People v. Brown*, 225 Ill. 2d 188 (2007), Smith explained that "because the statutory provisions under which my transfer to Criminal Court is void *ab initio* and never had any valid legal force, it necessarily follow that the transfer itself cannot be given – afforded any legal recognition." (R. 48). In sum: "The transfer is void just as the transfer statute is void. My plea and conviction likewise is void." (R. 48). In a brief ruling, the circuit court found that Smith's claim was not exempt from the two-year statute of limitations, and it therefore granted the State's motion to dismiss. (R. 51-52). Smith filed a notice of appeal. (C. 178-79).

Appellate court proceedings

On appeal, Smith argued that he was entitled to a new transfer hearing because he was transferred from juvenile court pursuant to a statute that had been declared void *ab initio*. *People v. Smith*, 2025 IL App (1st) 240121-U, ¶ 19.

If the appellate court determined that a new transfer hearing in juvenile court would not be feasible, Smith requested that the court fashion an appropriate alternative remedy, such as a new transfer hearing in criminal court. *Smith*, 2025 IL App (1st) 240121-U, ¶ 39. In a split decision, the appellate court affirmed, but on different grounds than the circuit court’s dismissal. *Id.* at ¶ 44.

The appellate court first agreed with Smith that his “transfer from juvenile court to criminal court was void because it was based on a facially unconstitutional and void *ab initio* law.” *Id.* at ¶ 34. The appellate court acknowledged that in *People v. Brown*, 225 Ill. 2d 188 (2007), this Court concluded that because Brown had been transferred from juvenile court pursuant to a void *ab initio* statute – Public Act 88-680, the same statute at issue in Smith’s case – Brown was “entitled to a new transfer hearing.” *Smith*, 2025 IL App (1st) 240121-U, ¶ 28, citing *Brown*, 225 Ill. 2d at 199-203. The appellate court also recognized that, like Smith, Brown was over the age of 21 when he challenged his transfer from juvenile court. *Id.* at ¶ 28.

However, the appellate court majority opined that “[t]en years after *Brown*, in *People v. Hunter*, 2017 IL 121306, our supreme court suggested that *Brown*’s remand for a new transfer hearing was improper, or, at the very least, would not have occurred if the State challenged the remand based on the defendant’s age.” *Id.* at ¶ 28. The majority determined that “[b]ecause Smith was 41 years old and no longer a minor under the Act when he filed his petition, under our supreme court’s decision in *Hunter*, a new transfer hearing is not practicable because the juvenile court does not have authority over him.” *Id.* at ¶ 36. The majority also concluded that it could not grant the requested alternate remedy, a new transfer

hearing in criminal court, because “under the [Juvenile Court] Act, a transfer hearing proceeds before a judge in the juvenile court, not the adult criminal court.” *Id.* at ¶ 41.

In a dissenting opinion, the Honorable Mary L. Mikva highlighted that this Court “made clear in *Brown* that under these precise circumstances, a defendant ‘is entitled’ to a new transfer hearing.” *Id.* at ¶ 46 (Mikva, J., *dissenting*, quoting *Brown*, 225 Ill. 2d at 199-200, 202). Justice Mikva opined that the majority’s decision to not grant Smith relief was “plainly at odds with the holding in *Brown*, a result that could only be proper if *Hunter* had overruled *Brown*,” and “[n]othing in the *Hunter* decision suggests that it overruled *Brown*.” *Id.* at ¶¶ 47-48. Further, even if the juvenile court lacked authority over Smith on remand, Justice Mikva noted that there would be “no jurisdictional bar” to conducting his transfer hearing in criminal court instead. *Id.* at ¶ 51. Justice Mikva concluded that “[t]he holding and remedy in *Brown* would appear to control the outcome of this case,” and therefore the appropriate remedy for Smith was “a remand to the adult criminal court for a discretionary transfer hearing under the version of the transfer statute preceding the one held unconstitutional in *Cervantes*.” *Id.* at ¶ 52.

Smith filed a petition for rehearing, which the appellate court denied on June 16, 2025. This Court granted leave to appeal on September 24, 2025.

ARGUMENT

Pursuant to *People v. Brown*, 225 Ill. 2d 188 (2007), Michael Smith is entitled to a new transfer hearing because his transfer from juvenile court was based on a facially unconstitutional and void *ab initio* statute.

“When a statute is found to be facially unconstitutional in Illinois, it is said to be void *ab initio*; that is, it is as if the law had never been passed and never existed.” *In re N.G.*, 2018 IL 121939, ¶ 50. Therefore, a judgment based on a void *ab initio* statute “must be treated by the courts as if it did not exist, and it cannot be used for any purpose under any circumstances.” *N.G.*, 2018 IL 121939, ¶ 36, citing *Ex parte Siebold*, 100 U.S. 371, 376 (1879). Indeed, this principle is “deeply embedded in our jurisprudence.” *Id.* at ¶ 37. Recognizing the importance of vacating void judgments, this Court has emphasized that “to the extent that the administration of justice may be inconvenienced by the need to take corrective action, such concerns cannot justify leaving in place and giving further effect to a criminal conviction based on a facially unconstitutional statute.” *Id.* at ¶ 59.

The question before this Court is what remedy is warranted when a defendant was transferred from juvenile to criminal court under a statute that has been declared void *ab initio*—but is no longer a juvenile when he challenges that transfer. This Court has unambiguously answered this exact question once before, in *People v. Brown*, 225 Ill. 2d 188 (2007). In that case, this Court held that transfers from juvenile court authorized by void *ab initio* statutes “can be afforded no legal recognition,” and a defendant transferred pursuant to such a statute is “entitled to a new transfer hearing.” *Brown*, 225 Ill. 2d at 199-200. Specifically, this Court in *Brown* ordered that the cause be “remanded to the *circuit court* for further

proceedings in accordance with the directions set forth in this opinion.” *Id.* at 208 (emphasis added).

In Smith’s case, the appellate court majority departed from this Court’s holding in *Brown*. Pursuant to *Brown* and *People v. Cervantes*, 189 Ill. 2d 80 (1999), all three justices agreed with Smith that his transfer was void. *People v. Smith*, 2025 IL App (1st) 240121-U, ¶ 34 (“Smith’s transfer from juvenile court to criminal court was void because it was based on a facially unconstitutional and void *ab initio* law.”); *Smith*, 2025 IL App (1st) 240121-U, ¶ 46 (Mikva, J., *dissenting*) (“[B]ecause the version of the transfer statute applied here was held unconstitutionally void in *Cervantes*, 189 Ill. 2d at 98, the transfer of Mr. Smith’s case from juvenile court to adult criminal court was a void transfer.”). But the appellate majority nevertheless declined to grant Smith relief. It concluded that “because Smith was 41 years old and no longer a minor under the Act when he filed his petition,” a new transfer hearing “is not practicable because the juvenile court does not have authority over him.” *Id.* at ¶ 36. The appellate majority also rejected Smith’s alternative relief, a new transfer hearing held in criminal court, asserting that “under the [Juvenile Court] Act, a transfer hearing proceeds before a judge in the juvenile court, not the adult criminal court.” *Id.* at ¶ 41. In a dissenting opinion, the Honorable Mary L. Mikva rejected the majority’s reasoning and concluded that Smith’s remedy should be “a remand to the adult criminal court for a discretionary transfer hearing.” *Id.* at ¶ 52. She reasoned that because the circuit court is one of general jurisdiction, “there is no jurisdictional bar to having that hearing occur in criminal court.” *Id.* at ¶ 51.

The appellate majority erred in affirming the dismissal of Smith’s petition. Its decision does not comport with this Court’s explicit holding in *Brown*. See *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 38, quoting *Agricultural Transportation Ass’n v. Carpentier*, 2 Ill. 2d 19, 27 (1953) (“Where the Supreme Court has declared the law on any point, *it alone can overrule and modify its previous opinion*, and the lower judicial tribunals are bound by such decision and it is the duty of such lower tribunals to follow such decision in similar cases.”) (emphasis in original). Further, the majority’s analysis does not comport with this Court’s command that void judgments *must* be vacated, even where granting relief may “inconvenience” the court. *N.G.*, 2018 IL 121939, ¶ 59. Accordingly, this Court should reverse the appellate court’s decision and remand Smith’s case for a new transfer hearing, governed by the version of the Juvenile Justice Act of 1987 in effect prior to enactment of Public Act 88-680.

Whether Smith is entitled to a new transfer hearing is a question of law subject to *de novo* review. *Brown*, 225 Ill. 2d at 198; *In re M.C.*, 319 Ill. App. 3d 713, 719 (1st Dist. 2001).

A. This Court’s decision in *People v. Brown*, 225 Ill. 2d 188 (2007), controls the outcome of Smith’s case.

This Court has long emphasized the importance of vacating void judgments, holding that where a “statute is violative of constitutional guarantees,” courts “have a duty not only to declare such a legislative act void, but also to correct the wrongs wrought through such an act.” *People v. Gersch*, 135 Ill. 2d 384, 399 (1990). This principle shaped this Court’s decision in *People v. Brown*. At issue in *Brown* was Public Act 88-680, commonly known as the Safe Neighborhoods

Act, which added a presumptive transfer provision to the Juvenile Court Act of 1987. *See* 705 ILCS 405/5-4(3.3)(a) (West 1996).

The presumptive transfer provision provided that – after the State files a petition for transfer and a judge finds probable cause to believe the allegations therein are true – there would be a rebuttable presumption that the minor should be transferred to criminal court. 705 ILCS 405/5-4(3.3)(a) (West 1996). Prior to the enactment of Public Act 88-680, there was no presumptive transfer provision, and it was assumed to be in the best interests of the minor to remain in the juvenile court. *See* 705 ILCS 405/5-4(3) (West 1994). In 1998, the State petitioned for the 16-year-old defendant in *Brown* to be transferred from juvenile court pursuant to the Juvenile Court Act of 1987, as amended by Public Act 88-680. *Brown*, 225 Ill. 2d at 194. The State’s petition was granted under the presumptive transfer provision, and Brown pled guilty to attempt murder in criminal court. *Id.* at 194-95.

About seven years later, Brown argued in a successive post-conviction petition that his transfer from juvenile court was void, because Public Act 88-680 had been declared void *ab initio* in *People v. Cervantes*, 189 Ill. 2d 80, 98 (1999), for violating the single subject clause of the Illinois Constitution. *Brown*, 225 Ill. 2d at 192. This Court agreed, holding that “because the particular statutory provisions under which defendant was transferred are void *ab initio* and have never had any valid legal force, it necessarily follows that the transfer itself can be afforded no legal recognition. The transfer is void just as the transfer statute is void.” *Id.* at 198-99. This Court then determined that Brown was “entitled to a new transfer hearing,” which would be “governed by the version of the Juvenile Justice Act of 1987 in

effect prior to enactment of the Safe Neighborhoods Law.” *Id.* at 199-200, 202.

Specifically,

If, after applying the version of the Juvenile Justice Act of 1987 in effect prior to enactment of the Safe Neighborhoods Law [Public Act 88-680], the circuit court determines that defendant’s case should not be transferred to criminal court, there can be no question that defendant’s original conviction cannot be allowed to stand. That is so because absent a transfer, there is no lawful basis for a conviction under this state’s criminal laws.

The situation will be different, however, should the circuit court ultimately conclude that transfer for trial under the state’s criminal laws is appropriate. Unlike the transfer provisions of the Safe Neighborhoods Law, the statutory provisions defining the criminal offenses with which defendant was charged and the attempted murder charge for which he was convicted were not affected by this court’s decision in *People v. Cervantes*. The substantive offenses remain unchanged, and their validity remains unquestioned.

Id. at 202-03 (citations omitted). This Court remanded the case to the circuit court for a new transfer hearing in accordance with its directions. *Id.* at 208. Though Brown was no longer a minor when he filed his successive post-conviction petition, Brown’s age was not discussed in this Court’s opinion.¹

The facts of Smith’s case are remarkably similar to that of *Brown*. In early 1998, both Brown and Smith were transferred from juvenile court after a discretionary transfer hearing governed by the Juvenile Court Act of 1987, as amended by the void *ab initio* Public Act 88-680. *Brown*, 225 Ill. 2d at 194; (C.

¹ The defendant in *Brown* was 16 years old in 1997, making him approximately 25 years old when he filed his post-conviction petition in 2006. *Brown*, 225 Ill. 2d at 192; *see also Smith*, 2025 IL App (1st) 240121-U, ¶ 28 (noting that Brown was “25 or 26 years old” when he raised his claim of a void transfer).

41). Both pled guilty to attempt murder in criminal court. *Id.* at 194-95; (C. 42). Both were over the age of 21 by the time they challenged their transfers.²

Under the doctrine of *stare decisis*, “[w]hen a question has been deliberately examined and decided, it should be considered settled and closed to further argument.” *People v. Williams*, 235 Ill. 2d 286, 294 (2009). This Court “will not depart from precedent merely because it might have decided otherwise if the question were a new one” and “prior decisions should not be overruled absent ‘good cause’ or ‘compelling reasons.’” *People v. Colon*, 225 Ill. 2d 125, 146 (2007) (citations omitted). In Smith’s case, there is no compelling reason to stray from this Court’s holding in *Brown*. The relief mandated by this Court in *Brown* comports with this Court’s emphasis on the importance of “correct[ing] the wrongs wrought” by void *ab initio* statutes. *Gersch*, 135 Ill. 2d at 399. Declining to grant Smith relief, however, directly contradicts long-held precedent that judgments based on void *ab initio* statutes “must be treated by the courts as if it did not exist” and “cannot be used for any purpose under any circumstances.” *N.G.*, 2018 IL 121939, ¶ 36, citing *Ex parte Siebold*, 100 U.S. 371, 376 (1879).

As Justice Mikva noted in her dissenting opinion, “[t]he holding and remedy in *Brown* would appear to control the outcome of this case.” *Smith*, 2025 IL App (1st) 240121-U, ¶ 46 (Mikva, J., *dissenting*). And the holding and remedy in *Brown* are clear – where a defendant was transferred pursuant to a void *ab initio* statute,

² This Court may take judicial notice of IDOC records. *People v. Johnson*, 2021 IL 125738, ¶ 54. Smith’s date of birth is June 1, 1981. See <https://idoc.illinois.gov/offender/inmatesearch.html> (inmate selector Michael Smith, #K72924). He was 41 years old when he filed his petition for relief from judgment on May 30, 2023. (C. 38); *Smith*, 2025 IL App (1st) 240121-U, ¶ 36.

“[t]he transfer is void just as the transfer statute is void,” and the defendant is “*entitled* to a new transfer hearing.” *Brown*, 225 Ill. 2d at 199-200 (emphasis added).

B. The appellate court erred in relying on *People v. Hunter*, 2017 IL 121306, in affirming the dismissal of Smith’s petition.

The appellate court majority agreed with Smith that his “transfer from juvenile court to criminal court was void because it was based on a facially unconstitutional and void *ab initio* law.” *Smith*, 2025 IL App (1st) 240121-U, ¶ 34. However, the majority ultimately affirmed the dismissal of Smith’s petition, finding that a new transfer hearing would not be “practicable.” *Id.* at ¶ 36. In reaching this decision, the majority relied primarily on this Court’s decision in *People v. Hunter*, 2017 IL 121306. That reliance was misplaced. *Hunter* may seem applicable to Smith’s case at first glance, as both cases concern adult defendants challenging their transfers from juvenile court. However, *Hunter* addressed a very different legal question, and its holding does not impact Smith’s case.

A decade after *Brown*, the defendant in *Hunter* sought a new transfer hearing – but on a different basis. The 16-year-old defendant had been charged with armed robbery and aggravated vehicular hijacking while armed with a firearm, offenses which qualified him for automatic transfer from juvenile court. *Hunter*, 2017 IL 121306, ¶¶ 4-5. He was transferred from juvenile court and ultimately convicted in criminal court. *Id.* at ¶ 6. While *Hunter*’s direct appeal was pending, Public Act 99-258 amended the Juvenile Court Act to eliminate his charges from the list of automatic transfer offenses. *Id.* at ¶ 8. He then argued on appeal that the amendment should apply retroactively to him, and his case should be remanded for a discretionary transfer hearing in juvenile court. *Id.* at ¶ 9. At the time of

his appeal, Hunter was 22 years old. *Id.* at ¶ 38. Citing *Brown*, he argued that a new transfer hearing was “feasible, despite his age.” *Id.* at ¶ 39.

This Court determined that Hunter was not entitled to a new transfer hearing, noting that the procedural amendments retroactively applied only to “pending cases,” and in Hunter’s case, “the proceedings in the trial court were completed well before the statute was amended.” *Id.* at ¶¶ 23, 32, citing *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶¶ 21, 28. This Court also noted a “further reason” for not granting relief in *Hunter*: new procedural rules only apply to ongoing proceedings “so far as practicable.” *Id.* at ¶ 37, citing 5 ILCS 70/4 (West 2016). Because he was no longer a minor, this Court found that a discretionary hearing in juvenile court was not practicable since “the juvenile court may not exercise jurisdiction over Hunter.” *Id.* at ¶ 38. It rejected Hunter’s reliance on *Brown*, observing that “the State apparently made no argument challenging the remand based on the defendant’s age” in *Brown*, and opining that “*Brown*’s silence on an issue that was not raised does not lend support to Hunter’s position here that a remand to the juvenile court for a discretionary transfer hearing is feasible.” *Id.* at ¶ 42.

Though *Hunter* may share some factual similarities to *Brown* and Smith’s case, those similarities are a red herring. *Hunter* is ultimately inapplicable to Smith’s case, as it dealt with an entirely different legal question. Namely, *Hunter* did not concern a void judgment. The statute authorizing the defendant’s transfer from juvenile court in *Hunter* was not void *ab initio* – it was merely amended to change the qualifications for automatic transfer. *Id.* at ¶ 17. Therefore, the defendant

in *Hunter* was only entitled to a discretionary transfer hearing if conducting that hearing would be “practicable.” *Id.* at ¶¶ 37-38.

In contrast, Illinois case law is unambiguous that when a judgment is based on a void *ab initio* statute, there is no “practicality” consideration in determining whether relief should be granted. As this Court has repeatedly emphasized, “to the extent that the administration of justice may be inconvenienced by the need to take corrective action, such concerns *cannot* justify leaving in place and giving further effect to a criminal conviction based on a facially unconstitutional statute.” *N.G.*, 2018 IL 121939, ¶ 59 (emphasis added). As Justice Mikva noted in her dissenting opinion, *Hunter* held that where the “retroactive application of a statutory amendment is not practicable, *** the status quo prevails.” *Smith*, 2025 IL App (1st) 240121-U, ¶ 48 (Mikva, J., *dissenting*). However, “where, as here, a conviction is the result of a void transfer, the status quo *cannot* prevail.” *Id.* (emphasis in original). Further, *Brown* is directly analogous to Smith’s case, and “[n]othing in the *Hunter* decision suggests that it overruled *Brown*.” *Id.* Accordingly, the appellate court majority erred in not following *Brown*, and *Hunter* should not impact this Court’s determination of whether Smith is entitled to relief.

C. There are no procedural barriers or jurisdictional issues impeding this Court’s ability to grant Smith relief.

In its response to Smith’s opening brief in the appellate court, the State urged the court to affirm the dismissal of Smith’s petition on procedural grounds. The court rejected all of the State’s procedural arguments: timeliness, improper vehicle, and mootness. It first found that Smith’s petition was not untimely, as the State claimed, because his transfer was void and challenges to void judgments are “not time-barred by the two-year statute of limitations” that generally applies

to section 2-1401 petitions. *Smith*, 2025 IL App (1st) 240121-U, ¶ 23, citing *People v. Thompson*, 2015 IL 118151, ¶ 32 (a “voidness challenge that is exempt from forfeiture and may be raised at any time involves a challenge to a final judgment based on a facially unconstitutional statute that is void *ab initio*.”). It also rejected the State’s argument that a section 2-1401 petition was “not the proper medium” for Smith’s claim, noting that section 2-1401 petitions are “proper vehicles for attacking judgments as void and that such petitions are not subject to the general requirements for section 2-1401 petitions.” *Id.* at ¶ 24, quoting *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 13. Regarding the issue of mootness, the court acknowledged that Smith “has experienced collateral consequences from the void transfer and subsequent convictions for attempted murder and UUWF.” *Id.* at ¶ 37. For example, these convictions were presented in aggravation at his most recent sentencing hearing, in case numbers 04 CR 1410701 and 04 CR 1410802, for first degree murder and armed robbery. *Id.*; (Sup. R. 1276, 1291-93). The trial court cited the convictions before imposing an aggregate sentence of 65 years’ imprisonment, which Smith is currently serving.³ (Sup. R. 1297-99, 1301-03). As the appellate court was correct to reject the State’s procedural arguments, this Court should likewise conclude that those arguments, should the State raise them in this Court, lack merit.

However, the appellate court majority ultimately determined that it could not grant Smith a new transfer hearing, because he was over the age of 21 and “the juvenile court does not have authority over him.” *Smith*, 2025 IL App (1st)

³ See <https://idoc.illinois.gov/offender/inmatesearch.html> (inmate selector Michael Smith, #K72924). This Court may take judicial notice of IDOC records. *People v. Johnson*, 2021 IL 125738, ¶ 54.

240121-U, ¶ 36, citing *Hunter*, 2017 IL 121306, ¶¶ 38-42 and *People v. Foxx*, 2018 IL App (1st) 162345, ¶ 45. The majority also rejected Smith’s suggestion that the new transfer hearing be held in criminal court, because “under the [Juvenile Court] Act, a transfer hearing proceeds before a judge in the juvenile court, not the adult criminal court.” *Id.* at ¶ 41, citing 705 ILCS 405/5-4 (West 1994).

But the appellate majority was incorrect in finding that Smith’s requested relief presented a jurisdictional issue. This Court did refer to the “jurisdiction” of the juvenile court as a barrier to relief in *Hunter*. *See Hunter*, 2017 IL 121306, ¶ 38 (“A discretionary transfer hearing in the juvenile court is no longer feasible because the juvenile court may not exercise jurisdiction over Hunter.”). However, this Court was likely not referring to jurisdiction in the constitutional sense, but rather to the *statutory authority* of the juvenile court. *See People v. Foxx*, 2018 IL App (1st) 162345, ¶ 44 (concluding that the word “jurisdiction” in *Hunter* was likely a reference to the juvenile court’s statutory authority, since “whether a person is tried in juvenile court or criminal court is a matter of procedure rather than jurisdiction”); *see also Smith*, 2025 IL App (1st) 240121-U, ¶ 50 (Mikva, J., *dissenting*, quoting *People v. Castleberry*, 2015 IL 116916, ¶ 15) (“[A] circuit court, of which the juvenile court is but one division, ‘is a court of general jurisdiction, which need not look to [a] statute for its jurisdictional authority.’”).

As this Court has recognized, a defendant being under the age of 21 is “not, technically, a jurisdictional requirement” for proceedings under the Juvenile Court Act, “since the juvenile court is simply a division of the circuit court which has jurisdiction of all justiciable matters except in two specified instances in which the supreme court has original and exclusive jurisdiction.” *In re Greene*, 76 Ill. 2d 204, 213 (1979); *see also* 705 ILCS 405/5-105(1.5) (defining “court” and “Juvenile

Court” as used throughout the Juvenile Court Act as “the circuit court in a session or division assigned to hear proceedings under [the Juvenile Court] Act”). In the context of juvenile delinquency petitions, this Court has acknowledged that the term “exclusive jurisdiction” used in the Juvenile Court Act is “misleading”:

[T]he relevant statutory language [of section 5-120 of the Act] is not helpful, as the inclusion of the phrase “exclusive jurisdiction” in section 5-120’s title creates the impression that section 5-120 somehow grants authority to the circuit court to adjudicate juvenile delinquency petitions, and that the limitations contained within that section are therefore limitations on the circuit court’s jurisdiction. But as we already have seen, once the legislature creates a justiciable matter, the circuit court’s authority to adjudicate that matter derives exclusively from the state constitution and therefore cannot be limited by the authorizing statute. That said, section 5-120’s title is misleading, as that section is not in fact a grant of authority to the circuit court. Rather, section 5-120 is a grant of authority to the State, specifically defining the class of persons against whom the State may lawfully initiate juvenile delinquency petitions[.]

In re Luis R., 239 Ill. 2d 295, 304-06 (2010) (internal citations omitted). Thus, as Justice Mikva noted in her dissenting opinion, while the juvenile court may possess the *statutory* authority to conduct transfer hearings, “there is no jurisdictional bar to having that hearing occur in criminal court.” *Smith*, 2025 IL App (1st) 240121-U, ¶ 51 (Mikva, J., *dissenting*). The circuit court’s jurisdiction derives from article VI of the Illinois Constitution, and the legislature “has no power to enact legislation that would contravene article VI.” *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002), citing Ill. Const., art. VI, § 9.

Indeed, Illinois courts have routinely remanded matters governed by the Juvenile Court Act to the circuit court after the defendant has reached the age of 21. In particular, courts have allowed the State to petition in criminal court for an adult defendant, who was a minor at the time of his offense, to be subject

to adult sentencing under section 5-130(c)(ii) of the Act. In *People v. Fort*, the defendant was 16 years old when he was charged with first degree murder and was transferred to criminal court pursuant to the automatic transfer provision of the Juvenile Court Act. 2017 IL 118966, ¶ 1. However, he was found guilty only of the uncharged offense of second degree murder, which was not subject to automatic transfer. *Fort*, 2017 IL 118966, ¶ 1. This Court therefore concluded that the defendant should not have been sentenced to the Illinois Department of Corrections. *Id.* at ¶ 41. Because the defendant was over the age of 21 at the time of his appeal, this Court held that the proper relief was to “remand the cause to the *trial court* with directions to vacate defendant’s sentence and allow the State to file a petition requesting a hearing for adult sentencing pursuant to section 5-130(1)(c)(ii) of the Juvenile Court Act.” *Id.* (emphasis added); *see also People v. Luna*, 2025 IL App (2d) 240382, ¶ 46 (remanding to the trial court to allow the State an opportunity to petition under section 5-130(1)(c)(ii) of the Act for the adult defendant, who was a minor at the time of his offense, to be sentenced as an adult); *People v. Clark*, 2020 IL App (1st) 182533, ¶ 84 (same); *People v. Martinez*, 2023 IL App (1st) 220844-U, ¶¶ 10-19 (relying upon *Fort* and *Clark*, State conceded that transfer hearing for defendant now over the age of 21 can and should occur in circuit court).

Thus, while proceedings under the Act typically terminate when a person turns 21, there is no jurisdictional bar for proceedings under the Act to occur in criminal court. The appellate court majority’s conclusion that a transfer hearing may only be conducted in juvenile court (*Smith*, 2025 IL App (1st) 240121-U, ¶ 50) does not conform with the Illinois Constitution’s mandate that circuit courts shall have original jurisdiction of all justiciable matters, except the two instances

where this Court has original and exclusive jurisdiction. Ill. Const. art. VI, § 9. Further, “in construing a statute, courts should presume that the legislature did not intend unjust consequences.” *Fort*, 2017 IL 118966, ¶ 35, citing *People v. Marshall*, 242 Ill. 2d 285, 293 (2011). Allowing the appellate majority’s interpretation of the Act to stand would lead to an unjust consequence – the continued recognition of Smith’s transfer, which was premised on a facially unconstitutional and void *ab initio* law. See *Brown*, 225 Ill. 2d at 199-200. This Court should therefore reject the appellate court majority’s determination that granting Smith relief is not feasible.

D. Conclusion

Smith’s void transfer from juvenile court has had far-reaching consequences. It led to his 1998 attempt murder conviction in criminal court, which served as the predicate offense for his 2002 UUWF conviction. Both convictions were used in aggravation at his most recent sentencing, which resulted in an aggregate term of 65 years’ imprisonment. (Sup. R. 1276, 1291-1293, 1297-99, 1301-03). But at this time, Smith does not seek vacatur of these convictions – he only requests a new transfer hearing, governed by the Act’s transfer provision in effect before the enactment of the void *ab initio* Public Act 88-680. This relief is not only consistent with this Court’s holding in *Brown*, but is also consistent with this Court’s emphasis on the importance of vacating void judgments. And Smith’s requested relief is within this Court’s broad powers under section 2-1401, which was intended to provide courts with “a versatile and effective means” to pursue justice. *People v. Lawton*, 212 Ill. 2d 285, 298-99 (2004) (opining that “[r]elief should be granted under section 2-1401 when necessary to achieve justice” and “[t]o accomplish that goal, the statute is to be construed liberally”); see also *Smith v. Airoom, Inc.*, 114

Ill. 2d 209, 225 (1986) (noting that one of the “guiding principles” of section 2-1401 “is that the petition invokes the equitable powers of the circuit court,” and an unconventional remedy may be granted “where justice and good conscience may require it”); 735 ILCS 5/2-1401(a) (West 2025) (“All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered.”).

Accordingly, Smith requests that this Court reverse the appellate court’s decision and remand his case for a new transfer hearing.

CONCLUSION

For the foregoing reasons, Michael Smith, Petitioner-Appellant, respectfully requests that this Court reverse the appellate court's decision and remand his case for a new transfer hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 23 pages.

/s/ Victoria Rose
VICTORIA ROSE
Assistant Appellate Defender

APPENDIX TO THE BRIEF

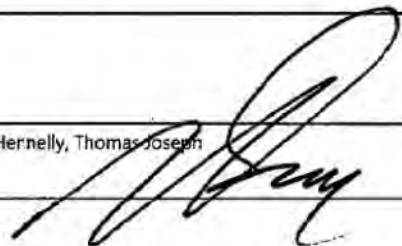
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Case Number 01CR2943802		Defendant Name SMITH, MICHAEL		Attorney Name PUBLIC DEFENDER B. FOX, 91580		Session Date 12/15/2023		Session Time 09:30 AM -	
CB/DCN# 014946762		IR # 1455909		EM		Case Flag		Bond #	
						Bond Type		Bond Amt	
CHARGES		** IN CUSTODY 12/20/2001 **			COURT ORDER ENTERED			CODES	
C001 720-5/24-1.1(A) FELON POSS/USE WEAPON/FIREARM 3/19/2002 DEFT. SENTENCED TO IDOC		<i>Stated</i> <i>Michael to ~</i> <i>discontinue</i> <i>quanta</i> <i>off call</i>			<i>Stated</i> <i>to</i> <i>prosecution</i>				
C002 720-5/24-1.1(A) FELON POSS/USE WEAPON/FIREARM 3/19/2002 Noile Prosequi									
ENTERED Judge Thomas Hannelly #1908 DEC 15 2023 IRIS Y. GARCIA CLERK OF THE CIRCUIT COURT CH. 10 - COUNTY, IL									
		JUDGE: Hannelly, Thomas Joseph			JUDGE'S NO: 1908		RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK:		VERIFIED BY:

In the Circuit Court of the FIRST Judicial Circuit
COOK County, Illinois
 (Or in the Circuit Court of Cook County).

THE PEOPLE OF THE
 STATE
 OF ILLINOIS

v.

Michael Smith
 Defendant/Appellant

No. 01 CR 2943802



Notice of Appeal

An appeal is taken from the order or judgment described below:

(1) Court to which appeal is taken: _____

(2) Name of appellant and address to which notices shall be sent:

Name: Michael Smith - 172924

Address: PO Box 1000, Menard, Illinois 62259

(3) Name and address of appellant's attorney on appeal:

Name: _____

Address: _____

If appellant is indigent and has no attorney, does he want one appointed?

(4) Date of judgment or order: DECEMBER 15, 2023

(5) Offense of which convicted: Agg

UNLAWFUL USE OF A WEAPON BY A FELON

(6) Sentence: THREE

(7) If appeal is not from a conviction, nature of order appealed from: Dismissal
OF PETITION TO VACATE JUDGEMENT

Signed Michael Smith

(May be signed by appellant, attorney for appellant, or clerk of circuit court)

STATE OF ILLINOIS
COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY,
ADULT DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF
ILLINOIS

PLAINTIFF-RESPONDENT,

-vs-

MICHAEL SMITH
DEFENDANT-PETITIONER.

CASE NO. 98 CR 19904

HON. JAMES T. SCHREIER

JUDGE PRESIDING

PETITION TO VACATE JUDGEMENT UNDER
SECTION 2-1401

PETITIONER, MICHAEL SMITH, PRO SE, STATES:

1.) PETITIONER IS DEFENDANT AND RESPONDENT IS PLAINTIFF IN THIS ACTION, WHEREIN THE YEAR 1999, JUDGEMENT WAS ENTERED FOR RESPONDENT AGAINST PETITIONER.

2.) SAID JUDGEMENT IS VOID AND SHOULD BE VACATED AND SET ASIDE BECAUSE, THE STATUTORY PROVISIONS PURSUANT TO WHICH DEFENDANT'S TRANSFER WAS CARRIED OUT WERE ENACTED AS PART OF THE SAFE NEIGHBORHOODS LAW (PUBLIC ACT 88-680), A STATUTE WHICH THE ILLINOIS SUPREME COURT FOUND TO BE UNCONSTITUTIONAL IN *PEOPLE V. CERVANTES*, 189 ILL.2D 80, 243 ILL. DEC. 233, 73 N.E.2D 265 (1999). UNDER THE ESTABLISHED PRECEDENT OF THE ILLINOIS SUPREME COURT, A STATUTE WHICH VIOLATES THE SINGLE-SUBJECT CLAUSE IS VOID IN ITS ENTIRETY. *PEOPLE V. CARRERA*, 203 ILL.2D 1, 16, 270 ILL. DEC. 440, 783 N.E.2D 5 (2002). AS A RESULT, ALL OF THE PROVISIONS OF THE SAFE NEIGHBORHOODS LAW,

INCLUDING THE SPECIFIC PROVISIONS AMENDING THE JUVENILE COURT ACT OF 1987 PURSUANT TO WHICH DEFENDANT WAS TRANSFERRED TO CRIMINAL COURT, ARE INVALID. MORE THAN THAT, THEY ARE VOID AB INITIO. AS SUCH, THEY HAVE NO FORCE OR EFFECT. IT IS AS IF THEY HAD NEVER BEEN PASSED.

WHEN A COURT EXERCISES ITS AUTHORITY OVER A MINOR PURSUANT TO THE JUVENILE COURT ACT OF 1987, AS THE COURT DID HERE IN ENTERTAINING THE STATE'S TRANSFER PETITION, IT MUST PROCEED WITHIN THE CONFINES OF THAT LAW AND HAS NO AUTHORITY TO ACT EXCEPT AS THAT LAW PROVIDES. SEE *PEOPLE V. JAIME P.*, 223 ILL.2D 526, 540, 308 ILL. DEC. 393, 861 N.E.2D 958 (2006).

BECAUSE THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH DEFENDANT WAS TRANSFERRED ARE VOID AB INITIO AND HAVE NEVER HAD ANY VALID LEGAL FORCE, IT NECESSARILY FOLLOWS THAT THE TRANSFER ITSELF CAN BE AFFORDED NO LEGAL RECOGNITION. THE TRANSFER IS VOID JUST AS THE TRANSFER STATUTE IS VOID. DEFENDANT MUST THEREFORE BE GRANTED A NEW TRANSFER HEARING.

IF, AFTER APPLYING THE VERSION OF THE JUVENILE JUSTICE ACT OF 1987 IN EFFECT PRIOR TO ENACTMENT OF THE SAFE NEIGHBORHOODS LAW, THE CIRCUIT COURT DETERMINES THAT DEFENDANT'S CASE SHOULD NOT BE TRANSFERRED TO CRIMINAL COURT, THERE CAN BE NO QUESTION THAT DEFENDANT'S ORIGINAL CONVICTION CANNOT BE ALLOWED TO STAND. THAT IS SO BECAUSE ABSENT A TRANSFER, THERE IS NO LAWFUL BASIS FOR A CONVICTION UNDER THIS STATE'S CRIMINAL LAWS. THE SAME IS TRUE OF DEFENDANT'S SENTENCE. WITHOUT A VALID TRANSFER AND SUBSEQUENT CONVICTION UNDER OUR CRIMINAL LAWS, THE LEGAL PREDICATE FOR THE SENTENCE EVAPORATES.

Wherefore Petitioner Requests The Said Judgment heretofore Entered herein be vacated And Set Aside.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Respondent,	)	98 CR 19904-01
	)	
v.	)	Relief from Judgment
	)	
MICHAEL SMITH,	)	
	)	Hon. Lawrence E. Flood
Defendant-Petitioner.	)	Judge Presiding

Order

Petitioner, Michael Smith, seeks relief from the judgment of conviction entered against him on April 7, 1999. Smith entered a negotiated plea of guilty to one count of attempt first-degree murder. Four other counts were dismissed. The court sentenced Smith to seven years imprisonment with pre-sentencing custody credit dating back to January of 1998. With applicable credit, he was likely released sometime in 2001 or 2002.

In 2004, Smith was indicted for murder and a separate armed robbery.¹ He was convicted of both in separate trials in 2007. He received sentences of 40 years for the murder and 25 years for the armed robbery. The sentences are consecutive.

Presently, Smith seeks to vacate his conviction in the 1998 case on the basis that he was transferred from juvenile court under the presumptive transfer provisions of Public Act 88-0680 invalidated by *People v. Cervantes* for violating the single-subject clause. 189 Ill. 2d 80 (1999). Because this is not a justiciable matter at this time, the pleading will be dismissed.

¹ Case nos. 04 CR 14107-01; 04 CR 14108-02.

Analysis

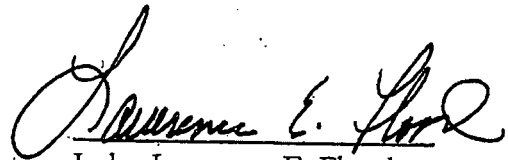
Under section 2-1401 of the Code of Civil Procedure, a challenge to a final judgment must be brought within two years of its entry unless the challenge attacks the judgment as void. *People v. Thompson*, 2015 IL 118151, ¶ 30. A judgment is void in only two situations: (1) when the judgment rests on a statute that is facially unconstitutional; or (2) when the judgment was procured without personal or subject-matter jurisdiction. *Id.* at ¶¶ 31-32. A circuit court can dismiss a petition without a responsive pleading where the claimant cannot possibly win relief. *People v. Vincent*, 226 Ill. 2d 1, 13 (2007). The potential merits of a voidness claim aside, Smith's claim cannot proceed because it is moot.

A court can take judicial notice of information from the Illinois Department of Correction's official website because it reports public records. *People v. Young*, 355 Ill. App. 3d 317, fn1 (2nd Dist. 2005). The IDOC website indicates that Smith's sentence for this case is discharged. The discharge likely occurred in the mid-2000s. "A question is moot when no actual controversy exists or where events occur which render it impossible for the court to grant effectual relief." *People v. Lieberman*, 332 Ill. App. 3d 193, 195 (1st Dist. 2002). And "[w]here the only relief sought is to vacate a sentence, the question of the validity of its imposition becomes moot when the sentence has been served." *Id.* (quoting *People v. S.L.C. a Minor*, 115 Ill. 2d 33, 39 (1986)). That is precisely the case here. Having fully served his sentence long ago, including mandatory supervised release, the Court cannot now afford Smith effectual relief.

Conclusion

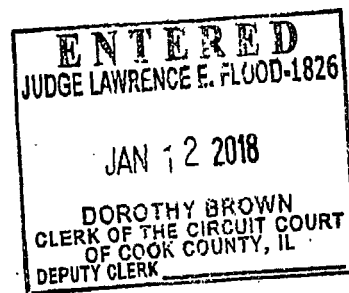
Based on the foregoing, the Court finds Smith cannot possibly win relief. Accordingly, the petition for relief from judgment is hereby **Dismissed**.

Entered:



Judge Lawrence E. Flood
Cook County Circuit Court
Criminal Division

Date: January 12, 2018



1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT-CRIMINAL DIVISION

6 THE PEOPLE OF THE)
 7 STATE OF ILLINOIS)

8 Plaintiff,
 9 -vs-

No. 04 CR 14107 (01)

Charge: MURDER

10 MICHAEL SMITH,
 11 Defendant.

12 REPORT OF PROCEEDINGS had in the Motion,
 13 before the Honorable LAWRENCE P. FOX, Judge in
 14 Criminal Court, heard on the 12th day of
 15 December, 2007.

16 APPEARANCES:

17 HON. RICHARD A. DEVINE,
 18 Attorney of Cook County, by:
 19 MS. CHERYL GALVIN, and
 20 MR. MICHAEL CLARKE,
 21 Assistant State's Attorney,
 22 Appeared for the People;

23 MR. EDWIN BURNETTE,
 24 Public Defender of Cook County, by:
 MS. JULIE KOEHLER, and
 MS. JEAN HERIGODT,
 Assistant Public Defender
 Appeared for the Defendant.

Yhana Wilkinson, CSR
 Official Court Reporter
 2650 South California, Rm. 4C02
 Chicago, Illinois, Il. 60608

1 2007, at the defendant's sentencing for his
2 armed robbery, would testify the same that with
3 respect to the attempt murder under Case Number
4 98 CR 19904, he would testify similarly today as
5 he did on September -- excuse me, April 24,
6 2007. So stipulated?

7 MS. HERIGODT: So stipulated.

8 MS. GALVIN: Judge, in addition, with
9 respect to the defendant's pre-sentence
10 investigation, the defendant now has three
11 felony convictions in his background. He has a
12 Class 3 unlawful use of a weapon by a felon
13 under 01 CR 29438, and we are amending that to
14 be 02 defendant; he has an attempt murder under
15 98 CR 19904; and an armed robbery under case
16 Number 04 CR 14108.

17 I'm seeking to introduce certified
18 copies of conviction with respect to all three
19 of those on convictions, which we will mark as
20 People's Exhibits 1 through 3 for purposes of
21 sentencing.

22 THE COURT: Those may be so admitted.

23 MS. GALVIN: That's it with respect to
24 stipulations, and we do have argument, Judge,

1 and fired eight times at that person seated in
2 the vehicle striking the person. That Tech 9
3 was subsequently recovered from the defendant's
4 home. Defendant was arrested on that charge,
5 and questioned about it, and he told Detective
6 Baker that he admitted shooting the Tech 9 at
7 the victim.

8 The defendant said his brother was
9 killed New Years Eve, and that the Mickey Cobras
10 was responsible. Defendant said he was a member
11 of the Black Stone street gang. Defendant also
12 had no knowledge of the victim responsible for
13 his brother's death, was the statement he gave
14 to police at the time of his arrest in that
15 case.

16 But that did not stop the
17 defendant's criminal path. When he was released
18 from that attempt murder, just shortly
19 afterwards he was resentenced in 2002 to three
20 years Illinois Department of Corrections on an
21 unlawful use of a weapon by felon charge in
22 2001. And after being released in 2000 -- after
23 being released after that three-year Illinois
24 Department of Corrections sentence, his criminal

1 ways compounded.

2 You heard the testimony through
3 stipulations and through testimony. Not only
4 did he in 2004 commit numerous robberies and
5 carjackings, he subsequently was responsible for
6 a murder of Corzel Mitchell in this case, all
7 violent crimes that were committed after his
8 most recent sentence in the Department of
9 Corrections.

10 Michael Smith shows a career path as
11 he became a young adult, and that was a career
12 path of a criminal, a violent criminal. And,
13 your Honor, based on the amount of crimes he's
14 committed and the violent nature of the crimes
15 he chose to commit, he is a danger to his
16 society and the community he lived in. And I
17 would urge your Honor in sentencing the
18 defendant, I would rely on the sentencing
19 statute 730 ILCS 5/5-8-4 Paragraph B, which
20 deals with discretionary consecutive sentencing.

21 The Court has discretion to impose a
22 consecutive sentence if an opinion of the court
23 such term is required to protect the public from
24 further criminal conduct by the defendant.

1 I think in this case above many
2 cases the defendant has shown he's dangerous to
3 society, and I would urge your Honor not to just
4 sentence him to hold him responsible for his
5 case that he's been convicted case and stands
6 before you, hold him accountable for the cases
7 that were pending that you heard testimony on in
8 aggravation involving his participation in. But
9 also, I think, this Court has a duty to protect
10 the public, and I urge you to do it this in
11 case, and do it maximum sentence of 60 years.
12 And I would ask that this run concurrent to the
13 armed robbery case that he was already sentenced
14 on.

15 THE COURT: Concurrent?

16 MR. CLARKE: I'm sorry, thank you for
17 correcting me.

18 Consecutive to the armed robbery
19 case he was already sentenced to 25 years on.

20 THE COURT: Defense?

21 MS. HERIGODT: Judge, when interviewed
22 for the pre-sentence investigation report, my
23 client described his life with his foster family
24 with Ms. Smith, who has so graciously come to

2025 IL App (1st) 240121-U

No. 1-24-0121

Order filed May 23, 2025

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of Cook County.
Respondent-Appellee,	)	
	)	
v.	)	No. 01 CR 29438
	)	
MICHAEL SMITH	)	Honorable Thomas J. Hennelly,
	)	Judge, Presiding.
Petitioner-Appellant.	)	

JUSTICE NAVARRO delivered the judgment of the court.
Justice Mitchell concurred in the judgment.
Presiding Justice Mikva dissented.

ORDER

¶ 1 *Held:* Where defendant argues that he is entitled to a new transfer hearing, we affirm the circuit court's order dismissing his section 2-1401 petition.

¶ 2 In 1998, petitioner Michael Smith, who was 16 years old, was charged as a juvenile with, among other charges, aggravated discharge of a firearm. Smith was subsequently transferred to criminal court pursuant to a presumptive-transfer provision of the Juvenile Court Act of 1987 that had been added through Public Act 88-680 (eff. Jan. 1, 1995). Pub. Act 88-680 (eff. Jan. 1, 1995) (adding 705 ILCS 405/5-4(3.3)). In criminal court, Smith was charged with and pled guilty to attempted first degree murder (720 ILCS 5/8-4) (West 1998); 720 ILCS 5/9-1 (West 1998)). In

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2023, Smith filed a *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2022)), arguing that his attempted murder conviction was void because the statute under which he was transferred from juvenile court to criminal court was unconstitutional and void *ab initio* under *People v. Cervantes*, 189 Ill. 2d 80 (1999). He requested the court vacate his conviction for attempted murder as well as his subsequent conviction in 2001 for unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2000)), for which the attempted murder conviction served as the predicate felony offense. The circuit court granted the State's motion to dismiss Smith's section 2-1401 petition, and Smith now appeals that order. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 1998, Smith was charged as a juvenile with aggravated battery, aggravated discharge of a firearm, unlawful use of a weapon, and unlawful possession of a firearm. As previously noted, under a presumptive-transfer provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-4 (3.3) (West 1996), as amended by Public Act 88-680 (eff. Jan. 1, 1995), also known as the Safe Neighborhoods Law, the State moved to transfer Smith from juvenile court to criminal court. The circuit court granted the State's petition, and Smith was subsequently charged in criminal court in case No. 98 CR 19904 with, among other charges, attempted first degree murder (720 ILCS 5/8-4) (West 1998); 720 ILCS 5/9-1 (West 1998)). Smith pled guilty to attempted murder and was sentenced to seven years in prison.

¶ 5 In the instant case, in 2001, when Smith was 20 years old, he was charged with UUWF (720 ILCS 5/24-1.1(a) (West 2000)), and his attempted murder conviction served as the predicate felony offense. Smith pled guilty to UUWF and was sentenced to three years in prison. We note that the only transfer hearing that occurred was in the 1998 case, where Smith pled guilty to the

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attempted murder conviction that served as the predicate felony offense for the UUWF conviction in this case.

¶ 6 In 2007, in 2 separate cases, Smith was found guilty of armed robbery and first degree murder and was sentenced to consecutive prison sentences of, respectively, 25 and 40 years.

¶ 7 In the 1998 case, in 2017, Smith filed a *pro se* section 2-1401 petition to vacate judgment and in 2022, he filed a *pro se* petition for certificate of innocence under section 2-702 of the Code (735 ILCS 5/2-702 (West 2022)), both of which were based on the argument that the provisions of the Act amended by Public Act 88-680 under which he was transferred from juvenile court to criminal court were unconstitutional and void *ab initio*.

¶ 8 Specifically, in Smith’s 2017 section 2-1401 petition to vacate judgment filed in the 1998 case, he asserted that the statutory provisions of the Act under which he was transferred from juvenile court to criminal court were enacted as part of Public Act 88-680, which the supreme court in *Cervantes* found unconstitutional and void *ab initio* for violating the single-subject clause. Smith therefore argued that the provisions of the Act under which he was transferred from juvenile court to criminal court were invalid and void *ab initio*. Smith argued that his transfer from juvenile court to criminal court was void, and he requested the circuit court vacate his attempted murder conviction and grant him a new transfer hearing.

¶ 9 The circuit court dismissed Smith’s petition, finding his claim moot. The court stated that Smith’s sentence was discharged in the mid-2000s and that, “[h]aving fully served his sentence long ago, including mandatory supervised release, the Court cannot now afford [him] effectual relief.”

¶ 10 In Smith’s 2022 petition for certificate of innocence filed in the 1998 case, he raised the same argument that he raised in his previous section 2-1401 petition. The circuit court

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dismissed Smith’s petition, finding that he did not satisfy the factors required to obtain a certificate of innocence and that he did not provide any evidence that he was innocent of the charges in the indictment. The court also stated that, “[t]he only unconstitutional part of [Smith’s] case is Public Act 88-0680 [*sic*] mandating [Smith’s] transfer from juvenile court to adult criminal court, which speaks not at all to [Smith’s] innocence of his indicted charges.”

¶ 11 In May 2023, in this case, Smith filed the instant *pro se* petition for relief from judgment under section 2-1401 of the Code, in which he continued to assert that he was transferred from juvenile court to criminal court under the provisions of the Act added by Public Act 88-680, which the supreme court found unconstitutional and void *ab initio* in *Cervantes*. Smith therefore argued that his transfer to criminal court as well as his attempted murder conviction were void. Smith argued the circuit court should vacate his convictions for attempted murder and UUWF, for which his attempted murder conviction served as the predicate felony offense.

¶ 12 In July 2023, Smith filed a motion for leave to cite additional authority, in which he cited *People v. Matthews*, 2022 IL App (4th) 210752 and *In re N.G.*, 2018 IL 121939, to support his argument that challenges based on void judgments may be raised at any time and are not limited by forfeiture or other procedural bars. See *In re N.G.*, 2018 IL 121939, ¶ 57 (“[U]nder Illinois law, there is no fixed procedural mechanism or forum, nor is there any temporal limitation governing when a void *ab initio* challenge may be asserted”); *Matthews*, 2022 IL App (4th) 210752, ¶ 24 (“Voidness challenges are not subject to forfeiture or any other procedural bar, and such challenges may be raised ‘at any time in any court’ ”).

¶ 13 The State moved to dismiss Smith’s section 2-1401 petition, arguing that his petition was untimely, as it was filed beyond the two-year statute of limitations period allowed for section 2-1401 petitions, and that his challenge was not exempt from the statute of limitations period. The

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State asserted that the court had already rejected Smith’s challenge when he had previously raised it, and that Smith was not arguing that the offense of UUWF under which he was convicted was void *ab initio*. According to the State, a section 2-1401 petition was “not the proper legal vehicle” for Smith’s challenge because his argument was based on errors of law and constitutional violations.

¶ 14 In Smith’s response to the State’s motion to dismiss, he stated that in the circuit court’s order dismissing his petition for certificate of innocence, the court “found that [his] transfer from juvenile to criminal court was void.” Smith noted that, “[w]hile the UUWF statute itself is not invalid, [his] conviction for UUWF derived from a facially unconstitutional statute—And is consequently void—because it was predicated on his void *ab initio* conviction for attempt first-degree murder.” He asserted that challenges to a void judgment may be raised at any time and that “[p]rosecutors also share the responsibility of ensuring that void convictions are vacated and expunged.”

¶ 15 At the hearing on Smith’s petition, the State continued to argue that Smith’s challenge was subject to the two-year statute of limitations period for section 2-1401 petitions and that, because he filed his petition more than two years after the court entered the final judgment, the court should dismiss his petition. The State argued that “the only cognizable claims in a 2-1401 would be *** the Court does not have any subject matter or personal jurisdiction over the Defendant and *** his offense is void *ab initio*.” The State asserted that Smith’s “argument is not void *ab initio*” and he did not have a “cognizable claim.”

¶ 16 In response, Smith argued that in the circuit court’s order dismissing his petition for certificate of innocence, the court “took judicial notice” that Public Act 88-680 “mandating [his] transfer from Juvenile Court to Criminal Court is void *ab initio*.” Smith asserted that he could raise

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a “void *ab initio* claim at any time in any proceeding” and that his transfer to criminal court as well as his “plea and conviction” were void. Smith highlighted that the facts of his case were similar to *People v. Brown*, 225 Ill. 2d 188, 196-97 (2007), where the supreme court concluded that because Public Act 88-680, which amended the provisions of the Act under which the defendant was transferred to criminal court, was void, the defendant’s transfer to criminal court was also void.

¶ 17 Following argument, the court granted the State’s motion to dismiss Smith’s section 2-1401 petition. This appeal follows.

¶ 18 II. ANALYSIS

¶ 19 Smith contends he is entitled to a new transfer hearing because he was transferred from juvenile court to criminal court under provisions of the Act amended by Public Act 88-680, which has been found unconstitutional and void *ab initio* by our supreme court in *People v. Cervantes*, 189 Ill. 2d 80 (1999) and *People v. Brown*, 225 Ill. 2d 188 (2007). Smith argues therefore that his transfer from juvenile court to criminal court is also void, and he requests we grant him a new transfer hearing. According to Smith, if, after a new transfer hearing, the circuit court determines that he should not have been transferred from juvenile court, then it must vacate his attempted murder conviction as well as his UUWF conviction in this case, as he would not have a predicate felony offense.

¶ 20 Generally, a party must file a section 2-1401 petition to vacate a judgment more than 30 days but not more than 2 years after the final judgment. *People v. Thompson*, 2015 IL 118151, ¶ 28; 735 ILCS 5/2-1401(c) (West 2022). “An exception to the two-year limitations period, however, exists when the petition challenges a void judgment.” *People v. Abdullah*, 2019 IL 123492, ¶ 13. Our supreme court has recognized two “circumstances when a judgment will be

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deemed void: (1) when the judgment was entered by a court that lacked jurisdiction or (2) when the judgment was based on a statute that is facially unconstitutional and void *ab initio*.” *Id.* Further, when a statute is determined to be facially unconstitutional “it is said to be void *ab initio*; that is, it is as if the law had never been passed.” *In re N.G.*, 2018 IL 121939, ¶ 50.

¶ 21 “[W]hen a section 2-1401 petition presents a ‘purely legal challenge to a judgment,’ such as a claim that the earlier judgment was void,” we review the circuit court’s ruling *de novo*. *Stolfo v. KinderCare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 22 (quoting *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986)). Under *de novo* review, “we perform the same analysis that at trial judge would perform” and “we may affirm on any basis appearing in the record, whether or not the trial court relied on that basis and whether or not the trial court’s reasoning was correct.” *Khan v. Fur Keeps Animal Rescue, Inc.*, 2021 IL App (1st) 182694, ¶ 25.

¶ 22 Initially, we note the State argues that Smith’s section 2-1401 petition is untimely because it was filed more than two decades after the judgment was entered and his challenge is not exempt from the two-year statute of limitations period for section 2-1401 petitions. The State asserts that the final judgment was not void, as the circuit court had jurisdiction to impose a sentence upon Smith when he pled guilty to UUWF and “the charge [UUWF] in this matter was not based upon a facially unconstitutional statute.”

¶ 23 Smith pled guilty to UUWF in March 2002, and he filed his petition in May 2023, which is more than 20 years after the final judgment. However, Smith argues that his transfer from juvenile court to criminal court in the 1998 case was void because it was authorized by provisions of the Act enacted by Public Act 88-680, which our supreme court found facially unconstitutional and void *ab initio*. He also argues that the void transfer resulted in his attempted murder and UUWF convictions, as attempted murder was the predicate offense for UUWF. Because Smith is

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arguing that his transfer from juvenile court to criminal court is void, as he was transferred under a facially unconstitutional law, and because his transfer resulted in his convictions for attempted murder and UUWF, Smith’s challenge is not time-barred by the two-year statute of limitations period. See *Thompson*, 2015 IL 118151, ¶ 32 (a “voidness challenge that is exempt from forfeiture and may be raised at any time involves a challenge to a final judgment based on a facially unconstitutional statute that is void *ab initio*”).

¶ 24 We also note that the State asserts that a section 2-1401 petition is “not the proper medium to plead errors of law or constitutional violations, such as immigration issues or inadequate counsel, or to substitute as an appeal.” However, our supreme court has stated that “petitions under section 2-1401(f) of the Code are proper vehicles for attacking judgments as void and that such petitions are not subject to the general requirements for section 2-1401 petitions.” *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 13 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)). Further, “section 2-1401 of the Code permits either a legal or factual challenge to a final judgment if certain procedural and statutory requirements are satisfied.” *Thompson*, 2015 IL 118151, ¶ 44. Accordingly, Smith’s argument that his transfer from juvenile court to criminal court was void because it was based on a void *ab initio* law was properly raised under a section 2-1401 petition.

¶ 25 We now turn to Smith’s argument that his transfer from juvenile court to criminal court was void. Smith argues, and the State does not dispute, that in the 1998 case he was transferred from juvenile court to criminal court pursuant to provisions of the Act that were amended by Public Act 88-680 (adding 705 ILCS 405/5-4(3.3)(a) (West 1996)), which our supreme court later found unconstitutional and void *ab initio* in *Cervantes*.

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¶ 26 Through Public Act 88-680 (eff. Jan. 1, 1995), also known as the Safe Neighborhoods Law, the Illinois General Assembly amended various statutes, including portions of the Act. As part of the public act, the general assembly added section 5-4(3.3), which permitted the State to file a petition to prosecute a defendant, who was 15 years of age or older, in criminal court as opposed to juvenile court if he or she was charged with certain offenses, including aggravated discharge of a firearm and a Class X felony other than armed violence. Pub. Act 88-680 (eff. Jan. 1, 1995) (adding 705 ILCS 405/5-4(3.3)). Upon the State's petition, if the juvenile court determined that there was probable cause that the allegations in the petition were true, a rebuttal presumption existed that the defendant was not fit for juvenile court and should be prosecuted in criminal court. *Id.* This section became known as the presumptive-transfer provision. See *Brown*, 225 Ill. 2d at 196-97. However, in *Cervantes*, our supreme court held that Public Act 88-680 violated the single-subject clause of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8) and was therefore unconstitutional. 189 Ill. 2d at 98.

¶ 27 In *Brown*, 225 Ill. 2d 188, our supreme court discussed the consequences of Public Act 88-680 being held unconstitutional. There, before *Cervantes* was published, a defendant, who was 16 years old at the time he shot someone, had his case transferred from juvenile court to criminal court pursuant to the presumptive-transfer provision of Public Act 88-680. *Id.* at 193. In criminal court, the defendant pled guilty to attempted murder and was sentenced to 28 years' imprisonment. *Id.* at 193-94. After the defendant unsuccessfully filed an initial postconviction petition, he filed a successive petition, challenging his transfer from juvenile court to criminal court based on *Cervantes*' holding that Public Act 88-680 was unconstitutional. *Id.* at 194. The circuit court dismissed his petition, but the appellate court reversed. *Id.* at 194-95. The case then reached our supreme court. *Id.* at 197.

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¶ 28 In reviewing various issues, the supreme court first focused on whether the defendant's transfer from juvenile court to criminal court was void. *Id.* at 198. The court observed that, in *Cervantes*, it held that Public Act 88-680 was unconstitutional, meaning the defendant was transferred from juvenile court to criminal court based on a law declared void *ab initio*. *Id.* at 198-199. Or, in other words, as the supreme court noted, a law with "no force or effect," as if the law "had never been passed." *Id.* at 199. The supreme court found that, because Public Act 88-680 was void, the defendant's transfer to criminal court was also void. *Id.* Consequently, our supreme court concluded that the defendant, now 25 or 26 years old, was entitled to a new transfer hearing to be performed in accordance with the Act, as it existed prior to the enactment of Public Act 88-680. *Id.* at 199, 202. According to the supreme court, following that hearing, if the juvenile court found that the defendant's transfer was improper, his original conviction for attempted murder and resulting sentence could not stand. *Id.* at 202. But, if the defendant's transfer was proper, his conviction would remain valid because *Cervantes* did not invalidate the substantive offenses with which he was originally charged and to which he pled guilty. *Id.* at 203.

¶ 29 Ten years after *Brown*, in *People v. Hunter*, 2017 IL 121306, our supreme court suggested that *Brown*'s remand for a new transfer hearing was improper, or, at the very least, would not have occurred if the State challenged the remand based on the defendant's age. In *Hunter*, the State charged the defendant with aggravated vehicular hijacking and armed robbery, both while armed with a firearm, for offenses he allegedly committed as a 16-year-old. *Id.* ¶ 4. At the time, both offenses were excluded from the jurisdiction of the juvenile court, meaning his case was automatically transferred to criminal court. *Id.* ¶ 5. The defendant was convicted of the offenses, and while his case was pending on appeal, Public Act 99-258 (eff. Jan. 1, 2016) became effective. *Id.* ¶¶ 6-7. Public Act 99-258 amended the Act and removed armed robbery while armed

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with a firearm and aggravated vehicular hijacking while armed with a firearm as automatic-transfer offenses. *Id.* ¶ 8.

¶ 30 Before the supreme court, one of the issues it had to decide was whether the amendment to the automatic-transfer statute should be applied retroactively to the defendant’s case, resulting in him obtaining a discretionary transfer hearing from juvenile court to criminal court. *Id.* ¶ 9. Our supreme court observed that applying the amendment retroactively to the defendant, whose case was pending on appeal, “would create inconvenience and a waste of judicial resources—a real-world result that the General Assembly could not have intended.” *Id.* ¶ 36. The court additionally noted that, because the amendment was procedural, it could only apply to ongoing proceedings “‘so far as practicable.’ ” *Id.* ¶ 37 (quoting 5 ILCS 70/4 (West 2016)). After noting that “‘practicable’ ” was synonymous with “ ‘feasible,’ ” the court concluded that a discretionary transfer hearing for the now 22-year-old defendant was not “feasible because the juvenile court may not exercise jurisdiction over [him],” as he was no longer a minor. *Id.* ¶ 38. Relying on *Brown*, the defendant argued that a discretionary transfer hearing was still feasible despite his age. *Id.* ¶ 39. In rejecting that argument, our supreme court discussed the facts of *Brown* and observed that:

“Although the defendant would have been 25 or 26 years old at the time we remanded the matter to the circuit court [in *Brown*], the State apparently made no argument challenging the remand based on the defendant’s age. *Brown*’s silence on an issue that was not raised does not lend support to [the defendant’s] position here that a remand to the juvenile court for a discretionary transfer hearing is feasible, notwithstanding that the juvenile court cannot exercise jurisdiction over a 22-year-old defendant.” (Footnote omitted.) *Id.* ¶ 42.

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¶ 31 Ultimately, our supreme court held that the amendment to the automatic-transfer statute could not be applied retroactively to the defendant’s case. *Id.* ¶ 43.

¶ 32 Shortly after *Hunter*, the appellate court emphasized the impossibility of a remand to juvenile court for an adult. *People v. Patterson*, 2018 IL App (1st) 101573-C, ¶¶ 20, 22. There, the appellate court observed that, in an earlier decision, it had remanded the matter to the juvenile court for a hearing on whether to transfer the 24-year-old defendant’s case to criminal court for sentencing. *Id.* However, in light of *Hunter*, our supreme court vacated the earlier decision and directed the appellate court to reconsider the case. *Id.* ¶ 20. After reconsideration, the appellate court concluded that “*Hunter* clarifies that this court cannot remand this case to the juvenile court,” as the defendant was no longer a minor. *Id.* ¶ 22; see also *People v. Fiveash*, 2015 IL 117669, ¶ 14 (holding “that the juvenile court has no authority over defendant because he was 23 years old when the instant proceedings were instituted and was, therefore, no longer subject to the Act’s provisions”).

¶ 33 Further, we note that the Act defines a “minor” as “a person under the age of 21 years subject to this Act.” 705 ILCS 405/5-105(10) (West 2022); *People v. Foxx*, 2018 IL App (1st) 162345, ¶ 45. This court has previously explained that, “once a defendant reaches the age of 21, under the Act, the juvenile court has no statutory authority over him.” *Foxx*, 2018 IL App (1st) 162345, ¶ 45. As such, if “ ‘a defendant’s age places him outside the scope of the [Juvenile Court] Act, the court has no authority to proceed under the Act.’ ” *Id.* (quoting *Fiveash*, 2015 IL 117669, ¶ 33).

¶ 34 Applying these decisions here, Smith was transferred from juvenile court to criminal court under provisions of the Act amended by Public Act 88-680, which our supreme court found unconstitutional and void *ab initio*. *Cervantes*, 189 Ill. 2d at 98; *Brown*, 225 Ill. 2d at 198-99. As

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such, Smith's transfer from juvenile court to criminal court was void because it was based on a facially unconstitutional and void *ab initio* law. See *id.*

¶ 35 Smith requests that, because his transfer is void, this court should grant him a new transfer hearing under the standards of the Act which were in place before the enactment of Public Act 88-680. He asserts that the outcome of the hearing will determine whether he has a basis to challenge his convictions for attempted murder and UUWF.

¶ 36 Smith filed his section 2-1401 petition in May 2023, when he was 41 years old and more than 20 years after he pled guilty to attempted murder and after he pled guilty to UUWF in this case. As such, because Smith was 41 years old and no longer a minor under the Act when he filed his petition, under our supreme court's decision in *Hunter*, a new transfer hearing is not practicable because the juvenile court does not have authority over him. See *Hunter*, 2017 IL 121306, ¶¶ 38-42; *Fox*, 2018 IL App (1st) 162345, ¶ 45 (finding that "since the defendant here was 34 years old at the time of his resentencing, transfer to juvenile court would have proven impracticable because the juvenile court would no longer have had authority to proceed against him under the Act").

¶ 37 We note that the State asserts that Smith completed his sentence for UUWF about two decades ago and that, therefore, his claim is moot, and this court cannot provide effectual relief. Smith responds that his claim is not moot, as he has experienced collateral consequences from the void transfer and subsequent convictions for attempted murder and UUWF. See *Sibron v. New York*, 392 U.S. 40, 57 (1968) ("a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction"). Smith asserts that at the sentencing hearings in 2007 for his most recent cases, the trial court used

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his convictions for attempted murder and UUWF in aggravation when it sentenced him to a total term of 65 years in prison.

¶ 38 However, in this case, as previously noted, Smith requests that we grant him a new transfer hearing pursuant to the Act that was in effect before the enactment of Public Act 88-680. As previously discussed, given that Smith was 41 years old when he filed his section 2-1401 petition, the juvenile court no longer has authority over him to conduct a new transfer hearing. See *Hunter*, 2017 IL 121306, ¶¶ 38-42; *Foxx*, 2018 IL App (1st) 162345, ¶ 45. Further, Smith completed serving his sentence for attempted murder and UUWF about 20 years ago. Smith is also not arguing that the offenses of attempted murder or UUWF under which he was convicted in 1998 and in this case are unconstitutional. In fact, in *Brown*, the supreme court noted that *Cervantes* did not affect the “statutory provisions defining the criminal offenses” with which the defendant was charged or the attempted murder charge for which he was convicted in that case. *Brown*, 225 Ill. 2d at 203. Given the foregoing, this court cannot provide Smith the effectual relief that he seeks.

¶ 39 Lastly, we note that Smith asserts that, if this court finds that a new transfer hearing before the juvenile court is impracticable, then we should fashion an appropriate alternate remedy. Smith does not suggest what an appropriate remedy would be, and the case law does not provide for one. Citing *People v. Fort*, 2017 IL 118966, Smith argues that we may remand for proceedings in criminal court to determine if his transfer would have been appropriate under the version of the Act in effect before Public Act 88-680 was enacted. We find *Fort* distinguishable.

¶ 40 In *Fort*, the 16-year-old defendant was transferred to criminal court pursuant to the “automatic transfer” provision of the Act and was subsequently convicted there of second degree murder, which was an uncharged offense not subject to automatic transfer to criminal court. 2017 IL 118966, ¶¶ 3-4, 24. The trial court sentenced the defendant as an adult even though the

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defendant was a minor and the State did not file a motion requesting adult sentencing as required by the Act. *Id.* ¶¶ 13, 30-31. Our supreme court found that the court erred when it sentenced him as an adult without the State’s request for adult sentencing. *Id.* ¶¶ 31, 41. The supreme court remanded the case to the trial court with directions to vacate the defendant’s sentence and to permit the State to file a motion requesting adult sentencing. *Id.* ¶ 41. The supreme court stated that, “[s]hould the trial court find after the hearing that defendant is not subject to adult sentencing, the proper remedy is to discharge the proceedings against defendant since he is now over 21 years of age and is no longer eligible to be committed as a juvenile under the Act.” *Id.*

¶ 41 Unlike *Fort*, where the supreme court remanded the case to adult criminal court to allow the State to file a petition in criminal court requesting adult sentencing, here, Smith is requesting we remand his case for a new transfer hearing under the version of the Act that was in effect before Public Act 88-680 was enacted. See *Hunter*, 2017 IL 121306, ¶ 41 (distinguishing *Fort* and stating “where the case was remanded to adult court to allow the State to file a motion in that court requesting adult sentencing [the defendant] seeks remand for a discretionary transfer hearing, which, he acknowledges, proceeds in the juvenile court”). However, under the Act, a transfer hearing proceeds before a judge in the juvenile court, not the adult criminal court. See *id.*; 705 ILCS 405/5-4 (West 1994)). And, as we have previously discussed, the juvenile court does not have authority over Smith. See *Hunter*, 2017 IL 121306, ¶¶ 38-42; *Foxx*, 2018 IL App (1st) 162345, ¶ 45.

¶ 42

III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the circuit court’s judgment.

¶ 44 Affirmed.

¶ 45 PRESIDING JUSTICE MIKVA, dissenting:

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¶ 46 The majority recognizes that because the version of the transfer statute applied here was held unconstitutionally void in *Cervantes*, 189 Ill. 2d at 98, the transfer of Mr. Smith’s case from juvenile court to adult criminal court was a void transfer. *Supra* ¶ 34 (citing *Brown*, 225 Ill. 2d at 198-99). Our supreme court made clear in *Brown* that under these precise circumstances, a defendant “is entitled” to a new transfer hearing under the prior version of the transfer statute. *Brown*, 225 Ill. 2d at 199-200, 202. If, following such a hearing, the court concludes that a discretionary transfer from juvenile court to adult criminal court would have been warranted, the conviction remains in place, since there can be no argument that the defendant’s criminal conviction is void. *Id.* at 203. If, however, the court concludes that a discretionary transfer would *not* have been warranted, then the defendant’s original conviction in adult criminal court “*cannot be allowed to stand.*” (Emphasis added.) *Id.* at 202. The holding and remedy in *Brown* would appear to control the outcome of this case.

¶ 47 Citing comments made by our supreme court some years later in *Hunter*, 2017 IL 121306, however, the majority concludes that *Brown* no longer controls, that since Mr. Smith is no longer a minor, “a new transfer hearing is not ‘practicable,’ ” and Mr. Smith’s conviction must simply be allowed to stand. *Supra* ¶¶ 30, 36-41. I respectfully dissent, as this conclusion is plainly at odds with the holding in *Brown*, a result that could only be proper if *Hunter* had overruled *Brown*.

¶ 48 Nothing in the *Hunter* decision suggests that it overruled *Brown*. In fact, and importantly, the question before the court in *Hunter* was quite different than the question before the court in *Brown*. The court in *Hunter* was wrestling with whether two amendments to the Juvenile Court Act should be applied retroactively to a case on direct appeal. *Hunter*, 2017 IL 121306, ¶ 1. In that context, the court consulted section 4 of the Statute on Statutes (5 ILCS 70/4

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(West 2022)) and focused in significant part on the fact that it provides that a criminal defendant may receive the benefit of a procedural amendment, “so far as practicable.” *Id.* ¶¶ 37-43. If retroactive application of a statutory amendment is not practicable, then the defendant does not receive the benefit, and the status quo prevails. *Id.* The core holding in *Brown*, however, is that where, as here, a conviction is the result of a void transfer, the status quo *cannot* prevail. *Brown*, 225 Ill. 2d at 202.

¶ 49 As the majority correctly notes, the transfer statute provides—and has provided, in each of the versions discussed here—for discretionary transfer hearings to be conducted by judges of the juvenile court (705 ILCS 405/5-4 (West 1994)). In the normal progression of a case, where a defendant is still a juvenile when that determination is made, the juvenile court is clearly the proper forum. This is not, however, as certain unfortunate language in *Hunter* suggests (see, e.g., *Hunter*, 2017 IL 121306, ¶¶ 41-43), a matter of “jurisdiction,” but rather one of specific statutory authority.

¶ 50 Jurisdiction is “conferred by the constitution, not the legislature.” (Internal quotation marks omitted.) *People v. Castleberry*, 2015 IL 116916, ¶ 15. And a circuit court, of which the juvenile court is but one division, “is a court of general jurisdiction, which need not look to [a] statute for its jurisdictional authority.” (Internal quotation marks omitted.) *Id.* ¶ 19. It is precisely because a transfer between the juvenile and criminal courts represents a mere change of forum (*People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 15) and is viewed as “purely a matter of procedure” (*Patterson*, 2014 IL 115102, ¶ 104) that amendments to the transfer statute have, where practicable, been applied retroactively. See *Howard*, 2016 IL 120729, ¶ 35 (amendment altering the list of offenses qualifying for automatic transfer); *People v. Price*, 2018 IL App (1st) 161202, ¶ 22 (amendment raising the minimum age for automatic transfer).

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¶ 51 If, as the majority concludes, the juvenile court “no longer has authority” to conduct a transfer hearing (*supra* ¶ 38), there is no jurisdictional bar to having that hearing occur in criminal court. Indeed, it appears to us that this is what the *Brown* court understood would happen when it remanded that case back to the criminal court from which the appeal in that case was taken. Our own research into the electronic docket indicates that, once back before the criminal court, that court transferred Mr. Brown’s case to the juvenile court for a discretionary transfer hearing (Case Summary, Case No. 98 CR 0657901, available at

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visited May 15, 2025)). Our opinion in *Brown* indicates that that was what the court specifically

intended. However, nothing in

intended. The case was appealed from the criminal court, and, in affirming in part the appellate

court’s decision to vacate the defendant’s conviction and remand for a new transfer hearing, our

supreme court simply “remanded to the circuit court for further proceedings.” *Brown*, 225 Ill. 2d

at 208. Our supreme court in *Brown* was far less concerned with what division of the circuit

court would hear the matter than it was with the fact that, because his transfer order was void,

Mr. Brown “*must* therefore be granted a new transfer hearing.” (Emphasis added.) *Id.* at 199.

¶ 52 Here, Mr. Smith has specifically asked this court, should we conclude that a remand to the juvenile court is not possible, to fashion an appropriate remedy addressing his void transfer. That remedy is a remand to the adult criminal court for a discretionary transfer hearing under the version of the transfer statute preceding the one held unconstitutional in *Cervantes*. It is a remedy that is both required by *Brown* and still consistent with *Hunter*. It is also one within our power to provide under section 2-1401, which empowers courts with “a versatile and effective means of pursuing justice,” a goal our supreme court has reminded us is our “highest obligation.” *People v. Lawton*, 212 Ill. 2d 285, 299 (2004).

No. 1-24-0121

¶ 53 Accordingly, I respectfully dissent.

No. 132018

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 1-24-0121.
	)	
Respondent-Appellee,	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois , No.
-vs-	)	01 CR 2943802.
	)	
	)	Honorable
MICHAEL SMITH,	)	Thomas Joseph Hennelly,
	)	Judge Presiding.
Petitioner-Appellant.	)	

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 17, 2025, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Nicholas Duarte
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