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No. 132060

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from Appellate Court
	)	of Illinois, First Judicial District,
Respondent-Appellee,	)	No. 1-24-0121.
	)	
v.	)	There on Appeal from the Circuit
	)	Court of Cook County, Illinois,
	)	No. 01 CR 29438.
	)	
MICHAEL SMITH,	)	The Honorable
	)	Thomas J. Hennelly,
Petitioner-Appellant.	)	Judge Presiding.

**BRIEF AND APPENDIX OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS**

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7938
eserve.criminalappeals@ilag.gov

*Counsel for Respondent-Appellee
People of the State of Illinois*

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RULE 341(c) CERTIFICATE OF COMPLIANCE

APPENDIX

CERTIFICATE OF FILING AND SERVICE

NATURE OF THE CASE

In 1999, after his case was transferred from the juvenile division to the criminal division of the circuit court, petitioner pleaded guilty to attempted murder and was sentenced to seven years in prison. In 2001, petitioner pleaded guilty to unlawful use of a weapon by a felon (UUWF), predicated on the attempted murder conviction, and was sentenced to three years in prison. Petitioner is currently serving an aggregate 65-year prison term for his 2007 first degree murder and armed robbery convictions.

In 2023, petitioner filed a petition for relief from judgment in his UUWF case, *see* 735 ILCS 5/2-1401, seeking to vacate both his attempted murder and UUWF convictions. The circuit court dismissed the petition. The appellate court affirmed and petitioner appeals from that judgment. Issues are raised on the pleadings: whether the § 2-1401 petition stated a claim and whether it was timely filed.

ISSUES PRESENTED

I. Whether petitioner's § 2-1401 petition lacked a legal basis for relief because he waived his challenges to his UUWF and attempted murder convictions when he pleaded guilty to both offenses.

II. Whether petitioner's § 2-1401 petition was untimely because it was filed more than two years after the challenged judgments and did not allege that the circuit court lacked jurisdiction or that the statutes of conviction are facially unconstitutional.

III. Alternatively, whether the Court should reverse the circuit court's order dismissing the petition as to petitioner's attempted murder conviction and remand for further proceedings to determine whether petitioner is entitled to relief from that judgment of conviction.

JURISDICTION

The Court allowed leave to appeal on September 24, 2025, and has jurisdiction under Supreme Court Rules 315 and 612(b).

STATEMENT OF FACTS

I. Petitioner Pleads Guilty to Attempted Murder in April 1999.

In January 1998, the People filed a juvenile delinquency petition charging then 16-year-old petitioner with two counts of aggravated battery, one count of aggravated discharge of a firearm, one count of unlawful use of a weapon, and one count of unlawful possession of a firearm or ammunition. C60.¹ In July 1998, the circuit court allowed the People's motion to transfer petitioner for criminal prosecution. C65. The record does not show the basis for the People's request for transfer.

In August 1998, petitioner was charged in criminal court with one count of attempted first degree murder, three counts of aggravated battery, and one count of possessing or carrying a firearm in public. C68. In April

¹ "Pet'r Br." refers to petitioner's brief. "PA" refers to the appendix to this brief. "C", "R", "SupC", and "Sup2R" refer to the common law record, report of proceedings, supplemental common law record, and supplemental report of proceedings, respectively. "SupC" contains documents filed in petitioner's attempted murder criminal case. "Sup2R" consists of the report of proceedings in petitioner's murder and armed robbery cases.

1999, the circuit court accepted petitioner's negotiated guilty plea to attempted murder and sentenced him to seven years in prison; pursuant to the agreement, the People dismissed all remaining charges. C54-55, 72, 79. Petitioner did not appeal.

II. Petitioner Pleads Guilty to UUWF in March 2012.

In November 2001, while on parole, petitioner was charged by information with UUWF for possessing a loaded firearm, unlawful possession of a weapon without a firearm owner's identification (FOID) card, and failure to register a firearm. C19-21. He was later indicted on two counts of UUWF predicated on his attempted murder conviction: Count 1 was based on his possession of a firearm and Count 2 on his possession of ammunition. C27-28. In March 2002, the circuit court accepted petitioner's negotiated guilty plea to Count 1 and sentenced him to three years in prison; the People dismissed Count 2. C8-9, 33-35; R25-26, 28-29. Petitioner did not appeal.

III. Petitioner Is Convicted of First Degree Murder and Armed Robbery.

Following his release from prison, beginning in April 2004, petitioner went on a crime spree, Sup2R427-29, 553-54, 1210, 1266-75, and was later charged with multiple offenses in five separate cases, Sup2R43-44.

Petitioner was tried and convicted of two counts of armed robbery and first degree murder, Sup2R427-29, 553-54, 1210, and sentenced to an aggregate of 65 years in prison, Sup2R479, 1303-04. The People then dismissed the remaining charges. Sup2R1313-14.

At sentencing on petitioner's armed robbery and murder cases, the circuit court received testimony about petitioner's prior attempted murder conviction. Sup2R433-48, 1285-89. Petitioner and his brother were members of the Blackstones street gang when petitioner's foster brother was fatally shot by a member of the Mickey Cobras street gang. Sup2R439, 442-43. About three weeks later, in retaliation for that shooting, petitioner armed himself with two guns, went out looking for a Mickey Cobra, ran up to a 17-year-old sitting in a car, and shot him five times. Sup2R433-40. The circuit court learned that petitioner also had prior juvenile delinquency adjudications, one for unlawful possession of a firearm (in November 1997) and one for possession of a controlled substance (in March 1998). Sup2R1290-93. The circuit court considered this evidence when determining petitioner's sentences. Sup2R1296-1302.²

IV. Petitioner Unsuccessfully Seeks § 2-1401 Relief and a Certificate of Innocence in His Attempted Murder Case.

In May 2017, more than 18 years after he pleaded guilty, petitioner filed a § 2-1401 petition in his attempted murder case, SupC5-11, seeking to vacate the order transferring his case from the juvenile to the criminal division of the circuit court and to hold a new transfer hearing, SupC10-11. Petitioner claimed that the transfer order was void because the statute under which he was transferred had been declared unconstitutional under the

² In 2008, petitioner pleaded guilty to bringing contraband to a penal institution and was sentenced to six years in prison, to run consecutively to his murder and armed robbery sentences. C121-22

Illinois Constitution's single subject clause in *People v. Cervantes*, 189 Ill. 2d 80 (1999). SupC9-10; *see* C55. Petitioner attached no documentation to his petition.

In January 2018, the circuit court sua sponte dismissed the petition as moot. SupC13-15. Construing the petition as seeking vacatur of petitioner's sentence, the court found that it could not afford petitioner effectual relief because he had already discharged the sentence. SupC15; *see* C55. Petitioner did not timely appeal. C75.

More than four years later, in October 2022, petitioner filed a petition for a certificate of innocence (COI). C110-48. He argued that he was entitled to a COI because his case was transferred to criminal court based on an unconstitutional statute, which rendered his conviction void. C54-56, 115-18. The circuit court denied the petition in February 2023. C58. Petitioner's appeal from that decision is pending in the appellate court. *See People v. Smith*, No. 1-23-1266 (Ill. App. Ct.).

V. Petitioner Files a § 2-1401 Petition in his UUWF Case, Seeking Relief from Both his UUWF and Attempted Murder Convictions, Which the Circuit Court Dismisses.

In May 2023, petitioner filed a § 2-1401 petition in his UUWF case, asking the court to vacate both his UUWF and attempted murder convictions. C38-92. He claimed that his UUWF conviction was invalid because his attempted murder conviction — an “essential element” of the UUWF conviction — was void, C46-50; and his attempted murder conviction was void because his case was transferred to criminal court under the statute that

Cervantes had declared facially unconstitutional, C44-47. In support, petitioner attached the following documents pertaining to his attempted murder conviction: (1) the circuit court’s order denying him a COI, C54-58; (2) two copies of the docket for the criminal case, C68-92; and (3) the docket for the underlying juvenile case, C60-67, which, as to the transfer states, “MOT PERMIT PROS CRIM LAW ALLOW,” C65.

The People moved to dismiss the petition, arguing that the petition was untimely, barred by the prior judgment in petitioner’s attempted murder case, and failed to state a claim for § 2-1401 relief. C107-08; R45-46. In reply, petitioner invoked the voidness exception to § 2-1401’s statute of limitations, arguing that his UUWF conviction is void because his attempted murder conviction is void ab initio. C165-67. The circuit court found the petition untimely and granted the People’s motion to dismiss. C174; R51-52.

VI. The Appellate Court’s Affirms.

The appellate court affirmed the circuit court’s judgment of dismissal. PA15, ¶ 43. The appellate court first held that petitioner’s § 2-1401 petition was not untimely because its allegations — that “his transfer from juvenile court to criminal court is void” and that the “transfer resulted in his convictions for attempted murder and UUWF” — fell within the voidness exception to § 2-1401’s statute of limitations. PA8, ¶ 23. Assuming, because the People had not affirmatively disputed it, that petitioner had been transferred under the statute that *Cervantes* had held was facially unconstitutional, PA8, ¶ 25, the appellate court held that petitioner’s transfer

from juvenile court was void, PA12-13, ¶ 34. But the appellate court declined petitioner’s request for a new transfer hearing under the provisions of the Juvenile Court Act in effect before the facially unconstitutional provision was enacted, because he was no longer a minor and therefore not subject to the Act. PA13-14, ¶¶ 35-36, 38 (applying *People v. Hunter*, 2017 IL 121306, ¶¶ 38-42). In doing so, the appellate court noted that petitioner had not alleged that “the offenses of attempted murder or UUWF under which he was convicted in 1998 and in this case are unconstitutional,” and *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.” PA14, ¶ 38 (quoting *People v. Brown*, 225 Ill. 2d 188, 203 (2007)).

Justice Mikva dissented. PA15-19. She would have “remand[ed] to the adult criminal court for a discretionary transfer hearing under the version of the transfer statute preceding the one held unconstitutional in *Cervantes*.” PA18, ¶ 52.

STANDARDS OF REVIEW

This Court reviews de novo both the circuit court’s dismissal of petitioner’s § 2-1401 petition, *People v. Wells*, 2023 IL 127169, ¶ 23, and the underlying issues of statutory construction, *id.* ¶ 31.

SUMMARY OF ARGUMENT

Petitioner is not entitled to relief from either his UUWF or attempted murder judgments. Petitioner waived his claims when he voluntarily pleaded guilty to both offenses. By pleading guilty to UUWF, petitioner waived his claim that he did not have a qualifying predicate felony conviction to support the conviction. And petitioner's guilty plea to attempted murder waived his claim that the antecedent order transferring his case from the juvenile to the criminal division of the circuit court was statutorily unauthorized. Accordingly, petitioner's voluntary guilty pleas bar relief and the Court should affirm the lower courts' judgments on this basis alone.

Moreover, the circuit court correctly held that petitioner's § 2-1401 petition was untimely. Petitioner filed the petition more than 20 years after the challenged judgments, well after the 2-year limitations period expired. The voidness exception does not apply to excuse his untimely filing: the petition did not allege a jurisdictional defect or that the statutes upon which his UUWF or attempted murder convictions are based are facially unconstitutional. Petitioner's claim that the procedural statute upon which he was transferred is facially unconstitutional does not render his convictions void. Petitioner's convictions were based on the statutes defining his offenses and punishments, not the non-punitive and procedural transfer statute. The

petition was therefore untimely as to both convictions and the Court may affirm the lower courts' judgments on this basis, too.

Alternatively, even were the petition timely as to petitioner's attempted murder conviction (because it allegedly rested on the facially unconstitutional transfer statute), the petition is still untimely as to his UUWF conviction. If the attempted murder conviction were vacated due to the procedural irregularity, such vacatur would not render petitioner's UUWF conviction void. Thus, even were the Court to order further proceedings on the petition as to his attempted murder conviction, the Court should affirm the dismissal of petitioner's § 2-1401 challenge to his UUWF conviction. And as to his challenge to his attempted murder conviction, petitioner alleged but has not yet proven that he was transferred under the facially unconstitutional statute. Accordingly, even if he did not waive his claim by pleading guilty and his petition is timely as to his attempted murder conviction, petitioner is not yet entitled to a new transfer hearing and a remand for further proceedings would be required.

ARGUMENT

I. Petitioner's § 2-1401 Claims Fail as a Matter of Law Because He Waived Them When He Voluntarily Pleaded Guilty to UUWF and Attempted Murder.

Petitioner's § 2-1401 petition is insufficient as a matter of law because he waived his claims when he voluntarily pleaded guilty to UUWF and attempted murder. *See, e.g., Wells*, 2023 IL 127169, ¶ 41 (petitioner's § 2-1401 petition “untenable as a matter of law” where she waived claim by

pleading guilty).³ “It is well established that a voluntary guilty plea waives all non-jurisdictional errors or irregularities, *including constitutional ones*.” *People v. Jones*, 2021 IL 126432, ¶ 20 (emphasis in original) (quotation marks omitted). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). When a defendant pleads guilty to a charged offense, “he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Id.*

The three narrow exceptions to this rule all pertain to claims that challenge the State’s constitutional power to prosecute conduct and impose punishment. A guilty plea does not waive (1) due process claims for vindictive prosecution; (2) double jeopardy claims evident from the face of the indictment and existing record; and (3) facial constitutional challenges to the statute of conviction or sentence. *See Class v. United States*, 583 U.S. 174, 177-83 (2018); *People v. Johnson*, 2019 IL 122956, ¶ 54; *In re N.G.*, 2018 IL

³ The People did not argue below that petitioner’s § 2-1401 petition failed as a matter of law based on his guilty plea waivers. But, as appellee in both this Court and the appellate court, the People may defend the circuit court’s judgment on any basis of record. *See In re Veronica C.*, 239 Ill. 2d 134, 151 (2010) (“appellee may raise any argument or basis supported by the record to show the correctness of the judgment below, even though [they] had not previously advanced such an argument”). Similarly, this Court “may affirm on any basis supported by the record.” *Id.*; *see also People v. Johnson*, 208 Ill. 2d 118, 128-32 (2003) (discussing this well-established principle). And here, were the Court to find the § 2-1401 petition timely, the People could still argue on remand that petitioner’s guilty pleas preclude § 2-1401 relief as a matter of law. Accordingly, the Court should address the effect of petitioner’s guilty pleas on his claims.

121939, ¶ 49. Petitioner does not allege a jurisdictional error or a claim that would fall within any recognized exception, so his guilty pleas to UUWF and attempted murder foreclose § 2-1401 relief from the resulting convictions.

A. Petitioner’s guilty plea to UUWF waived his claim that the predicate felony is invalid.

Petitioner’s voluntary guilty plea to UUWF waived his claim that he did not have the necessary predicate felony conviction to support his UUWF conviction. *See* C48-49. Indeed, a stipulation to the prior felony conviction would have barred this claim, *People v. Gray*, 2024 IL 127815, ¶¶ 27-28 (defendant’s stipulation at trial that he had two prior qualifying felony convictions for armed habitual criminal conviction precluded him from attacking those facts later), and a guilty plea goes even further: “A guilty plea is more than a confession which admits that the accused did various acts. It is an admission that he committed the crime charged against him,” *United States v. Broce*, 488 U.S. 563, 570 (1989) (quotation marks and citations omitted), which “releases the State from proving *anything* beyond a reasonable doubt,” *Hill v. Cowan*, 202 Ill. 2d 151, 154 (2002) (emphasis in original), and “supplies both evidence and verdict, ending controversy,” *People v. White*, 2011 IL 109616, ¶ 17 (quotation marks omitted). Thus, when petitioner pleaded guilty to UUWF, he (1) admitted that he was guilty of all the elements of that crime, *Broce*, 488 U.S. at 570; *McCarthy v. United States*, 394 U.S. 459, 466 (1969), including that he “ha[d] been convicted of a felony,”

720 ILCS 5/24-1.1(a) (2001); and (2) relinquished any claim that would contradict that admission, *Broce*, 488 U.S. at 573-74.

Accordingly, petitioner waived his challenge to his UUWF conviction. *See People v. Walker*, 211 Ill. 2d 317, 337 (2004) (UUWF statute “does not require proof of specific felony conviction”; proof of “defendant’s felon status” is sufficient); *see also, e.g., United States v. Wallace*, 280 F.3d 781, 784 & n.1 (7th Cir. 2002) (by pleading guilty to unlawful possession of a weapon by a felon, defendant admitted he had a prior felony conviction and thus waived his claim that the conviction was invalid because state supreme court had vacated the underlying predicate felony conviction).

B. Petitioner’s guilty plea to attempted murder waived his claim that the circuit court procedurally erred when it transferred the case.

In turn, petitioner’s underlying challenge to his attempted murder conviction is barred by his voluntary guilty plea to that offense.

According to petitioner, the proceedings that led to that conviction were defective because the statute under which he was transferred is facially unconstitutional and void ab initio, so the People lacked statutory authority to transfer his case from juvenile to criminal court. *See* C45-50.

Petitioner’s valid guilty plea waived this claim, for two reasons. First, by pleading guilty, petitioner waived his right to *any* trial, *see Brady v. United States*, 397 U.S. 742, 748 (1970) (a guilty plea “is the defendant’s consent that judgment of conviction may be entered without a trial — a

waiver of his right to trial before a jury or a judge”), which necessarily included a waiver of his statutory right to a trial in a particular division of the circuit court, *see People v. Patterson*, 2014 IL 115102, ¶ 104 (defendant has no constitutional right to be tried in juvenile court). “[T]he juvenile court is merely a division of a single unified circuit court. It is the circuit court, as a whole, which is vested with jurisdiction” by the Illinois Constitution. *People v. P.H.*, 145 Ill. 2d 209, 222 (1991) (citations omitted). Thus, “[w]hether a person is tried in juvenile or criminal court is a matter of procedure rather than jurisdiction.” *Id.* The alleged lack of statutory authority for petitioner to be tried in criminal court is therefore not an unwaivable jurisdictional defect, and petitioner waived any claim that he should have been tried in juvenile court when he unconditionally pleaded guilty in criminal court. *See In re Greene*, 76 Ill. 2d 204, 214 (1979) (defendant may waive right to be tried in juvenile rather than criminal court; such an error “is analogous to prosecuting a defendant in the wrong county or to proceeding before a court that is improperly organized, objections to which can be waived”); *see, e.g., People v. Green*, 104 Ill. App. 3d 278, 281 (1st Dist. 1982) (defendant waived right to juvenile proceedings, where he failed to assert the right before trial in criminal court); *cf., e.g., People v. Ondrey*, 65 Ill. 2d 360, 363-64 (1976) (by pleading guilty, defendant waived constitutional right to trial in the county where offense committed because “[t]he place of trial is not jurisdictional”).

Second, petitioner's claim that the People lacked statutory authorization for the transfer is merely an attack on "case-related government conduct that t[ook] place before the plea [wa]s entered," which falls squarely within the categories of claims waived by a guilty plea. *Class*, 583 U.S. at 182; *see Tollett*, 411 U.S. at 267. It is irrelevant that petitioner did not discover until after he pleaded guilty that his transfer was allegedly unauthorized. A valid guilty plea is not "vulnerable to later attack" because a "defendant did not correctly assess every relevant factor entering into his decision" or "because later judicial decisions indicate that the plea rested on a faulty premise." *Jones*, 2021 IL 126432, ¶ 23 (quoting *Brady*, 397 U.S. at 757); *see also United States v. Bradley*, 400 F.3d 459, 463 (6th Cir. 2005) (collecting cases).

Accordingly, when petitioner voluntarily pleaded guilty to attempted murder in criminal court, he waived his claim that the transfer was unauthorized. *People v. Shaw*, 3 Ill. App. 3d 1096, 1098-99, 1101 (3d Dist. 1972) (defendant waived challenge to prosecution in criminal court by pleading guilty); *see also, e.g., Rodriguez v. Ricketts*, 798 F.2d 1250, 1251-52 (9th Cir. 1986) (defendant waived constitutional challenge to transfer by pleading guilty because alleged error not jurisdictional); *Trombley v. Anderson*, 584 F.2d 807, 808 (6th Cir. 1978) (same); *Smith v. Yeager*, 459 F.2d 124, 126-27 (3d Cir. 1972) (same, because transfer hearing is "a purely procedural right"); *State v. Kelley*, 537 A.2d 483, 485-88 (Conn. 1988) (same,

because alleged error did not affect criminal court’s jurisdiction); *State v. Burnight*, 978 P.2d 214, 217-18 (Idaho 1999) (defendant waived challenge to prosecution in criminal court by pleading guilty); *State v. Emery*, 636 N.W.2d 116, 118, 121-23 (Iowa 2001) (same, because error did not affect criminal court’s jurisdiction); *Waynewood v. State*, 552 N.W.2d 718, 719 (Minn. 1996) (defendant waived challenge to transfer by pleading guilty in criminal court); *State v. Lindsey*, 249 P.3d 491, 495-96 (Mont. 2011) (same).

People v. Brown, 225 Ill. 2d 188 (2007), upon which defendant may rely, does not warrant a different result. *Brown* held, in the context of the guilty plea defendant’s motion for leave to file a successive postconviction petition, that because the statutory provision under which the defendant’s case had been transferred to criminal court was facially unconstitutional and thus void *ab initio*, the circuit court lacked “authority to act,” rendering the “transfer” void. 225 Ill. 2d at 199 (citing *In re Jaime P.*, 223 Ill. 2d 526, 540 (2006)). In granting the defendant a new transfer hearing, *Brown* noted that the defendant’s guilty plea did not “alter [its] analysis” because “[a] guilty plea does not preclude a defendant from challenging a circuit court’s judgment as void *ab initio*,” and “an attack on a void judgment may be raised at any time.” *Id.* (citing *People v. Guevara*, 216 Ill. 2d 533, 542-43 (2005)).

But this part of *Brown* is inconsistent with settled precedent holding that a knowing and intelligent guilty plea waives all non-jurisdictional constitutional and statutory claims that arose prior to entry of the plea,

except for claims that the State lacked the constitutional authority to prosecute the conduct or impose the punishment. *See Class*, 583 U.S. at 179-83; *Johnson*, 2019 IL 122956, ¶ 54; *N.G.*, 2018 IL 121939, ¶¶ 49, 71. It is also inconsistent with the Court’s later precedent holding that “the failure to satisfy a certain statutory requirement or prerequisite [does not] deprive the circuit court of its power or jurisdiction to hear a cause of action” or “constitute a nonwaivable condition precedent to the circuit court’s jurisdiction.” *People v. Castleberry*, 2015 IL 116916, ¶ 15 (quotation marks and citations omitted). Indeed, *Castleberry* rejected the line of authority, *see id.* ¶¶ 15, 18-19, cited in *Brown*, that conflated a statutory violation with voidness. *See Jaime P.*, 223 Ill. 2d at 540 (“where, as here, the circuit court’s power to act is controlled by statute, the court must proceed within the statute’s strictures, and any action taken by the court that exceeds its statutory power to act is void”) (cited by *Brown*, 225 Ill. 2d at 199). Even if, as *Brown* correctly observed, the circuit court lacked statutory “authority to act” because the transfer statute was facially unconstitutional, 225 Ill. 2d at 199, it would not affect the circuit court’s constitutional power to adjudicate the charged crimes or impose punishment, *see Castleberry*, 2015 IL 116916, ¶ 15. Thus, *Castleberry* makes clear that the type of error at issue in *Brown* was not jurisdictional and does not fit within the narrow exception to the guilty plea waiver rule for unconstitutional statutes.

Moreover, *Guevara*, upon which *Brown* relied, does not support its conclusion. *Guevara* held (correctly) that “a guilty plea does not preclude a defendant from arguing . . . that he was sentenced under a statute that was facially unconstitutional and void *ab initio*.” 216 Ill. 2d at 542-43. However, it did not broadly hold, as *Brown* suggested, that a guilty plea defendant may — despite his knowing and intelligent guilty plea — challenge the constitutionality of the procedures that occurred prior to the conviction. Indeed, the defendant in *Guevara* claimed that the sentencing statute was facially unconstitutional, so his claim fell within the recognized exceptions to the guilty plea waiver rule. *Id.* In short, *Guevara* confirms that petitioner waived his challenge to his UUWF and attempted murder convictions, because he argues only that the circuit court erred procedurally in transferring his case, not that the court lacked jurisdiction. For these reasons, this part of *Brown* is inconsistent with the Court’s precedent and should be overruled. *See infra*, § II.B (discussing why stare decisis principles should not prevent the Court from overruling parts of *Brown*).

II. Petitioner’s § 2-1401 Petition Was Untimely.

In any event, the circuit court properly dismissed petitioner’s § 2-1401 petition as untimely. Section 2-1401 “provides a statutory mechanism for vacating final judgments older than 30 days.” *People v. Stoecker*, 2020 IL 124807, ¶ 18. The petition must be filed no more than two years after the entry of the final judgment unless, as relevant here, “the petition challenges a void judgment.” *People v. Thompson*, 2015 IL 118151, ¶¶ 28-29; *see* 735

ILCS 5/2-1401(c), (f). “[A] voidness challenge . . . is exempt from the ordinary procedural bars” only where the petition alleges that (1) “the court that entered the final judgment lacked personal or subject matter jurisdiction,” or (2) the “final judgment [was] based on a facially unconstitutional statute.” *Thompson*, 2015 IL 118151, ¶¶ 31-32; see *People v. Price*, 2016 IL 118613, ¶ 31.

In criminal cases, a final judgment is based on a facially unconstitutional statute where the statute defining the offense or punishment is facially unconstitutional. *N.G.*, 2018 IL 121939, ¶¶ 40-41, 43, 46, 48-50, 52, 56-59, 68-74; see *People v. Woods*, 193 Ill. 2d 483, 488 (2000) (conviction includes adjudication of guilt and pronouncement of sentence); *People v. Meyerowitz*, 61 Ill. 2d 200, 209-11 (1975) (defendant may not be convicted where statute defining offense or penalty is unconstitutional); see also *People v. McFadden*, 2016 IL 117424, ¶ 19 (“we have consistently held that when a *criminal statute* has been declared facially unconstitutional, a defendant may not be prosecuted under it” (emphasis added)).⁴ In sum, just

⁴ The Court’s voidness exception in the criminal context stems from the common law principle that “[i]f the law which defines the offense and prescribes its punishment is void, the court was without jurisdiction, and the prisoners must be discharged.” *Ex parte Yarbrough*, 110 U.S. 651, 654 (1884); accord *Ex parte Siebold*, 100 U.S. 371, 374-77 (1879); see Paul M. Bator, *Finality in Criminal Law & Federal Habeas Corpus for State Prisoners*, 76 Harvard L. Rev. 441, 479-80 (1963) (in late 1800s, an attack on “the constitutionality of the statute creating the offense” was “considered a ‘jurisdictional’ issue open on collateral attack” and a conviction under such a statute was “‘void,’ not merely erroneous, and thus [could not] constitute a

like the narrow exceptions to the guilty plea waiver rule, the voidness exception applies only when a conviction is based on a jurisdictional defect or a facially unconstitutional statute of conviction or sentence. *See N.G.*, 2018 IL 121939, ¶¶ 49-50.

A. The petition was untimely as to the UUWF conviction.

It is undisputed that petitioner filed his § 2-1401 petition more than two years after entry of final judgment in his UUWF case. And petitioner cannot avoid the time-bar under the voidness exception because his petition did not allege a jurisdictional defect in that case, or that the statute upon which his UUWF conviction is based is facially unconstitutional.

The petition instead alleged that the purely procedural statute upon which petitioner's *attempted murder* case was transferred is facially unconstitutional. C46. But even if the allegation that the transfer statute is facially unconstitutional sufficed to satisfy the voidness exception (and it does not, *see infra*, § II.B), that would make the § 2-1401 petition timely only as to petitioner's attempted murder conviction, not his UUWF conviction.

Petitioner's UUWF conviction does not depend on the continued validity of his attempted murder conviction, so even if the attempted murder conviction were vacated due to the procedural irregularity, such vacatur would not

lawful cause of imprisonment"). After the 1970 Illinois Constitution, the circuit court's jurisdiction is not affected by the facial unconstitutionality of statutes that define an offense and prescribe its punishment. *See Castleberry*, 2015 IL 116916, ¶¶ 15, 18. For this reason, a conviction is void if either (1) the circuit court lacked jurisdiction, or (2) the statute defining the offense or prescribing the punishment is facially unconstitutional.

render petitioner's UUWF conviction void. Accordingly, petitioner's § 2-1401 petition as to his UUWF conviction is untimely.

The UUWF statute “protect[s] the public from dangerous persons who are seeking to obtain firearms.” *N.G.*, 2018 IL 121939, ¶ 62 (citing *McFadden*, 2016 IL 117424, ¶¶ 29-30). It requires proof of “the defendant’s felon status” at the time he knowingly possessed a firearm; it “does not require proof of a specific felony conviction.” *Walker*, 211 Ill. 2d at 337; *see* 720 ILCS 5/24-1.1(a) (2001). Petitioner’s felon status was established when he pleaded guilty to UUWF and agreed that he had previously been convicted of a felony. *See Walker*, 211 Ill. 2d at 337; *supra*, § I.A; *see also* *McFadden*, 2016 IL 117424, ¶ 14.

The validity of petitioner’s UUWF conviction does not depend on the continued validity of his attempted murder conviction. The prohibition on possessing a firearm is “triggered by any felony conviction, not merely ‘valid’ convictions.” *N.G.*, 2018 IL 121939, ¶ 69 (discussing *Lewis v. United States*, 445 U.S. 55, 60 (1980)). It does “not matter that the predicate felony might [later] be subject to collateral attack on the grounds that it was obtained in violation of” some procedural right, *id.* (discussing *Lewis*), because the UUWF statute “is not concerned with prosecuting or enforcing the prior conviction. Rather, the legislation is concerned with ‘the role of that conviction as a disqualifying condition for the purpose of obtaining firearms.’” *McFadden*, 2016 IL 117424, ¶ 29 (quoting *United States v. Mayfield*, 810 F.2d 943, 946

(10th Cir. 1987)). Thus, “[s]o long as the defendant’s conviction for that [predicate] felony remain[s] undisturbed through court challenge or pardon at the time of the conduct giving rise to the subsequent felony (possession of a firearm), it [may] be used to establish” the felon-status element of the second offense. *N.G.*, 2018 IL 121939, ¶ 69 (discussing *Lewis*); accord *McFadden*, 2016 IL 117424, ¶¶ 24, 29 (applying *Lewis*). Petitioner was a felon when he possessed a firearm, so even if his predicate felony conviction for attempted murder were vacated in future proceedings, it would have no effect on the validity of his UUWF conviction, based on petitioner’s status at the time of the offense. See *McFadden*, 2016 IL 117424, ¶¶ 26-31; *Lewis*, 445 U.S. at 60-67; see, e.g., *United States v. Padilla*, 387 F.3d 1087, 1089, 1091-92 (9th Cir. 2004) (collecting cases and holding that unauthorized transfer from juvenile to criminal court in predicate felony case did not render felon-in-possession conviction invalid); see also, e.g., *United States v. Williams*, 131 F.4th 652, 659-61 (8th Cir. 2025) (collecting additional cases and holding that constitutional error in predicate felony convictions did not render felon-in-possession conviction invalid); *United States v. Thompson*, 901 F.3d 785, 786-87 (7th Cir. 2018) (similar); *United States v. Marks*, 379 F.3d 1114, 1119-20 (9th Cir. 2004) (similar); *Wallace*, 280 F.3d at 784 & n.1 (similar); *Clark v. State*, 739 P.2d 777, 781 (Alaska Ct. App. 1987) (observing that majority of state courts follow *Lewis*, collecting cases, and holding that later reversal of predicate conviction does not undo felon-in-possession conviction); *Martin v.*

State, 642 S.E.2d 837, 840 (Ga. 2007) (constitutional infirmity in predicate felony conviction does not bar felon-in-possession conviction); *State v. Lobendahn*, 784 P.2d 872, 873 (Haw. 1989) (later reversal of predicate conviction does not render felon-in-possession conviction unlawful).

“[R]equiring an individual to clear his felony record before possessing a firearm” is consistent with the UUWF statute’s intent to prevent irresponsible and dangerous people from possessing guns. *McFadden*, 2016 IL 117424, ¶ 30. When petitioner committed his UUWF offense, he “had a judgment of conviction that had not been vacated and that made it unlawful for him to possess firearms.” *Id.* ¶ 31. Under the law, he was a felon and could not “resort to self help by first obtaining and possessing a firearm, and thereafter trying to assert the invalidity of the prior conviction” as a basis to overturn the UUWF conviction. *Id.* ¶ 30 (cleaned up).⁵ Indeed, the violent

⁵ In fact, petitioner had ample opportunity to seek vacatur of his attempted murder conviction before he illegally possessed the weapon. The appellate court had invalidated the presumptive transfer provision upon which petitioner relies before he pleaded guilty to attempted murder in April 1999, *Brown*, 225 Ill. 2d at 206-07, and this Court did so in December 1999, *People v. Cervantes*, 189 Ill. 2d 80, 82 (1999). Petitioner therefore could have raised the single-subject challenge to his transfer before he pleaded guilty to attempted murder, and certainly before he illegally possessed the weapon in November 2001. *See Brown*, 225 Ill. 2d at 194, 207 (“it is clear that legal precedent supporting defendant’s single-subject challenge existed and could have been invoked by him at the time he filed his initial postconviction petition” in March 1999). But even had he successfully vacated his attempted murder conviction before he illegally possessed the weapon, the People could have prosecuted him for the illegal possession under numerous other statutes. *See* 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (no FOID card), (a)(3)(D) (prior delinquency adjudication for felony), (a)(3)(F) (member of a

conduct underlying petitioner’s attempted murder conviction — his revenge shooting of a purported rival gang member — is not “constitutionally immune from punishment,” *N.G.*, 2018 IL 121939, ¶ 74, and the alleged defect in the conviction is purely procedural and does not implicate his constitutional rights, *see supra*, § I.B. Thus, “[t]here is nothing absurd or unjust or unreasonable about” upholding petitioner’s UUWF conviction, even if his attempted murder conviction is vacated at a later proceeding. *McFadden*, 2016 IL 117424, ¶ 30.

To be sure, *N.G.* questioned whether the felon-status rule should apply where the predicate conviction “was based on a facially unconstitutional statute that penalized conduct the state had no power to punish.” 2018 IL 121939, ¶ 71. In doing so, *N.G.*, at most, carved out a limited exception to the felon-status rule applied in *McFadden*. But that exception does not apply here because the attempted murder statute under which petitioner was convicted is not facially unconstitutional.

B. The petition was untimely with respect to the attempted murder conviction entered in petitioner’s separate case.

Nor could the petition be construed as timely with respect to the attempted murder conviction entered in petitioner’s previous case.⁶

street gang or engaged in street gang related activity), (a)(3)(I) (under age 21) (2001); *id.* § 5/24-3.1(a)(2) (2001) (under age 21 and adjudged delinquent).

⁶ According to *N.G.*, the fact that petitioner sought relief from his attempted murder conviction in his UUWF case does not alone bar relief, because the Circuit Court of Cook County had jurisdiction over the attempted murder

The petition alleged that the procedural statute upon which petitioner’s attempted murder case was transferred is facially unconstitutional. C46. But petitioner’s conviction was based on — and he was convicted under — the statute defining his offense and punishment, not the transfer statute. The transfer statute is not punitive, *Patterson*, 2014 IL 115102, ¶¶ 104-06; a transfer hearing is not an “adjudicatory proceeding . . . to determine whether a minor has committed acts which violate criminal law,” *P.H.*, 145 Ill. 2d at 225-27; and a transfer order is not final and appealable, *People v. Jiles*, 43 Ill. 2d 145, 147 (1969). Thus, the “prosecution of a juvenile in adult criminal proceedings without regard to the transfer provisions set forth in the statute renders the disposition voidable rather

case and both parties. 2018 IL 121939, ¶ 57 (“it is sufficient if a person subject to a conviction premised on a facially invalid statute raises his or her challenge through an appropriate pleading in a court possessing jurisdiction over the parties and the case”). But this case demonstrates the practical difficulties with allowing voidness challenges to convictions in any case in which the People are a party. As discussed in § II.A, *supra*, the UUWF conviction’s validity does not depend on the continued validity of the attempted murder conviction. So, if petitioner’s challenge to his attempted murder conviction were timely and not waived by his guilty plea, then, because he filed the § 2-1401 petition in his UUWF case, any further proceedings on the validity of the attempted murder conviction — including a potential retrospective transfer hearing, *see infra*, § III — would be litigated in the UUWF case, rather than in the case in which the challenged final judgment was entered. And any order vacating the attempted murder conviction would be entered in the wrong case. *See N.G.*, 2018 IL 121939, ¶ 145 (Theis, J., dissenting) (citing difficulties with entering orders vacating judgments in proceedings other than actual criminal case). Thus, in an appropriate case, this Court should consider refining *N.G.*’s blanket statement.

than void.” *People v. Hall*, 55 Ill. App. 3d 341, 343 (1st Dist. 1977). Because the § 2-1401 petition did not allege that the statutes under which petitioner was convicted are facially unconstitutional, the voidness exception does not apply, and the circuit court correctly dismissed his § 2-1401 petition as untimely.

Brown, upon which the appellate court based its decision, PA9-10, ¶¶ 27-28 (citing *Brown*, 225 Ill. 2d at 193-203), reflects an outdated understanding of the voidness doctrine, is an outlier, and should be overruled in part. To start, as discussed in § I.B, *supra*, *Brown* granted the defendant a new transfer hearing based on the pre-*Castleberry* view of the voidness doctrine, under which the circuit court’s jurisdiction — i.e., its “authority to act,” *Brown*, 225 Ill. 2d at 199 — was limited by statutory prerequisites, requirements, or conditions precedent. But the Court has since clarified that the circuit court’s jurisdiction derives solely from the Illinois Constitution; thus, although orders entered without statutory authority may be voidable, they are not void. *Castleberry*, 2015 IL 116916, ¶¶ 15, 18; *see In re Marriage of Tronsrue*, 2025 IL 130596, ¶¶ 33-34 (“[a] voidable judgment is a judgment ‘entered erroneously by a court having jurisdiction,’” so “once the circuit court obtain[s] jurisdiction, any judgment erroneously entered [i]s a voidable judgment, not a void judgment”). And, here, the unconstitutionality of the transfer provision means only that the circuit court allegedly applied the wrong version of the statute, not that it lacked jurisdiction to order the

transfer. *See People v. Holmes*, 2017 IL 120407, ¶¶ 32-36; *People v. Blair*, 2013 IL 114122, ¶ 30. In other words, the facial unconstitutionality of the transfer provision may render the transfer voidable, but it does not render the final criminal judgment void. *See Hall*, 55 Ill. App. 3d at 343.

Similarly, as discussed above and in § I.B, *supra*, a conviction is not void merely because an interim procedural order was based on a facially unconstitutional statute. “The actual existence of [the transfer] statute, prior to . . . [the] determination [of unconstitutionality], is an operative fact” and has “consequences which cannot justly be ignored.” *Chicot Cnty. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 374 (1940); *see Holmes*, 2017 IL 120407, ¶¶ 32-36 (discussing *Blair*, 2013 IL 114122, ¶ 29, which relied on *Chicot Cnty.*). The historical, procedural fact that a case was transferred from one division of the circuit court to another may be “deemed to have finality and acted upon accordingly,” *Chicot Cnty.*, 308 U.S. at 374, because doing so does not deny a defendant any constitutional rights, much less implicate the State’s constitutional power to prosecute the conduct and impose the punishment.

As the Court recognized in *N.G.*, unlike a conviction “based on a facially unconstitutional statute that penalized conduct the state had no power to punish,” a conviction “obtained through a constitutionally deficient *procedure* . . . ‘does not, as a general matter, have the automatic consequence of invalidating a defendant’s conviction or sentence.’” 2018 IL 121939, ¶¶ 71-

72 (emphasis in original) (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 201 (2016)). “Even where procedural error has infected a trial, the resulting conviction or sentence may still be accurate; and, by extension, the defendant’s continued confinement may still be lawful.” *Id.* ¶ 72 (quoting *Montgomery*, 577 U.S. at 201); *see also id.* ¶ 35. Moreover, establishing that a conviction was based on a facially unconstitutional statute of offense or punishment “requires no elaborate fact-finding or hearing” because “[t]he statutory basis for the conviction can be readily ascertained by retrieval and review of official court records.” *Id.* ¶ 58. In contrast, the success of petitioner’s claim depends on the outcome of a new transfer hearing, underscoring that the alleged procedural error could render his conviction voidable, but it does not make it void. *See Hall*, 55 Ill. App. 3d at 343.

Indeed, other than *Brown*, the Court has found convictions void on collateral review only where the statutes defining the offenses or punishments were facially unconstitutional. *See, e.g., People v. Abdullah*, 2019 IL 123492, ¶¶ 1, 10, 15-16, 37 (penalty); *N.G.*, 2018 IL 121939, ¶¶ 42-43 (offense); *People v. Chairez*, 2018 IL 121417, ¶ 6, 56, 66 (offense); *People v. Taylor*, 2015 IL 117267, ¶¶ 2, 11, 15, 17 (penalty); *People v. Zeisler*, 125 Ill. 2d 42, 46-47, 49 (1988) (offense); *Meyerowitz*, 61 Ill. 2d at 206-11 (offense and penalty). Even on direct review, the vast majority of the Court’s cases have

found convictions void for the same substantive defects.⁷ And in the three remaining direct review cases, (1) the voidness exception was not at issue (because the case was not on collateral review), *see People v. Carrera*, 203 Ill. 2d 1, 2-3 (2002) (reversing conviction where statute authorizing arrest was facially unconstitutional); *People v. Gersch*, 135 Ill. 2d 384, 386-87, 390-92 (1990) (same where statute allowing State to elect jury trial was facially unconstitutional); *People v. Schraeberg*, 347 Ill. 392, 393-94 (1932) (same where statute pertaining to selection of jurors was facially unconstitutional); and/or (2) the procedure itself denied the defendant an independent constitutional right (unlike here, where the improper transfer did not deny petitioner any constitutional right), *see Gersch*, 135 Ill. 2d at 391-92, 401 (defendant denied constitutional “right to waive a jury trial”); *Schraeberg*, 347 Ill. at 393-95 (defendant denied constitutional right to legally constituted

⁷ *See, e.g., People v. Relford*, 2017 IL 121094, ¶¶ 14-16, 63 (offense); *People v. Mosley*, 2015 IL 115872, ¶¶ 8, 25, 55, 61 (offense and penalty); *People v. Aguilar*, 2013 IL 112116, ¶¶ 7-8, 22 (offense); *People v. Clemons*, 2012 IL 107821, ¶¶ 4-5 (penalty); *People v. Madrigal*, 241 Ill. 2d 463, 465-66, 479 (2011) (offense); *People v. Hauschild*, 226 Ill. 2d 63, 68, 88-89 (2007) (penalty); *People v. Carpenter*, 228 Ill. 2d 250, 253-54, 273 (2008) (offense); *People v. Wright*, 194 Ill. 2d 1, 4-5, 28-30 (2000) (offense); *People v. Ramsey*, 192 Ill. 2d 154, 155-58 (2000) (offense); *Cervantes*, 189 Ill. 2d at 82-83, 98 (offense); *People v. Tellez-Valencia*, 188 Ill. 2d 523, 525-26 (1999) (offense); *People v. Reedy*, 186 Ill. 2d 1, 5-6, 12 (1999) (penalty); *People v. Woolley*, 178 Ill. 2d 175, 179, 204-05 (1997) (penalty); *People v. Lewis*, 175 Ill. 2d 412, 414, 423-24 (1996) (penalty); *People v. Zaremba*, 158 Ill. 2d 36, 38, 42-43 (1994) (offense); *People v. Christy*, 139 Ill. 2d 172, 173-74, 181 (1990) (penalty); *People v. Johnson*, 114 Ill. 2d 69, 69-70, 71-73 (1985) (offense); *People v. Wick*, 107 Ill. 2d 62, 63, 67-68 (1985) (offense); *People v. Wagner*, 89 Ill. 2d 308, 310, 313 (1982) (offense); *People v. Frey*, 54 Ill. 2d 28, 29-30, 32 (1973) (offense).

jury). In short, a conviction is void only if the circuit court lacked jurisdiction or the statute defining the offense or penalty is facially unconstitutional.

Accordingly, compelling reasons and good cause exist to overrule *Brown*'s voidness holding. See *Castleberry*, 2015 IL 116916, ¶ 19 (doctrine of stare decisis "is not an inexorable command" and "where good cause or compelling reasons justify departing from precedent we will do so"). As discussed above and in § I.B, *supra*, *Brown* applied an obsolete view of the voidness doctrine, ignored the procedural nature of the transfer statute, and is an outlier. See *People v. Colon*, 225 Ill. 2d 125, 146 (2007) (good cause to depart from stare decisis exists when a decision is badly reasoned). Adhering to *Brown* will merely perpetuate confusion in future cases. See *N.G.*, 2018 IL 121939, ¶ 76 ("When a thing is wrong, it is wrong. The longer we wait to right this wrong, . . . the more difficult it will be to rectify the error, embedded in the case law through usage."). The Court should therefore overrule *Brown*'s voidness holding and reaffirm that the voidness exception is reserved for the exceptional circumstances where the circuit court lacked subject matter or personal jurisdiction, or a statute defining the defendant's offense or punishment is facially unconstitutional. Because petitioner's § 2-1401 petition failed to state a voidness claim on any of those bases, the circuit court correctly dismissed it as untimely.

III. Even if Relief Is Not Barred by Petitioner's Guilty Plea and His Petition Is Timely as to His Attempted Murder Conviction, He Is Not Entitled to Relief From that Conviction Without Further Proceedings.

Should the Court conclude that petitioner did not waive his challenge to his attempted murder conviction by pleading guilty and further that his § 2-1401 petition is timely as to that conviction, it should remand for further proceedings on the petition, rather than order a new transfer hearing, as petitioner requests. In ruling on the People's motion to dismiss, the circuit court assumed the truth of petitioner's assertion that he had been transferred pursuant to the provision held facially unconstitutional by *Cervantes*. See *Padilla v. Vazquez*, 223 Ill. App. 3d 1018, 1026 (1st Dist. 1991) ("all well-pleaded facts are to be taken as true" when ruling on motion to dismiss § 2-1401 petition). But petitioner provided no evidence proving that he was in fact transferred under the facially unconstitutional provision. The docket sheet from the juvenile case that petitioner attached to his petition states only, "MOT PERMIT PROS CRIM LAW ALLOW," C65, but it does not specify on what basis permission was sought or allowed. It is therefore possible that petitioner was transferred under a statutory provision other than the one held unconstitutional by *Cervantes*. See, e.g., 705 ILCS 405/5-4(3) (1994) (discretionary transfer), *id.* § 5-4(3.1) (gang transfer); *id.* § 5-4(3.2) (gang transfer). Accordingly, because petitioner has not yet proven that he was transferred under a facially unconstitutional statute, he has not shown that a new transfer hearing is warranted.

Should petitioner demonstrate on remand that he was transferred under the facially unconstitutional statute, then the criminal division of the circuit court may conduct a retrospective transfer hearing to determine whether the juvenile court would have transferred petitioner under the law in effect before the facially unconstitutional provision was enacted. *See Brown*, 225 Ill. 2d at 202 (discussing remedy). If the court finds that the juvenile court would have transferred petitioner, then it should affirm petitioner's attempted murder conviction; if it finds that the juvenile court would not have transferred petitioner, then it should vacate the conviction. *See id.* at 202-03. This remedy is consistent with the legislative intent that petitioner be tried in criminal court following a transfer hearing. It is also consistent with the remedy provided by *Kent v. United States*, where the Supreme Court remanded to the criminal court for a transfer hearing because the juvenile court no longer had authority over the petitioner, who was then over age 21. 383 U.S. 541, 564-65 (1966); *see, e.g., Kemplen v. Maryland*, 428 F.2d 169, 177-78 (4th Cir. 1970) (providing same remedy); *State v. Mastracchio*, 546 A.2d 165, 170 (R.I. 1988) (same).

The People agree with petitioner that there is no jurisdictional bar to the circuit court holding the retrospective transfer hearing. *See* Pet'r Br. 18-19; *supra* § I.B; *Lindsay v. Lindsay*, 257 Ill. 328, 333-34 (1913). The People further agree that *People v. Hunter*, 2017 IL 121306, upon which the appellate court relied, PA13, ¶ 36, does not control here. *See* Pet'r Br. 14-16.

Hunter, applying the plain language of § 4 of the Statute on Statutes, held that retroactive application of an amendment to the transfer statute was not “practicable” for a defendant who was over age 21 at the time the amendment went into effect. 2017 IL 121306, ¶¶ 21, 24, 28, 37-38, 43. But this case does not present a statutory retroactivity question or require application of the Statute on Statutes. Rather, like the remedy provided by *Kent*, any remedy here would be based in equity. *See generally Warren Cnty. Soil & Water Conserv. Dist. v. Walters*, 2015 IL 117783, ¶¶ 35-50 (discussing equitable underpinnings of § 2-1401). Thus, *Hunter* is inapposite.

In sum, should the Court hold that petitioner did not waive his challenge to his attempted murder conviction by pleading guilty and that his § 2-1401 petition was timely as to that conviction, then it should remand to the circuit court for further proceedings. During those proceedings, petitioner should be given the opportunity to prove that he was transferred under the statute held facially unconstitutional by *Cervantes*. If he proves that fact, then the circuit court should hold a retrospective transfer hearing to determine whether the juvenile court would have transferred petitioner under the law in effect before the facially unconstitutional provision was enacted. If the court finds that the juvenile court would have transferred petitioner, then it should affirm petitioner’s attempted murder conviction; if it finds that the juvenile court would not have transferred petitioner, then it should vacate the conviction.

CONCLUSION

This Court should affirm the judgment of the appellate court.

June 26, 2026

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7938
eserve.criminalappeals@ilag.gov

*Counsel for Respondent-Appellee
People of the State of Illinois*

RULE 341(c) CERTIFICATE OF COMPLIANCE

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. 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(a), is 33 pages.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General

APPENDIX

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; *Foxx*, 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 <https://cccportal.cookcountyclerkofcourt.org> (last visited May 15, 2025)). However, nothing in the supreme court’s opinion in *Brown* indicates that that was what the court specifically 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).

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¶ 53 Accordingly, I respectfully dissent.

CERTIFICATE OF FILING AND SERVICE

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 June 26, 2026, the **Brief and Appendix of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

Victoria Rose
Assistant Appellate Defender
Office of the State Appellate Defender
203 North LaSalle Street, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Petitioner-Appellant

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General