2026 IL App (2d) 260211-U
No. 2-26-0211
Order filed November 10, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

TIMERA BRANCH, Defendant-Appellant.

Appeal from the Circuit Court of Kane County.
Honorable John A. Barsanti, Judge, Presiding.
No. 09-CF-3186

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel was granted leave to withdraw and dismissal of defendant's petition for relief from judgment, filed more than two years after judgment of conviction, was affirmed where petition was legally insufficient to state claim that could be brought outside the two-year period and any error relating to defendant's opportunity to respond to the State's motion to dismiss was harmless.

¶ 2 Defendant, Timera Branch, appeals from an order of the circuit court of Kane County granting the State's motion to dismiss her *pro se* petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2024)) for relief from her conviction of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)). The Office of the State Appellate Defender (OSAD) was appointed to represent defendant but now moves to withdraw, claiming that there are no

arguably meritorious issues for appeal. We agree, allow OSAD to withdraw, and affirm the dismissal of defendant's petition.

¶ 3 I. BACKGROUND

¶ 4 As recounted in our order disposing of defendant's direct appeal (*People v. Branch*, 2013 IL App (2d) 111290-U), the State presented evidence at defendant's bench trial that she intentionally struck the 17-year-old victim with her vehicle, pinning him against a building, and thereby causing his death. The previous evening, the victim had been involved in an altercation with defendant's son. According to the presentence investigation report (PSI), defendant related that "she was raised by both parents until her mother left her father after years of abuse." Defendant indicated that her father "also abuse[d] the children," and that she "experience[ed] mental abuse by her adult relatives and was sexually abuse[d] by her father's friend." On November 9, 2011, the trial court sentenced defendant to a 34-year prison term.

¶ 5 In 2018, defendant filed a petition for relief from judgment under section 2-1401, alleging that the offense was related to domestic violence by an intimate partner. In an affidavit attached to the petition, she averred that she had been in relationships with men who had beaten her. The trial court dismissed the petition without prejudice on the basis that the court could not ascertain if the petition had been served on the State or if the State had knowledge of the petition. Defendant appealed, but we dismissed the appeal for lack of jurisdiction. Defendant subsequently refiled the petition, but the trial court dismissed it. On March 12, 2026, defendant filed a second petition for relief under section 2-1401, stating:

> "[Defendant] is now allowed to introduce evidence that was withheld from the court or introduced as mitigating factors at the time of trail [*sic*] or sentencing.

> This evidence being the following: Mental Health State, Gender base discrimination, disproportionate fundamental fairness requires that similarly situated who were involved in the same crime should not receive grossly disparat [*sic*] sentences."

Defendant asserted that had this evidence been known to the trial court, she might have received a less severe sentence.

¶ 6 On March 17, 2026, the State moved to dismiss the petition. On April 8, 2026, the trial court granted the motion, dismissing the petition as untimely and for failure to plead any facts that would warrant relief from defendant's conviction. Defendant filed a timely notice of appeal. OSAD was appointed to represent her.

¶ 7 Per *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), the appellate defender assigned to represent defendant in this appeal moves to withdraw as counsel. In her motion, counsel states that she read the record and found no issue of arguable merit. Counsel further states that she advised defendant of her opinion. Counsel supports her motion with a memorandum of law providing a statement of facts, a list of potential issues, and arguments as to why those issues lack arguable merit. We advised defendant she had 30 days to respond to the motion. Defendant did not file a response and the time for doing so has lapsed.

¶ 8 II. ANALYSIS

¶ 9 Section 2-1401 provides, in pertinent part, as follows:

> "(a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review, and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings

hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. ***

(b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by an affidavit or other appropriate showing as to matters not of record. ***

(b-5) A movant may present a meritorious claim under this Section if the allegations in the petition establish each of the following by a preponderance of the evidence:

(1) the movant was convicted of a forcible felony;

(2) the movant's participation in the offense was related to him or her previously having been a victim of domestic violence or gender-based violence;

(3) there is substantial evidence of domestic violence or gender-based violence against the movant that was not presented at the movant's sentencing hearing;

(4) (blank); and

(5) the evidence of domestic violence or gender-based violence against the movant is material and noncumulative to other evidence offered at the sentencing hearing ***.

* * * *

(c) Except as provided in *** subsection (b-5) *** of this Section *** the petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years." 735 ILCS 5/2-1401 (West 2024).

¶ 10 The trial court found that the petition was both untimely and insufficient as a matter of law. In her motion to withdraw, counsel asserts that, although the petition was not filed within the generally applicable two-year period for doing so under section 2-1401(c), the petition would not be time-barred if it stated grounds for relief under section 2-1401(b-5) on the basis that her participation in the offense was related to her previously having been a victim of domestic violence or gender-based violence. Counsel advises us, however, that there is no potentially meritorious basis for arguing that the petition was sufficient to do so. We agree.

¶ 11 When gauging the sufficiency of a pleading to establish grounds for relief, all well-pleaded facts and all reasonable inferences from those facts must be taken as true. *Cahokia Unit School Dist. No. 187 v. Pritzker*, 2021 IL 126212, ¶ 24. However, defendant's conclusory allegation of "Gender base [*sic*] discrimination" (which is the only allegation even remotely within the scope of section 2-1401(b-5)) is legally insufficient. See *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429-30 (2006) (plaintiff "must allege facts sufficient to bring a claim within a legally recognized cause of action [citation], not simply conclusions [citation]." The affidavit attached to defendant's prior section 2-1401 petition was more specific, but even if she had resubmitted that affidavit, the petition would still be legally insufficient. Although defendant averred that she had relationships with men who had beaten her, it cannot be inferred that her actions here—the apparent revenge killing of a teenager who had been in an altercation with her son—were related in any way to that abuse. *Cf. People v. Boyd*, 2026 IL App (5th) 241200-U, ¶¶ 35-36 (cited as persuasive authority) (affirming dismissal of section 2-1401 petition that alleged that the defendant had been the victim of domestic violence—specifically, physical abuse during childhood—but did not explain how her participation in a planned robbery and murder was related to the abuse that she suffered).

¶ 12 Counsel advises us that she also considered arguing that the trial court erred by granting the State's motion to dismiss without giving defendant sufficient time to respond. "[B]asic notions of fairness dictate that a petitioner be afforded notice of, and a meaningful opportunity to respond to, any motion or responsive pleading by the State." *People v. Stoecker*, 2020 IL 124807, ¶ 20. However, as counsel notes, even if the trial court granted the State's motion prematurely, defendant the error was harmless because section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2024)) offered defendant an alternative route to respond to the State's motion (*Stoecker*, 2020 IL 124807, ¶ 25) and, in any event, no response defendant might have offered would avoided dismissal of her legally insufficient petition (*id.* ¶ 26 (failure to give defendant adequate time to respond to motion to dismiss section 2-1401 petition was harmless error where "no additional proceedings would have enabled him to prevail on his claim for relief")).

¶ 13 We therefore agree with counsel that there is no arguably meritorious basis for challenging the dismissal of defendant's petition.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Kane County.

¶ 16 Affirmed.