2026 IL App (1st) 250103

FIFTH DIVISION

September 4, 2026

No. 1-25-0103

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. VERNA COLBERT, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 04CR18541 Honorable Tyria B. Walton, Judge, presiding.

JUSTICE C.A. WALKER delivered the judgment of the court, with opinion.
Justices Pucinski and Hyman concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Verna Colbert appeals from the circuit court's order denying her petition for relief from judgment under sections 2-1401(b-5) and (b-10) of the Code of Civil Procedure (735 ILCS 5/2-1401(b-5), (b-10) (West 2024)). Colbert sought a new sentencing hearing based on newly presented evidence relating to gender-based violence and postpartum psychosis. On appeal, Colbert contends the circuit court erred by denying her petition without considering whether she

satisfied the statutory requirements for relief under either subsection. Because the circuit court did not determine whether Colbert satisfied the statutory prerequisites for relief under section 2-1401(b-5) or (b-10) of the Code of Civil Procedure (735 ILCS 5/2-1401(b-5), (b-10) (West 2024)), we vacate the order denying her petition and remand for an evidentiary hearing. On remand, the circuit court shall determine whether Colbert has satisfied the statutory requirements for relief under either section 2-1401(b-5) or section 2-1401(b-10).

¶ 2 I. BACKGROUND

¶ 3 Defendant, Verna Colbert, was charged by indictment with first degree murder in connection with the death of her two-year-old son. Prior to trial, Colbert underwent multiple fitness evaluations and was diagnosed with significant mental illness, including major depressive disorder with psychotic features. After receiving treatment, she was restored to fitness, and the criminal proceedings resumed.

¶ 4 Following a jury trial, Colbert was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2002)). The jury further found that the victim was under 12 years of age and the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty, rendering Colber eligible for an extended-term sentence.

¶ 5 Following the capital sentence hearing, the circuit court declined to impose either the death penalty or natural life imprisonment and instead sentenced Colbert to 63 years' imprisonment. Colbert's conviction and sentence were affirmed on direct appeal.

¶ 6 On October 4, 2024, Colbert filed a petition for relief from judgment pursuant to sections 2-1401(b-5) and (b-10) of the Code of Civil Procedure (735 ILCS 5/2-1401(b-5), (b-10) (West 2024)). She sought a new sentencing hearing, alleging that newly presented evidence relating to

gender-based violence and postpartum psychosis entitled her to relief under those statutory provisions.

¶ 7 In support of her petition, Colbert presented evidence describing a lengthy history of trauma and gender-based violence. Her petition alleged that she was exposed to domestic violence during childhood; was sexually abused by her older brother from age 8 to age 10 and, shortly after, was sexually abused by her step father for two years until he died when she was 12 years old; attempted suicide in middle school; gave birth to her first child at age 15; attempted suicide a second time at age 17; ultimately had seven children, including one child born from a kidnapping and gang rape; and struggled with longstanding substance abuse. Colbert also attached a psychological evaluation prepared by Dr. Brooke Laufer. Dr. Laufer opined that Colbert suffered from postpartum psychosis at the time of the offense and her condition was associated with a history of trauma, gender-based violence, and post-traumatic stress disorder. Colbert alleged this evidence had not been presented at sentencing and supported relief under sections 2-1401(b-5) and (b-10).

¶ 8 The State did not file a written response to the petition. On January 7, 2025, the circuit court reviewed the motion and stated: "This is a one-sided litigation at this point, the State is not involved at all in this proceeding so I can go ahead and rule." The court observed that the original sentencing judge "heard aggravation from the State as well as mitigation from Defense Counsel." As to the original sentencing judge, the Court stated

> "after mitigation and aggravation were considered by the Court, the Court made a decision not to give her the death penalty, which was an available option at the time under the statute. And the Court also decided not to even give her life in prison but instead, gave her a number of years, and it was 63 years in the Illinois Department of Corrections which, of course, for murder, is served at one hundred percent of the time."

The circuit court then denied Colbert's request for a new sentencing hearing. Colbert filed a timely notice of appeal. This appeal followed.

¶ 9 II. JURISDICTION

¶ 10 The circuit court denied Colbert's petition for relief on January 7, 2025. Colbert filed a timely notice of appeal on January 10, 2025. Accordingly, this court has jurisdiction, pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 304(b)(3) (eff. July 1, 2017).

¶ 11 III. ANALYSIS

¶ 12 On appeal, Colbert argues the circuit court erred in denying her petition for relief from judgment under sections 2-1401(b-5) and (b-10) of the Code of Civil Procedure (735 ILCS 5/2-1401(b-5), (b-10) (West 2024)). Specifically, Colbert contends that the circuit court failed to consider whether she established the statutory requirements for relief under either subsection and instead denied the petition based solely on its conclusion that the original sentencing court had adequately considered mitigating evidence and imposed an appropriate sentence. The State responds that we may affirm because Colbert's petition is barred by the two-year limitations period contained in section 2-1401(c) of the Code (*id.* § 2-1401(c)) and, alternatively, because Colbert failed to establish entitlement to relief under either subsection.

¶ 13 The interpretation of section 2-1401 presents a question of statutory construction, which we review *de novo*. *People v. McChriston*, 2014 IL 115310, ¶ 15. Likewise, because the circuit court disposed of a section 2-1401 petition without conducting an evidentiary hearing, our review is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 14 The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *McChriston*, 2014 IL 115310, ¶ 15. The best indication of intent is the statutory

language itself, given its plain and ordinary meaning. *People v. Casler*, 2020 IL 125117, ¶ 24. In determining legislative intent, we do not read words or phrases in isolation. Rather, we consider the statute as a whole and construe its provisions in harmony with one another so that no part of the statute is rendered meaningless or superfluous. *People v. Gutman*, 2011 IL 110338, ¶ 12; *People v. Marshall*, 242 Ill. 2d 285, 292 (2011).

¶ 15 As an alternative basis for affirmance, the State argues that Colbert's petition is untimely under section 2-1401(c) of the Code. Subsection (c) provides, in relevant part:

> "Except as provided in Section 20b of the Adoption Act [(750 ILCS 50/20b (West 2024))] and Section 2-32 of the Juvenile Court Act of 1987 [(705 ILCS 405/2-32 (West 2024))], in a petition based upon Section 116-3 of the Code of Criminal Procedure of 1963 [(725 ILCS 5/116-3 (West 2024))] or subsection (b-5) or (b-10) of this Section, or in a motion to vacate and expunge convictions under the Cannabis Control Act [(720 ILCS 550/1 *et seq*. (West 2024))] as provided by subsection (i) of Section 5.2 of the Criminal Identification Act [(20 ILCS 2630/3.2 (West 2024))], 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(c) (West 2024).

Specifically, the State contends that petitions brought pursuant to sections 2-1401(b-5) and (b-10) remain subject to the two-year limitations period contained in subsection (c) and therefore must be filed within two years after entry of the original judgment. Because Colbert filed her petition more than 20 years after her sentence became final, the State contends the petition is time-barred. In support, the State relies on *People v. Bowers*, 2021 IL App (4th) 200509, in which the Fourth

District held that a petition brought under section 2-1401(b-5) was barred because it was filed more than two years after entry of judgment.

¶ 16 Although *Bowers* addressed the timeliness of a petition brought under subsection (b-5), we are not persuaded it resolves the issue presented here. *Bowers* interpreted section 2-1401(c) before the General Assembly amended section 2-1401 through Public Act 103-403 (eff. Jan. 1, 2024) and before the legislature subsequently expanded the statutory scheme governing petitions brought under subsections (b-5) and (b-10). Accordingly, this appeal presents a substantial question concerning the proper construction of the post-amendment statutory framework and whether *Bowers* remains controlling under that framework. See *Gutman*, 2011 IL 110338, ¶ 12; *Marshall*, 242 Ill. 2d at 292 (we consider the statute as a whole and construe its provisions in harmony with one another so that no part of the statute is rendered meaningless or superfluous).

¶ 17 We find our supreme court's discussion in *People v. Wells*, 2023 IL 127169, instructive. There, the State argued that the defendant's subsection (b-5) petition was untimely because it was filed beyond section 2-1401's ordinary two-year limitations period. *Id.* ¶ 43. The supreme court declined to address the issue, concluding that subsection (b-5) was otherwise inapplicable. *Id.*

¶ 18 Significantly, however, the court noted that Public Act 103-403 amended subsection (c) to provide that, " '[e]xcept 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.' " *Id.* ¶ 43 n.1 (quoting Pub. Act 103-403, § 5 (eff. Jan. 1, 2024)). Although *Wells* did not decide the amendment's effect on the timeliness of a subsection (b-5) petition, its discussion confirms that the limitations issue must be considered under the amended statutory scheme.

¶ 19 In its brief, the State's interpretation of the statutory scheme measures the limitations period from the date the original judgment became final. The practical consequence of that construction

is that a defendant whose judgment became final more than two years before the legislature enacted the statutory remedies contained in subsections (b-5) and (b-10) generally would be unable to invoke those remedies because the limitations period would have expired before those statutory claims became available.

¶ 20 We do not believe the amended statutory scheme can be reasonably read to support the State's interpretation. Subsections (b-5) and (b-10) were enacted to provide a specific statutory mechanism through which defendants could seek relief based upon mitigating evidence that historically had not been adequately recognized or presented during sentencing proceedings. Prior to the enactment of those provisions, however, a defendant had no statutory right to seek the specific relief now authorized by subsections (b-5) and (b-10). The subsequent amendment to subsection (c), which our supreme court expressly noted in *Wells*, further supports considering the amended statutory framework in determining whether *Bowers* controls. Construing subsection (c) in the manner urged by the State—to require every petition brought under those subsections to have been filed within two years of the original judgment—would substantially diminish the practical effect of the legislature's decision to create those remedies. Under the State's construction, the limitations period for many defendants would expire before the legislature created the statutory right to seek relief.

¶ 21 Our conclusion is reinforced by the legislature's clarification that subsections (b-5) and (b-10) apply to "all eligible convictions." Although that language does not resolve the limitations question before us, it reflects the legislature's intent that these statutory remedies extend beyond newly imposed sentences and supports a construction that gives meaningful effect to the remedies the General Assembly created. Moreover, such a construction is inconsistent with our obligation to construe the statute and, where reasonably possible, give effect to every provision so that no

part of the statute is rendered superfluous or without operative effect. *Gutman*, 2011 IL 110338, ¶ 12; *Marshall*, 242 Ill. 2d at 292 (2011).

¶ 22 Accordingly, we find the amended statutory scheme cannot reasonably be construed in the manner presented by the State. Although *Bowers* interpreted an earlier version of section 2-1401(c), the legislature's clarification that these remedies apply to "all eligible convictions" provides a substantial basis for distinguishing *Bowers* in cases governed by the amended statutory framework. Thus, we decline to affirm the circuit court's judgment on the alternative ground that Colbert's petition is barred by section 2-1401(c).

¶ 23 Having rejected the State's alternative ground for affirmance, we next consider whether the circuit court erred in denying the petition under sections 2-1401(b-5) and (b-10).

¶ 24 Sections 2-1401(b-5) and (b-10) provide that a movant may present a meritorious claim if the allegations in the petition establish each statutory requirement by a preponderance of the evidence. 735 ILCS 5/2-1401(b-5), (b-10) (West 2024). Subsection (b-5) applies to qualifying claims involving domestic violence or gender-based violence, while subsection (b-10) applies to qualifying claims involving postpartum depression or postpartum psychosis. Both provisions require, among other things, the evidence to be material, noncumulative, and sufficiently conclusive that it would likely change the sentence originally imposed. *Id*. § 2-1401(b-5)(5), (b-10)(E).

¶ 25 Here, Colbert's petition expressly alleged she satisfied both statutory provisions. Under subsection (b-5), she alleged that her participation in the offense was related to her previously being a victim of gender-based violence and that substantial evidence of such violence was not adequately presented at the sentencing hearing. Under subsection (b-10), she further alleged her participation in the offense was a direct result of postpartum psychosis and no evidence of that

condition was presented by a qualified medical professional at her sentencing hearing. Under both subsections, Colbert alleged the newly presented evidence was material, noncumulative, and sufficiently conclusive that it would likely change her sentence. In support of those allegations, Colbert presented evidence describing a lengthy history of trauma and gender-based violence. Her petition alleged that she was exposed to domestic violence during childhood; was sexually abused by her older brother from age 8 to age 10 and, shortly after, was sexually abused by her step father for two years until he died when she was 12 years old; attempted suicide in middle school; gave birth to her first child at age 15; attempted suicide a second time at age 17; ultimately had seven children, including one child born from a kidnapping and gang rape; and struggled with longstanding substance abuse. She further alleged, and Dr. Laufer opined, that she suffered from PTSD and postpartum psychosis and that renewed sexual aggression by her older brother shortly before the offense, exacerbated those conditions.

¶ 26 At the January 7, 2025, hearing, the court observed that the original sentencing court had heard evidence in aggravation and mitigation, declined to impose either the death penalty or natural life imprisonment, and imposed a sentence of 63 years. The court stated that the original sentencing court had considered "substantial mitigation" and had "deemed 63 years an appropriate sentence for the homicide of the two-year-old child." The court ultimately found the original sentencing court "was proper in its ruling" and denied Colbert's request for a new sentencing hearing.

¶ 27 But the circuit court's ruling does not indicate that it determined whether Colbert satisfied the statutory requirements of subsection (b-5) or (b-10). Instead, the court focused on the mitigation presented at the original sentencing and whether the sentence imposed was appropriate. That inquiry, however, is distinct from whether Colbert now satisfies the statutory requirements for relief under either subsection. With respect to subsection (b-5), the court did not determine

whether Colbert's participation in the offense was related to her history of gender-based violence or whether substantial evidence of that violence had not been presented at sentencing. With respect to subsection (b-10), the court did not determine whether Colbert's participation in the offense was the direct result of postpartum depression or postpartum psychosis or whether the remaining requirements of that subsection were established. Nor did the court determine, under either subsection, whether the evidence was material, noncumulative, and sufficiently conclusive that it would likely change the original sentence. The circuit court's ruling on the 2-1401 petition focused on whether the original sentencing court imposed an appropriate sentence based on the evidence before it. But that does not resolve whether Colbert's allegations and supporting materials establish the subsequently-enacted statutory requirements for relief under the subsections (b-5) and (b-10). We decline to address these claims in the first instance because they turn on factual determinations the circuit court never made.

¶ 28 Our supreme court's decision in *Madison Two Associates v. Pappas*, 227 Ill. 2d 474 (2008), is instructive. There, the circuit court resolved a threshold legal question but did not reach whether the parties had satisfied the particular statutory requirements governing intervention. *Id.* at 496. Our supreme court held that the appellate court properly remanded the causes for the circuit court to determine whether those requirements were met under the facts of the case. *Id.* Here, similarly, because the circuit court did not determine whether Colbert satisfied the requirements of sections 2-1401 (b-5) or (b-10), we decline to decide those fact-dependent statutory questions.

¶ 29 Accordingly, we vacate the circuit court's order denying Colbert's petition and remand for the court to consider the petition under the statutory framework established by sections 2-1401(b-5) and (b-10). On remand, the circuit court shall determine whether Colbert has established the prerequisites for relief under either subsection. During the oral argument in this matter, the State

acknowledged that, if the matter were remanded, "it should go back for an evidentiary hearing." Accordingly, on remand, the circuit court shall conduct an evidentiary hearing to determine whether Colbert has established the statutory prerequisites for relief under either subsection.

¶ 30 Finally, we acknowledge Colbert's motion to attend oral argument. At the time of argument, Colbert was incarcerated at Logan Correctional Center in Lincoln, making in-person attendance in Chicago impracticable. Through videoconference technology, Colbert was able to participate in this proceeding as she pursues her constitutional right to appellate review. We commend counsel and correctional staff for facilitating her participation and recognize the important role technology can play in ensuring incarcerated litigants meaningful access to the courts.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Cook County is vacated, and the cause remanded for further proceedings consistent with this opinion.

¶ 33 Vacated; cause remanded.

***People v. Colbert,* 2026 IL App (1st) 250103**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 04-CR-18541; the Hon. Tyria B. Walton, Judge, presiding.
Attorneys for Appellant:	Debra Loevy and Theresa Kleinhaus, of The Exoneration Project, of Chicago, for appellant.
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