

Filling the Void: The Case for Repudiating and Replacing Illinois' Void Sentence Rule

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During the summer of 2010, the Illinois Supreme Court repeated the “well settled” rule “that a [criminal] sentence that is in conflict with statutory guidelines is void and may be challenged at any time.”¹ The predominant reason a judgment is considered void under Illinois law is that “it was entered by a court that lacked jurisdiction of the parties or the subject matter or that lacked the inherent power² to make or enter the particular order involved.”³ Thus, this void sentence rule presumes

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1. *People v. Petrenko*, 931 N.E.2d 1198, 1206 (Ill. 2010).

2. The concept of “inherent power” is tied closely to the idea of court jurisdiction. *See infra* note 49 and accompanying text.

3. *People v. Madej*, 739 N.E.2d 423, 427 (Ill. 2000); *see also* *Steinbrecher v. Steinbrecher*, 759 N.E.2d 509, 531 (Ill. 2001) (“[T]he dissent does not dispute that the trial court . . . had both subject matter jurisdiction and personal jurisdiction over the parties. For this reason, the judgment is not ‘void.’”); *People v. Davis*, 619 N.E.2d 750, 754 (Ill. 1993) (“Whether a judgment is void or voidable presents a question of jurisdiction. . . . Where jurisdiction is lacking, any resulting judgment rendered is void”); *People v. Wade*, 506 N.E.2d 954, 955–56 (Ill. 1987) (explaining that a void judgment is one entered by a court without jurisdiction of the parties or the subject matter, or lacking the “inherent” power to enter the particular order involved).

Illinois courts have also recognized that a judgment may be considered void if procured by fraud. *E.g.*, *In re Adoption of E.L.*, 733 N.E.2d 846, 859 (Ill. App. Ct. 2000); *People ex rel. Brzica v. Vill. of Lake Barrington*, 644 N.E.2d 66, 69–70 (Ill. App. Ct. 1994), *overruled on other grounds* by *People ex rel. Graf v. Vill. of Lake Bluff*, 795 N.E.2d 281, 289 (Ill. 2003), and *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 770 N.E.2d 177, 185 (Ill. 2002). Fraud is not a factor in the void sentence rule. Some Illinois Appellate Court authority supports the idea that an order may be considered void if entered in an unconstitutional manner, but these

that a circuit court has no authority to impose a sentence beyond the applicable statutory range.⁴ As the court implied, this void sentence rule has indeed become an incantation so oft recited that it no longer bears scrutiny; the “accumulated weight of repetition” behind it has, unfortunately, become an “invitation to think words rather than things.”⁵

More careful examination, however, belies the sanctity of the rule. The “things” underlying the void sentence rule are the notions that a circuit court derives its sentencing jurisdiction from statute and that a circuit court exceeds its jurisdiction where it issues a sentence beyond the statutory range. These notions conflict with an immutable tenet of current Illinois law: a circuit court’s jurisdiction flows directly from the Illinois Constitution and does not come from the legislature, which, except in the area of administrative review, has no control over court jurisdiction of justiciable matters.⁶

None of this is to say that, as a matter of policy, once a convicted defendant has exhausted his direct appeals, he should have no forum in which to challenge an erroneously harsh sentence. Nor is it to say that

cases draw their rule from inapposite federal jurisprudence and thus should not be followed. *See, e.g.,* Eckel v. MacNeal, 628 N.E.2d 741, 744 (Ill. App. Ct. 1993) (citing Hays v. La. Dock Co., 452 N.E.2d 1383, 1388 (Ill. App. Ct. 1983) (relying on federal law)); *infra* notes 57–66 (explaining why federal jurisdictional rules are not analogous to Illinois jurisdictional rules).

4. *People v. Wade*, 506 N.E.2d 954, 955–56 (Ill. 1987) (explaining that “[a] void judgment is one entered by a court without jurisdiction . . . or that lacks ‘the inherent power to make or enter the particular order involved’” before holding that a sentence entered without statutory authority is void); *People ex rel. Ward v. Salter*, 192 N.E.2d 882, 884 (Ill. 1963) (determining that the trial court’s sentence exceeded statutory authority and issuing an order directing it to “expunge from its records a void order entered by it without jurisdiction”); *Armstrong v. Obucino*, 133 N.E. 58, 59 (Ill. 1921) (stating that the rule that judgments cannot be attacked collaterally is subject to an exception that “a decree may be void because the court has exceeded its jurisdiction”). The decision in *Armstrong* is cited in a line of cases supporting the modern void sentence rule. *See In re T.E.*, 423 N.E.2d 910, 913 (Ill. 1981) (citing *People v. Hamlett*, 96 N.E.2d 547, 550 (Ill. 1951) (citing *People ex rel. Weed v. Whipp*, 186 N.E. 135, 136 (Ill. 1933) (citing *People ex rel. Modern Woodmen of Am. v. Cir. Ct. of Wash. Cnty.*, 179 N.E. 441, 444 (Ill. 1931) (citing *Armstrong*, 133 N.E. at 59)))).

5. Felix Frankfurter & James M. Landis, *Power of Congress Over Procedure in Criminal Contempts in ‘Inferior’ Federal Courts—A Study in Separation of Powers*, 37 HARV. L. REV. 1010, 1022–23 (1924). Although the authors were referring to writers’ invoking an amorphous principle they did not understand, their point is applicable here, where repetition has preempted reflection to the point that the void sentence rule has become boilerplate, repeated without thought to its provenance or virtue. *See also In re Harris*, 855 P.2d 391, 396 (Cal. 1993) (introducing discussion of collateral remedies in California by noting that “[a]s with many rules of law, multiple repetitions over time may tend to obscure the original purpose of the rule”); *id.* (“It is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis.” (quoting *Hyde v. United States*, 225 U.S. 347, 391 (1912) (Holmes, J., dissenting))).

6. *Belleville Toyota*, 770 N.E.2d at 185 (explaining Illinois’ current constitutional scheme).

the State should not enjoy the same remedy for an illegally lenient sentence.⁷ In law, though, the reasoning employed to reach a result is at least as important as the result itself, and has consequences much farther-reaching.⁸ Further, the persistence of the void sentence rule, in the face of contrary constitutional principles, undermines the Illinois Supreme Court's continuing efforts to clarify Illinois law on circuit court jurisdiction.⁹ Thus, although few would suggest that Illinois now retreat from the result that a court may correct an improper sentence at any time, the inescapable tension between the void sentence rule and the Illinois Constitution demands that Illinois reconsider the path it takes to that result.

This article scrutinizes Illinois' void sentence rule in an effort to place it on surer legal ground. Part I discusses the development of the void sentence rule in the context of the evolution of Illinois circuit courts' jurisdictional authority. Part II argues that the rationale supporting the void sentence rule, frail from the start, was left irreparable by the 1964 amendments to the judicial article of the Illinois Constitution, yet persisted through repetition in a bevy of decisions blithely indifferent to the shifting constitutional landscape. Part II therefore concludes that Illinois must abolish the void sentence rule. From there, this article studies alternative, and more tenable, bases by which Illinois can sustain the result that a sentence outside statutory bounds may be corrected at any time, either by a defendant or by the State. Part III observes the near universality of the principle that defendants may challenge improper sentences at any time, and it surveys the bases by which courts in other U.S. jurisdictions entertain

7. See *People v. Malchow*, 739 N.E.2d 415, 429–30 (Ill. 2000) (explaining that a sentence below the statutory minimum may be corrected on review even though the State may not normally challenge a defendant's sentence on appeal).

8. See Frederick Schauer, *Giving Reasons*, 47 STAN. L. REV. 633, 635 (1995) ("The reasons [lawyers and judges] provide [for their results] are broader than the outcomes they are reasons for. . . . The lawyer or judge who gives a reason steps behind and beyond the case at hand to something more encompassing."); cf. *People v. Sharifpour*, 930 N.E.2d 529, 552 (Ill. App. Ct. 2010) (O'Malley, J., concurring) ("[The legal reasoning underlying the void sentence rule] leaves courts faced with illegal-sentence issues in the uncomfortable position of choosing between binding authority holding that such sentences are void as exceeding statutory authority and equally binding authority holding that lack of statutory authority does not render a decision void. Worse, a court asked to decide whether to extend the special rule for sentencing to a new context must derive its analytical framework from an inscrutable and irreconcilable area of law. . . . As the law now stands, we know that [illegal sentences may be corrected at any time], but we have no tenable reason why, nor any framework for determining what other matters should receive similar treatment.").

9. See *In re Alex T.*, 873 N.E.2d 1015, 1017 (Ill. App. Ct. 2007) (citing a trio of Illinois Supreme Court decisions trying to clarify the reach of circuit court jurisdiction under the current Illinois Constitution).

challenges to criminal sentences outside statutory limits. Part IV concludes that Illinois' legislature should enact the most popular of the alternative bases for allowing challenges to sentences by adopting Rule 35(a) of the Federal Rules of Criminal Procedure.

I. THE PATH TO THE VOID SENTENCE RULE

The void sentence rule, like so many creatures of the common law, traces its lineage to principles long preceding it, and owes its development to the desultory progress of the law surrounding it. The void sentence rule grew from Illinois law governing circuit court jurisdiction. Thus, the origins, rationale, and folly of the rule become most apparent through the context of the jurisdictional principles that bore it, and eventually evolved to contradict it. The first of these jurisdictional principles were announced in the inaugural days of Illinois' statehood.

A. 1818 Constitution and Early Law

Illinois' first constitution, adopted in 1818, was a hastily crafted document¹⁰ whose judicial article contained a scant 557 words.¹¹ The founding charter vested judicial power in the Illinois Supreme Court and "such inferior courts as the general assembly shall . . . establish,"¹² and it allowed circuit courts "such jurisdiction as the general assembly shall by law provide."¹³ Thus, from the start, Illinois courts were trained to look to the legislature as the only source of their subject matter jurisdiction.¹⁴ The legislature obliged by passing in 1819 a

10. JANET CORNELIUS, CONSTITUTION MAKING IN ILLINOIS 1818–1970, at 10 (1972) ("The committee took only one week to draft the constitution, and the entire convention debated its provisions only two weeks before approving the constitution in final form."). This haste reflected both the urgency of Illinois' rush to statehood and the impatience of the drafters, *id.* at 10–11, and it resulted in what has been characterized as a "badly organized" constitution, ROBERT P. HOWARD, ILLINOIS: A HISTORY OF THE PRAIRIE STATE 115 (1972), that borrowed liberally from those of other states; CORNELIUS, *supra*, at 11 (citing the U.S., Tennessee, Kentucky, Ohio, and Indiana constitutions); HOWARD, *supra*, at 103 (citing the New York, Kentucky, and Ohio constitutions).

11. GEORGE FIEDLER, THE ILLINOIS LAW: COURTS IN THREE CENTURIES 1673–1973, at 189 (1973); *see* ILL. CONST. of 1818, art. IV.

12. ILL. CONST. of 1818, art. IV, § 1.

13. *Id.* § 4. Of the constitutions identified as models for the Illinois Constitution, *see supra* note 10, Indiana's had the most similar provision regarding circuit court jurisdiction. It provided that Indiana circuit courts would enjoy "[c]ommon law and chancery Jurisdiction, as also complete criminal Jurisdiction, in all such cases and in such manner, as may be prescribed by law." IND. CONST. of 1816, art. V, § 3.

14. *See* Estate of Mears v. Brady, 443 N.E.2d 289, 291 (Ill. App. Ct. 1982) ("The Illinois Constitution of 1818 represented a legislative dominance of the matter [of courts' jurisdiction]."), *overruled on other grounds by* Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 770

precursor to what is now known as the Circuit Courts Act¹⁵ to allow the circuit court subject matter jurisdiction over “all causes, matters, and things at common law and in chancery,”¹⁶ and “all cases of treason, felony, and other crimes and misdemeanors that may be committed . . . and that may be brought before them respectively, by any rules or regulations provided by law.”¹⁷

Laws enacted soon thereafter set forth the crimes to be tried by the circuit court and the sentences to be imposed for conviction. The state’s earliest criminal and sentencing laws employed a form of determinate sentencing—definite sentences articulated at the time of sentencing¹⁸—that, perhaps owing to the scarcity of prison facilities in the new Illinois territory, relied largely on now-antiquated alternatives to incarceration.¹⁹ Although some of these early laws provided maximum

N.E.2d 177, 185 (Ill. 2002). (*Brady’s* discussion of the constitutional history is, however, of dubious merit, as discussed in notes 32 and 34, *infra*.) The Illinois legislature did not shy from wielding its constitutional power over the judiciary; it thrice legislated the circuit court into and out of existence before the constitution was amended in 1848. *The History of the Illinois Supreme Court, Chapter III: Early Courts in the State of Illinois: 1818 to 1848*, ILLINOIS SUPREME COURT, <http://www.state.il.us/court/SupremeCourt/Historical/judicialsystem.asp> (last visited Jan. 21, 2011) [hereinafter *History of the Illinois Supreme Court*]. It also effected drastic changes to the Illinois Supreme Court in response to a politically unpopular court decision. CORNELIUS, *supra* note 10, at 36.

15. 705 ILL. COMP. STAT. 35/0.01 to 35/36 (2008).

16. The phrase “at common law and in chancery” was interpreted to refer to “all the powers and jurisdiction of the Courts of King’s Bench and Common Pleas in England.” *Beaubien v. Brinckerhoff*, 3 Ill. (2 Scam.) 269, 273 (1840). Historically, Courts of the King’s Bench, i.e., courts of equity or chancery, provided equitable relief by exercising the King’s “prerogative to dispense justice despite the law.” Laura S. Fitzgerald, *Is Jurisdiction Jurisdiction?*, 95 NW. U. L. REV. 1207, 1250–51 (2001); *see also* FIEDLER, *supra* note 11, at 240–41 (“In Illinois, as in almost all other states, the terms ‘court of chancery,’ ‘court of equity,’ ‘chancery,’ and ‘equity’ are used synonymously.”). Courts of Common Pleas, i.e., courts of law or common law courts, applied the common law.

17. An Act Regulating and Defining the Duties of the Justices of the Supreme Court, Laws of Illinois 1819, §§ 26, 28, at 380.

18. David H. Norris & Thomas Peters, *Fiscal Responsibility and Criminal Sentencing in Illinois: The Time for Change is Now*, 26 J. MARSHALL. L. REV. 317, 319–20 (1993). Determinate sentencing contrasts with indeterminate sentencing, a form of sentencing in which the sentencing authority announces a range of punishment and leaves to corrections authorities (often a parole board or corrections facility) the task of determining the ultimate sentence to be served. *Id.* *See generally* LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 304–08 (1993) (discussing states’ historical oscillation between the two approaches).

19. *See* ANDREW A. BRUCE, THE WORKINGS OF THE INDETERMINATE-SENTENCE LAW AND THE PAROLE SYSTEM IN ILLINOIS 20–21 (1928); James B. Haddad, *Commentary: Some Lessons from the History of Illinois Sentencing Laws*, 2 N. ILL. U. L. REV. 19, 23 (1981) (citing BRUCE, *supra*, at 21–22). Alternative penalties included “whipping,” “confinement in stocks and pillories,” or, for more serious crimes, “[d]eath by hanging.” HOWARD, *supra* note 10, at 117.

punishments or even ranges of punishment,²⁰ the void sentence rule did not arise in Illinois law until some time later.

At this nascent stage, the common law formed the basic principles that would shape the future of Illinois law on jurisdiction. Two of these basic principles prove relevant to this discussion. First, the Illinois Supreme Court's early case law stated the rule that a judicial decision will be considered void, and thus a nullity, when handed down by a court without subject matter jurisdiction.²¹ Second, the court distinguished between such void court orders, which could be attacked at any time, even collaterally, and voidable court orders, which could be upheld only by a reviewing court through the direct appeal process. The Illinois Supreme Court's first extended articulation of this void-voidable distinction sets forth a conception that survives to this day. In 1841, in *Buckmaster v. Jackson ex dem. Carlin*,²² the court explained:

In cases of errors or irregularities occurring, they are to be corrected, either by an application to the tribunal where they arise, or in an appellate court, by some direct proceeding between the parties. On the contrary, where this jurisdiction over the person, or subject matter, does not exist, the judgment is a mere nullity; decides nothing; concludes no one; and may be rejected, when collaterally drawn in question. . . . When a court has jurisdiction, it has a right to decide every question that arises in the cause, and whether the decision be correct or not, its judgment, until reversed, is regarded as binding in every other court. . . . The leading distinction is between judgments and decrees merely void, and such as are voidable only. The former are binding nowhere; the latter every where, until reversed by a superior authority.²³

20. For example, in 1827, arson was punishable by not more than one hundred lashes and imprisonment not exceeding three years; robbery was punishable by a fine, not less than fifty or more than one hundred lashes, and imprisonment not exceeding three years. BRUCE, *supra* note 19, at 20.

21. *Robinson v. Harlan*, 2 Ill. (1 Scam.) 237, 237 (1835) (holding that whenever a justice of the peace—a tribunal inferior to the circuit court—“assumes jurisdiction in a case not conferred by the statute, its acts are null and void”); *Tindall v. Meeker*, 2 Ill. (1 Scam.) 137, 137 (1834) (“If an inferior court [a justice of the peace] entertains jurisdiction of a case, and gives judgment, where by law such inferior court has no jurisdiction, the whole proceedings are *coram non judice* and void.”); *Flack v. Ankeny*, 1 Ill. (Breese) 187, 189 (1826) (“[W]here the justice [of the peace] has no jurisdiction, and undertakes to act, his acts are *coram non judice*, but if he has jurisdiction, and errs in exercising it, then the act is not void, but voidable, only.” (quoting *Butler v. Potter*, 17 Johns. 145, 145 (N.Y. 1819))).

22. 4 Ill. (3 Scam.) 104 (1841).

23. *Id.* at 106–07. Modern formulations of the void-voidable distinction hew neatly to these ideas. *See, e.g., In re Marriage of Mitchell*, 692 N.E.2d 281, 284 (Ill. 1998); *People v. Davis*, 619 N.E.2d 750, 754 (Ill. 1993).

The notion that a decision was considered void if entered without jurisdiction, combined with the constitutional constraints allowing Illinois courts jurisdiction only to the extent contemplated by statute, compelled early Illinois courts to take great care to avoid overstepping their authority. In fact, an early rule developed under which a complaint seeking to invoke the circuit court's jurisdiction "must contain sufficient matter to give the justices jurisdiction, or the whole of the proceedings will be *coram non judice*,²⁴ and consequently, void."²⁵ Although Illinois would later replace its original constitution and substitute increasingly liberal provisions on circuit court jurisdiction, the common law never fully let go of its original anxieties regarding statutory compliance.

B. The 1848 and 1870 Constitutions

In 1847, the delegates to Illinois' second constitutional convention assembled, determined to rectify what had come to be seen as the inadequacies of the 1818 charter²⁶ and to modernize the constitution for a rapidly changing state.²⁷ The three-month effort²⁸ led to a new constitution, adopted in 1848,²⁹ that was "considerably longer and more detailed than that of 1818."³⁰ The most widely noted changes embodied by the 1848 Constitution's judicial article were the provisions governing the makeup of the Illinois courts.³¹ In addition, the revised constitution contained a new definition of circuit court jurisdiction: where the 1818

24. The phrase *coram non judice* ("not before a judge") describes a matter "[b]efore a judge or court that is not the proper one or that cannot take legal cognizance of the matter." BLACK'S LAW DICTIONARY 362 (8th ed. 2004).

25. *Wells v. Hogan*, 1 Ill. (Breese) 337, 338 (1830). In *Wells*, the Illinois Supreme Court held that the initial complaint failed to describe all of the elements necessary to sustain a cause of action under a forcible detainer statute, and, accordingly, the Court concluded that the circuit court lacked jurisdiction to entertain the action. *Id.*; see also *Clark v. Roberts*, 1 Ill. (Breese) 285, 287 (1828) ("The affidavit was necessary to give jurisdiction to the justice. It does not comply with the requisition of the statute; hence, all subsequent proceedings are void.").

26. CORNELIUS, *supra* note 10, at 33 ("A major effort was made by the delegates to correct all mistakes made in the 1818 document.").

27. *Id.* at 25–27 (summarizing Illinois' population growth, changing settlement patterns, and developing economic, social, and political concerns); *id.* at 25, 28–29 (noting popular loss of confidence in the 1818 Constitution).

28. FIEDLER, *supra* note 11, at 210. These three months far exceeded the time used to draft the 1818 Constitution. See *supra* note 10 and accompanying text.

29. ILL. CONST. of 1848.

30. CORNELIUS, *supra* note 10, at 32; see also FIEDLER, *supra* note 11, at 210.

31. See CORNELIUS, *supra* note 10, at 36 (discussing provisions for election of judges); FIEDLER, *supra* note 11, at 210 (stating that the 1848 Constitution's "providing for a system of courts to be elected by the people" was "a definite departure from the previous appointive system").

Constitution allowed circuit court jurisdiction only “as the general assembly shall by law provide,” the 1848 Constitution conferred jurisdiction to circuit courts “in all cases at law and equity.”³² The 1848 Constitution also granted limited jurisdiction to two types of inferior tribunals: county courts and justices of the peace.³³

The next revision to Illinois’ Constitution, in 1870, brought no substantive change to the reach of circuit court original jurisdiction; it allowed circuit courts “original jurisdiction of all causes in law and equity.”³⁴ However, to accommodate the judiciary’s growing

32. ILL. CONST. of 1848, art. V, § 8. The phrase “cases in law and equity” mirrors a similar concept contained in Illinois’ first Courts Act, which allowed jurisdiction over “all causes, matters, and things at common law and in chancery.” See *Estate of Mears v. Brady*, 443 N.E.2d 289, 291 (Ill. App. Ct. 1982), *overruled on other grounds by* *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 770 N.E.2d 177, 185 (Ill. 2002). It should be noted that the decision in *Brady*, in an attempt to characterize the development of Illinois law on jurisdiction as a “tug-and-pull imbroglio between the courts and the legislature,” *id.*, actually gives a misleading impression of constitutional progress on the issue. *Brady* correctly notes that, prior to the 1848 Constitution, the Illinois Supreme Court had interpreted the Courts Act as conferring “original and unlimited jurisdiction.” *Id.* (quoting *Beaubien v. Brinckerhoff*, 3 Ill. (2 Scam.) 269, 273 (1840)). *Brady* then incorrectly portrays the 1848 Constitution as repudiating the “original and unlimited” idea by employing a “restrictive” “law and equity” concept found in the early statutes.” *Id.* A fair reading of the 1818 and 1848 Constitutions reveals a linear progression of circuit court jurisdiction. The 1818 Constitution conveyed no jurisdiction to the circuit court except that which the legislature deigned to provide. After the legislature provided such jurisdiction, the 1848 Constitution solidified it by directly providing for circuit court jurisdiction to the same extent as the legislature had provided. Thus, the 1848 Constitution actually represented a step forward for circuit court authority, not a step backward as *Brady* claims.

33. County courts were created by section 16 of the judicial article. ILL. CONST. of 1848, art. V, § 16. Their jurisdiction extended “to all probate and such other jurisdiction as the general assembly may confer in civil cases, and such criminal cases as may be prescribed by law, where the punishment is by fine only, not exceeding one hundred dollars.” *Id.* § 18. Justices of the peace were created by section 27, which conferred them “such jurisdiction[] as may be prescribed by law.” *Id.* § 27.

34. ILL. CONST. of 1870, art. VI, § 12; FIEDLER, *supra* note 11, at 248 (“[B]asically, the constitutional judicial system of the Constitution of 1848 was carried into the Constitution of 1870 [with limited changes].”). Some authority has suggested that, in the march toward more liberal constitutional grants of jurisdiction to the circuit court, the 1870 Constitution’s use of the phrase “original jurisdiction” represented a “cautious step forward” from the plain “jurisdiction” referenced in the 1848 Constitution. *Brady*, 443 N.E.2d at 291. However, the word “original” in this context does not appear to imply any stronger grant of authority; rather, it appears to imply a distinction between circuit courts’ “original jurisdiction” and their “appellate jurisdiction” over inferior courts described in the very same sentence of the 1870 Constitution. See ILL. CONST. of 1870, art. VI, § 12 (“The circuit courts shall have original jurisdiction of all causes in law and equity, and such appellate jurisdiction as is or may be provided by law.”). This combines with other errors, see *supra* note 32, to impugn the accuracy of the *Brady* court’s recitation of the constitutional history of Illinois courts’ jurisdiction. It is worth noting, then, that *Brady*’s ultimate holding—its interpretation of the 1870 Constitution—was repudiated by the Illinois Supreme Court in *Belleville Toyota*, 770 N.E.2d 177. See *infra* notes 91–106 and accompanying text.

caseload,³⁵ as well as the state's rapidly emerging urban-rural dichotomy,³⁶ the new constitution not only added more judges (and an intermediate appellate court³⁷), but also reorganized the judiciary to create a complex system of specialized inferior courts of limited jurisdiction,³⁸ including county courts,³⁹ probate courts,⁴⁰ justices of the peace,⁴¹ and Cook County criminal courts.⁴²

Illinois courts determined that the circuit courts' jurisdiction over "all causes in law and equity"

include[d] every claim or demand in a court of justice which was known at the adoption of the Constitution as an action at law or a suit in chancery, and also all actions since provided for which involve[d] personal or property rights of the same nature as those previously enforced by actions at law or in equity.⁴³

The circuit courts' jurisdiction did not, however, extend to "special statutory proceedings involving rights and providing remedies not of a kind previously existing in law or equity."⁴⁴ Accordingly, in statutory proceedings, as with inferior courts of limited jurisdiction,⁴⁵ courts were

35. HOWARD, *supra* note 10, at 335 (stating that the reorganization was effected in part to address congested court dockets).

36. CORNELIUS, *supra* note 10, at 70 (explaining that delegates generally loath to facilitate disparate treatment for urban and rural areas "admitted the realities of Chicago's judicial problems" and granted Chicago special treatment); *History of the Illinois Supreme Court*, *supra* note 14 (stating that the Constitution of 1870 was written for a "part urban-part rural state").

37. ILL. CONST. of 1870, art. VI, § 11.

38. Harry G. Fins, *Analysis of Illinois Judicial Article of 1961 and Its Legislative and Judicial Implementation*, 11 DEPAUL L. REV. 185, 188–89 (1962). Later amendments led to the creation of additional specialized inferior courts. *Id.* at 186. By the late 1950s, the system encompassed "102 county courts, 20 circuit courts, 14 probate courts, 29 city courts, a superior court of Cook County, a Criminal Court of Cook County, three municipal courts, over 2700 justices of the peace[,] and approximately 500 police magistrates," often with confusing or even overlapping jurisdictions. Robert H. Frick, *Order from Chaos: Court Integration Under the Proposed Judicial Article*, 39 CHI. B. REC. 269, 269 (1958). See generally Nat M. Kahn, *Concurrent Jurisdiction of Circuit Court with that of Probate Court in Claims against Estates of Decedents*, 42 CHI. B. REC. 277 (1961) (describing one area of jurisdictional confusion under the 1870 Constitution); Samuel W. Witwer, Jr., *The Illinois Constitution and the Courts*, 15 U. CHI. L. REV. 53 (1947–1948) (describing confusion regarding jurisdiction and arguing for consolidation of Illinois courts); ILL. CONST. of 1870, art. VI, comm. cmt. 4 (West 1964) ("[A] virtual hodgepodge of courts had developed, particularly in the Cook County or Chicago metropolitan area."). This confusion strongly motivated the 1964 amendments to the judicial article. See *infra* notes 85–90 and accompanying text.

39. ILL. CONST. of 1870, art. VI, § 18.

40. *Id.* § 20.

41. *Id.* § 21.

42. *Id.* § 26.

43. *People v. Graw*, 2 N.E.2d 71, 72–73 (Ill. 1936).

44. *Id.* at 73.

45. *Brown v. Van Keuren*, 172 N.E. 1, 3 (Ill. 1930) ("Whatever the rank of the court

required to “exercise their powers within the limits of the jurisdiction conferred by statute.”⁴⁶ Thus, subject matter jurisdiction for inferior courts of limited jurisdiction and for circuit courts in statutory proceedings became “not only the power of the court to hear and determine [a case], but also the power to render the particular judgment entered.”⁴⁷ Where such a court entered a judgment that “transcend[ed] the statute conferring jurisdiction,” the “judgment or decree [was] void and [could] be collaterally impeached or set aside . . . after the time for review had expired.”⁴⁸ This concept was expressed alternatively as the circuit court’s exceeding its jurisdiction or acting without “inherent power.”⁴⁹ These ideas formed the basis of the void sentence rule.

C. *The Birth of the Void Sentence Rule*

The current incarnation of the void sentence rule traces to the Illinois Supreme Court’s 1918 decision in *People ex rel. Maglori v. Siman*.⁵⁰ In *Siman*, the convicted larcenist Mike Maglori petitioned for habeas corpus relief from his imprisonment on the ground that the larceny statute allowed a sentence of a fine or imprisonment, yet he received both.⁵¹ The court began its analysis of Maglori’s collateral attack on his sentence by citing the general principle that “[j]urisdiction’ in a

exercising a special statutory jurisdiction, it is governed by the same rules as courts of limited jurisdiction.”); *Keal v. Rhydderck*, 148 N.E. 53, 55 (Ill. 1925) (same); *Haywood v. Collins*, 60 Ill. 328, 333 (1871) (finding that courts exercising statutory jurisdiction “stand[] upon the same ground and [are] governed by the same rules as courts of limited and inferior jurisdiction”).

46. *Smith v. Smith*, 166 N.E. 85, 88 (Ill. 1929).

47. *Thayer v. Vill. of Downers Grove*, 16 N.E.2d 717, 719 (Ill. App. Ct. 1938), *overruled on other grounds by James v. Frantz*, 172 N.E.2d 795 (Ill. 1961); *see Armstrong v. Obunino*, 133 N.E. 58, 59 (Ill. 1921) (stating that the rule that erroneous judgment may not be collaterally attacked “is subject to an exception . . . that the decree may be void because the court has exceeded its jurisdiction,” and explaining that the authority of courts of limited jurisdiction was circumscribed by statute).

48. *Thayer*, 16 N.E.2d at 719.

49. *People v. Sharifpour*, 930 N.E.2d 529, 547–48 (Ill. App. Ct. 2010) (“Some courts characterize the [inherent power requirement] as a subspecies of subject matter jurisdiction while others characterize it as a situation where a court acts in excess of its jurisdiction.” (citing *In re Gilberto G.-P.*, 873 N.E.2d 534, 539 (Ill. App. Ct. 2007) (Grometer, J., concurring) (noting that the jurisdictional problem of a court lacking “the power to render a particular disposition” had been characterized as lacking subject matter jurisdiction or as lacking jurisdiction generally))). The very phrasing of the term “inherent power” suggests that it was coined to describe power courts intrinsically possess, such as the power to protect their dignity through contempt proceedings, *e.g.*, *Stewart v. Lathan*, 929 N.E.2d 1238, 1244 (Ill. App. Ct. 2010), but devolved to a misnomer that described power the courts had or had not been conferred by an extrinsic source, such as the constitution or the legislature, *cf. Steinbrecher v. Steinbrecher*, 759 N.E.2d 509, 518–19 (Ill. 2001) (describing the “‘inherent power’ requirement”).

50. 119 N.E. 940 (Ill. 1918).

51. *Id.* at 941–42.

particular case is not only the power of the court to hear and determine but also the power to render the particular judgment entered, and every act of the court beyond its jurisdiction is void.”⁵² The court adapted this general principle to the context of criminal sentencing by borrowing the statement of law from the United States Supreme Court that “[i]f [a] court or judge had no jurisdiction to render the judgment and sentence complained of, the judgment is void, and one imprisoned under and by virtue of it may be discharged from custody on habeas corpus.”⁵³ The court then concluded that the governing larceny statute did not authorize the circuit court to impose both a fine and a prison sentence on Maglori, and thus the court, having imposed the fine, exceeded its statutory jurisdiction when it added the prison sentence.⁵⁴ As a remedy, the court declared Maglori’s sentence “void as to the excess,” and, because Maglori had paid his fine, the court held his excess prison term to be null.⁵⁵ This conception of the void sentence rule survives to the present.⁵⁶

52. *Id.* at 942 (citing *Ex parte Reed*, 100 U.S. 13, 23 (1879); *Chi. Title & Trust Co. v. Brown*, 55 N.E. 632, 633 (Ill. 1889)). The efficacy of these citations is discussed *infra* at notes 57–66 and accompanying text.

53. *Siman*, 119 N.E. at 942 (citing *In re Bonner*, 151 U.S. 242, 261 (1894); *United States v. Pridgeon*, 153 U.S. 48, 62–63 (1894); *In re Swan*, 150 U.S. 637, 651 (1893); *Ex parte Nielsen*, 131 U.S. 176, 182 (1889)).

54. *Id.* at 942 (“The trial court had jurisdiction to either fine [Maglori] or to imprison him within the limitations of the statute; but the court did not have jurisdiction to both fine and imprison [him], as it did in this case. The court therefore exceeded its jurisdiction.”).

55. *Id.* at 942–43. Prior to the United States Supreme Court’s decision in *Pridgeon*, there had been some dispute as to whether an excessive sentence should be deemed void in its entirety (so that any prisoner so sentenced would be allowed to go free) or void only as to the excess (so that a prisoner so sentenced would be freed once he served the statutory maximum). *Recent Case*, 9 HARV. L. REV. 287, 287 (1895). *Pridgeon* resolved that dilemma by choosing the latter option. This remedy—declaring void the excess portion of a sentence—had been suggested in an earlier Illinois Supreme Court decision, *People ex rel. Busch v. Green*, 117 N.E. 764, 766–67 (Ill. 1917), but it was not invoked in that case because the *Green* court determined that the prisoner there was not entitled to release. Prior Illinois Supreme Court decisions had rejected void sentence arguments. *See People ex rel. Harris v. Graves*, 114 N.E. 556, 556 (Ill. 1916) (rejecting the argument that defendant could use habeas corpus proceedings to challenge a sentence as void); *People ex rel. Henderson v. Allen*, 43 N.E.2d 332, 332 (Ill. 1896) (“If there was any error committed by the court in the trial of the cause or in the sentence of the petitioner, that is a question which may be reviewed by writ of error; but the party has no right to a writ of habeas corpus.”). One prior decision had allowed a collateral challenge to a sentence on the ground that it was void, but the challenge was based not on conformity with statutory limits but instead on the indefinite nature of the sentence. *See People ex rel. Hinckley v. Pirfenbrink*, 96 Ill. 68, 68 (1879) (declaring void a sentence that would end only “on the will of the [sentencing] judge”).

56. *See, e.g., People v. Petrenko*, 931 N.E.2d 1198, 1206–07 (Ill. 2010) (noting that it is well settled that a sentence that is in conflict with statutory guidelines is void).

II. PROBLEMS WITH THE VOID SENTENCE RULE

The void sentence rule developed from principles of limited circuit court jurisdiction created under Illinois' first three constitutions to hold that a sentence in excess of statutory limits is void and thus may be challenged at any time because a court has no authority to impose it in the first place. Even if this result might be laudable, the rationale supporting it was troubled from the start. That trouble, combined with the jurisdictional transformation wrought by the 1964 amendments to the judicial article of the Illinois Constitution, made the rationale supporting the rule entirely specious. However, in spite of these troubles, or in indifference to them, the rule perpetuated itself through the force of its own repetition.

A. *Initial Problems with the Void Sentence Rule*

From the time the void sentence rule was articulated in *People ex rel. Maglori v. Siman*, it was beset by difficulty for several reasons.

First, the rule was founded on a tenuous analogy between Illinois and federal jurisdictional principles. The *Siman* court relied on a United States Supreme Court decision, *Ex parte Reed*,⁵⁷ and a prior Illinois Supreme Court decision, *Chicago Title & Trust Co. v. Brown*,⁵⁸ to support its statement that "jurisdiction" entails "not only the power of the court to hear and determine but also the power to render the particular judgment entered."⁵⁹ *Brown*, however, made no such statement.⁶⁰ Thus, *Siman* had only the United States Supreme Court

57. *Siman*, 119 N.E. at 942 (citing *Ex parte Reed*, 100 U.S. 13, 23 (1879)).

58. *Id.* (citing *Chi. Title & Trust Co. v. Brown*, 55 N.E. 632, 633 (Ill. 1899)).

59. *Id.*

60. The relevant passage from *Brown* provides as follows:

'Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them. The question is whether, in the case before a court, their action is judicial or extra judicial, with or without the authority of law to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction. What shall be adjudged between the parties, and with which is the right of the case, is judicial action, by hearing and determining it.' Bouvier defines 'jurisdiction' as follows: 'Jurisdiction is the authority by which judicial officers take cognizance of and decide cases; power to hear and determine a cause; the right of a judge to pronounce a sentence of the law in a case or issue before him, acquired through due process of the law.'

55 N.E. at 633 (quoting *People v. Seelye*, 32 N.E. 458, 468 (Ill. 1892) (quoting *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 714 (1838))). This passage refers only to a court's power to hear the dispute at issue, not to a court having the power to render a particular judgment. The dissenting justice in *Siman* made this same observation. See *Siman*, 119 N.E. at 944 (Carter, J., dissenting) ("I do not think the reasoning in [*Brown*] supports the definition given in the opinion as to the meaning of jurisdiction.").

case to support its description of jurisdiction. Likewise, *Siman* mustered only federal case law to support its statement that “[i]f [a] court or judge had no jurisdiction to render the judgment and sentence complained of, the judgment is void, and one imprisoned under and by virtue of it may be discharged.”⁶¹ Unfortunately, the analogy between Illinois and federal law does not hold. The United States Constitution does not directly establish the jurisdiction of federal trial courts but instead leaves to Congress the authority to “ordain and establish” such lower federal courts.⁶² This power to “ordain and establish” inferior courts has been interpreted to indicate that all federal courts inferior to the Supreme Court derive their authority from the legislature, which has the “power of ‘investing [inferior courts] with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.’”⁶³ Thus, federal district courts are, by definition, courts whose jurisdiction is always limited by statute. Illinois circuit courts at the time of *Siman*, on the other hand, had limited jurisdiction only in certain situations and otherwise enjoyed constitutional jurisdiction over “all causes in law and equity.”⁶⁴ This general jurisdiction, unlike that of federal trial courts, extended to criminal matters.⁶⁵ When it borrowed federal law regarding voidness of excessive sentences, the *Siman* court incorrectly assumed that Illinois circuit courts were, like federal trial courts, courts of limited jurisdiction for all purposes.⁶⁶

61. *Siman*, 119 N.E. at 942 (citing *In re Bonner*, 151 U.S. 242, 261 (1894); *United States v. Pridgeon*, 153 U.S. 48, 62–63 (1894); *In re Swan*, 150 U.S. 637, 651 (1893); *Ex parte Nielsen*, 131 U.S. 176, 182 (1889)).

62. See U.S. CONST. art. III, § 1 (“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”).

63. *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943); see also 18 U.S.C. § 3231 (2006) (conferring federal district courts “original jurisdiction . . . of all offenses against the laws of the United States”); *United States v. Hall*, 98 U.S. 343, 345 (1878) (“Such courts possess no jurisdiction over crimes and offences committed against the authority of the United States, except what is given to them by the power that created them; nor can they be invested with any such jurisdiction beyond what the power ceded to the United States by the Constitution authorizes Congress to confer, from which it follows that before an offence can become cognizable in the Circuit Court the Congress must first define or recognize it as such, and affix a punishment to it, and confer jurisdiction upon some court to try the offender.”).

64. ILL. CONST. of 1870, art. VI, § 12.

65. *Young v. Illinois*, 6 Ill. App. 434, 434 (1880) (citing the 1870 Illinois Constitution’s grant of jurisdiction over “all causes in law and equity” and explaining that “[t]he criminal offense of assault and battery duly charged is clearly a case at law”).

66. After the 1964 amendments to the Illinois Constitution, see *infra* Part II.B, the analogy between federal trial court jurisdiction and Illinois trial court jurisdiction became even weaker. See Jeffrey A. Parness, *American General Jurisdiction Trial Courts: New Visions, New*

Second, the void sentence rule was founded on the theory that an order that does not conform to statute is entirely void,⁶⁷ i.e., “from its inception a complete nullity and without legal effect.”⁶⁸ The idea that a long-settled sentence may become not just erroneous, but entirely void, creates intolerable paradoxes in the law. For example, since “[t]he final judgment in a criminal case is the sentence,”⁶⁹ and since (with limited exceptions not relevant here⁷⁰) only final orders are appealable in Illinois criminal cases,⁷¹ what happens to a direct appeal following a sentence that has been retroactively declared never to have occurred? The void sentence rule logically compels the very strange result that once a sentencing judgment is retroactively erased, any appeal from that judgment would also be erased.⁷² Or, as another example, what should happen in the case of a convict sentenced to six years’ imprisonment when the law limits his sentence to five years? At the expiration of his fifth year of incarceration, may the convict assume the self-help remedy of escape and avoid prosecution for escape on the ground that his illegal sentence actually never existed? Illinois courts have yet to reconcile, or even address, these analytical difficulties created by the void sentence rule.

The third and fourth problems with the void sentence rule were addressed in Justice Joseph N. Carter’s prescient dissenting opinion in *Siman*. In his dissent, Justice Carter first noted the majority’s failure to

Guidelines, 55 U. KAN. L. REV. 189, 204 n.118 (2006) (distinguishing federal trial courts of limited jurisdiction from Illinois trial courts of general jurisdiction).

67. *People ex rel. Maglori v. Siman*, 119 N.E. 940, 942 (Ill. 1918) (“If such court or judge had no jurisdiction to render the judgment and sentence complained of, the judgment is void . . .”). The remedy the court in *Siman* devised for this problem was that only the excess portion of a sentence would be considered void. However, the rationale for the void sentence rule is not limited to the correction of excessive sentences; it also provides the State a remedy for illegally lenient sentences. *See People v. Malchow*, 739 N.E.2d 433, 433 (Ill. 2000) (relying on the void sentence rule to vindicate the State’s request to have an illegally lenient sentence corrected on review even though the State may not normally challenge a defendant’s sentence on appeal). Interestingly, modern articulations of the void sentence rule often omit any qualification that only the excess part of a sentence will be considered void. *E.g.*, *People v. Petrenko*, 931 N.E.2d 1198, 1206 (Ill. 2010) (“It is well settled that a sentence that is in conflict with statutory guidelines is void and may be challenged at any time.”).

68. *Ford Motor Credit Co. v. Sperry*, 827 N.E.2d 422, 428 (Ill. 2005).

69. *People v. Partee*, 530 N.E.2d 460, 463 (Ill. 1988).

70. *See ILL. SUP. CT. R.* 604 (listing particular types of orders that may be appealed even if not final).

71. *E.g.*, *In re Justin L.V.*, 882 N.E.2d 621, 626 (Ill. App. Ct. 2007) (“Except where an Illinois Supreme Court rule provides for an interlocutory appeal, [the Illinois Appellate Court] has jurisdiction to review only final judgments.”).

72. *Cf. In re Marriage of Duggan*, 877 N.E.2d 1140, 1162 (Ill. App. Ct. 2007) (O’Malley, J., concurring) (questioning whether retroactive rescission of a judgment’s finality voids any prior appeals from the newly non-final judgment).

distinguish two distinct concepts: jurisdiction—the “authority to hear and decide a cause,” which authority “[did] not depend upon the correctness of the decision made”—and the correctness of the ultimate order entered by a court vested with jurisdiction.⁷³ As Justice Carter observed, precedent had theretofore held that “[i]f an error has been committed by the court in the trial of the cause or in the sentence of the petitioner, that is a question which may be reviewed by a [direct appeal], but the party has no right to a writ of habeas corpus,”⁷⁴ i.e., no right to challenge the error after the party has exhausted its direct appeals. The *Siman* majority improperly expanded the concept of jurisdiction to include the authority to order a particular remedy.

The second, and related, problem Justice Carter raised in his *Siman* dissent was that the *Siman* majority’s ruling would lead to practical difficulties. As Justice Carter rightly wondered, “[i]f jurisdiction should be defined as it has been in the [majority] opinion, then every act of the court that goes beyond the authority of the court to enter it [would be] void.”⁷⁵ Thus, under the void sentence rule in *Siman*, there would be no real distinction between erroneous and void judgments. As Justice Carter predicted, Illinois courts invoking the void sentence rule in the ensuing century would struggle with the impossible task of distinguishing simple errors, which are merely avoidable and correctable

73. *People ex rel. Maglori v. Siman*, 119 N.E. 940, 944 (Ill. 1918) (Carter, J., dissenting) (quoting *People v. Talmadge*, 61 N.E. 1049, 1050 (Ill. 1901)) (internal quotation marks omitted). Courts in other states have recognized this distinction. See *People v. Ramirez*, 72 Cal. Rptr. 3d 340, 346 (Ct. App. 2008) (distinguishing between lack of jurisdiction, which makes a judgment void, and an act in excess of jurisdiction, which makes the judgment only avoidable so that an objection to the judgment can be waived); *Myers v. Commonwealth*, 42 S.W.3d 594, 596 (Ky. 2001) (rejecting the argument that an erroneous sentence creates a jurisdictional problem because “[o]nce jurisdiction has properly attached . . . jurisdiction is not lost just because the court makes a mistake in determining the facts, the law, or both”); *DeShields v. State*, 132 P.3d 540, 543 (Mont. 2006) (“Whether a district court commits a statutory error in imposing a sentence must not be confused with whether the court had the power or capacity to impose a sentence.”); *State v. Johnston*, 510 S.E.2d 423, 425 (S.C. 1999) (“[T]his Court, in discussing error preservation, has specifically distinguished a trial court’s sentencing authority from its subject matter jurisdiction.”). All of these states have trial courts of general, rather than limited, jurisdiction. See CAL. CONST. art. VI, § 10 (“Superior courts have original jurisdiction in all other causes.”); KY. CONST. § 112(5) (“The Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court.”); MONT. CONST. art. VII, § 4(1) (“The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity.”); S.C. CONST. art. V, § 11 (“The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts . . .”).

74. *Siman*, 119 N.E. at 944 (Carter, J., dissenting) (quoting *People ex rel. Huber v. Whitman*, 115 N.E. 531, 532 (Ill. 1917) (internal quotation marks omitted) (citing *People ex rel. Harris v. Graves*, 114 N.E. 556, 556 (Ill. 1916))).

75. *Id.*

only on direct appeal, from erroneous judgments, which are void and correctable at any time.⁷⁶

Nonetheless, Justice Carter's warnings went unheeded; in fact, his dissent was never cited in any subsequent court decision.⁷⁷ In *People ex rel. Carlstrom v. Eller*,⁷⁸ a decision announced soon after *Siman*, the Illinois Supreme Court appeared to backtrack from, and even repudiate, the *Siman* rationale by reasoning that, in *Eller*, "[t]he criminal court, which pronounced the sentence in question, had jurisdiction of the [defendant] and of the subject-matter of the suit, and while the statutory penalty for the crime . . . is fine or imprisonment, and not both, . . . it was error to inflict both punishments"; however, "the judgment was not void, but was a valid judgment of conviction for the crime" and could not be collaterally attacked.⁷⁹ Despite this reasoning, which was diametrically contrary to the reasoning on which the court in *Siman* based its holding, the court in *Eller* interpreted *Siman* to mean that the criminal court's sentence "was not entirely void, but was simply excessive" so that only the illegal portion of the sentence "was the excessive and void part of the judgment."⁸⁰ Thus, the court in *Eller* purported to follow *Siman* at the same time it repudiated *Siman*'s reasoning; the *Eller* court offered no reason why the excess portion of a sentence should be considered void other than the jurisdictional reasons espoused in *Siman*.

Despite Justice Carter's reservations, and despite the problems implied (but superficially reconciled) by *Eller*, Illinois common law began to accept without further scrutiny *Siman*'s broad definition of jurisdiction as including the authority to enter a particular judgment. The rule was thus repeated,⁸¹ and then repeated again,⁸² and again,⁸³

76. See *People v. Davis*, 619 N.E.2d 750, 754 (Ill. 1993). In *Davis*, the Illinois Supreme Court bemoaned courts' failures to differentiate between voidable and void judgments, but, in its own clarification of the matter, the Court indiscriminately cited outdated and current principles of circuit court jurisdiction. See *id.* at 754–55 (citing the Illinois 1970 Constitution, but then citing jurisdictional precedent—*Armstrong v. Obucino*, 133 N.E. 58, 58 (Ill. 1921)—that predated the constitutional change).

77. The only authority to have noticed Justice Carter's dissent was a law review case note that opined that Justice Carter had the better view of the case. Current Note, 28 YALE L.J. 292, 292 (1919) ("The view of Mr. Justice Carter, that the sentence was not beyond the power of the court but merely erroneous, seems preferable. . . . Prior Illinois cases seem to sustain that view.").

78. 153 N.E. 597 (Ill. 1926).

79. *Id.* at 599.

80. *Id.* (discussing *Siman*, 119 N.E. 940).

81. *People ex rel. Modern Woodmen of Am. v. Cir. Ct. of Wash. Cnty.*, 179 N.E. 441, 444 (Ill. 1932) (citing *Armstrong*, 133 N.E. at 59; *Siman*, 119 N.E. at 942, and cases cited therein; *People v. Super. Ct.*, 84 N.E. 875, 877–78 (Ill. 1908)).

82. *People ex rel. Weed v. Whipp*, 186 N.E. 135, 136 (Ill. 1933) (citing *Modern Woodmen of*

and again,⁸⁴ until its verity was sustained by sheer repetition alone. By 1964, any concerns with the void sentence rule had faded from thought.

B. A Deeper Problem for the Void Sentence Rule—Amendments to the Illinois Constitution

Even if the original problems underlying the void sentence rule—and its presumption that a circuit court had no jurisdictional authority to impose a criminal sentence beyond that described in a statute—had been overlooked, a new, more fundamental problem arose in 1964 when the Illinois Constitution was amended to effect wholesale changes in circuit court jurisdiction. These changes should have vitiated the void sentence rule, but, as with the original problems, they went largely unnoticed as Illinois courts continued to repeat their previous mistake.

1. The 1964 Amendments and How They (Should Have) Affected the Void Sentence Rule

In response to the administrative difficulties engendered by the confusing system of often overlapping courts of limited jurisdiction spawned by the 1870 Constitution, the constitution's judicial article was amended, effective in 1964, to set forth an entirely new jurisdictional scheme.⁸⁵ The new judicial article eliminated the labyrinthine system of inferior courts in favor of a single, unified circuit court,⁸⁶ upon which the article conferred “unlimited original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law.”⁸⁷ This change largely alleviated the jurisdictional

Am., 179 N.E. at 446; *Eller*, 153 N.E. at 599; *Siman*, 119 N.E. at 942; *People ex rel. Busch v. Green*, 117 N.E. 764, 766–67 (Ill. 1917)).

83. *People ex rel. Barrett v. Sbarbaro*, 54 N.E.2d 559, 563 (Ill. 1944) (citing federal law).

84. *People v. Hamlett*, 96 N.E.2d 547, 550 (Ill. 1951) (citing *Whipp*, 186 N.E. at 136).

85. CORNELIUS, *supra* note 10, at 131 (“The amendment submitted to the voters in 1962 was intended to simplify the judicial system by centralizing its administration and eliminating overlapping jurisdictions.”). Voters, divided between Cook County (largely in favor of the amendment) and the rest of the state (largely opposed), passed the amendments in November 1962, and they took effect on January 1, 1964. FIEDLER, *supra* note 11, at 262.

86. ILL. CONST. of 1870, art. VI, historical note at 9 (West 1964) (noting that the form of the ballot informed voters that the amendment to the judicial article would “give the state an integrated court system in which all judicial power would be vested in three levels of courts: the Supreme, Appellate, and Circuit Courts”); DAVID R. MILLER, 1970 ILLINOIS CONSTITUTION ANNOTATED FOR LEGISLATORS 53 (4th ed. 1996) (regarding the 1970 Constitution, which did not alter the structure created by the 1964 amendments, “[a]ll trial-level judicial functions have been consolidated in the circuit courts”).

87. ILL. CONST. of 1870, art. VI, § 9 (amended 1964). *See generally* Harry G. Fins, *Re-examination of “Jurisdiction” in Light of New Illinois Judicial Article*, 53 ILL. B.J. 8 (1964) (discussing the changes wrought by the 1964 amendment).

problems that, until then, had plagued the Illinois court system.⁸⁸ Six years later, when Illinois adopted its current constitution, the Constitution of 1970, it left the court system largely unchanged from that provided for in the 1964 amendments.⁸⁹ The current constitution provides that “Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction” and that “Circuit Courts shall have such power to review administrative action as provided by law.”⁹⁰

The revolutionary significance of this change, if not immediately apparent, was finally explained at length thirty-eight years later in the Illinois Supreme Court’s landmark 2002 decision in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*⁹¹ In *Belleville Toyota*, the defendants argued that a statute of limitations constituted a “jurisdictional prerequisite to the plaintiff’s right to sue” (or, put more precisely, a jurisdictional prerequisite to a court’s authority to hear the case).⁹² The court took this argument as an invitation to clarify the import of the post-1964 constitutional scheme for circuit court jurisdiction. It first defined subject matter jurisdiction as “the power of a court to hear and determine cases of the general class to which the proceeding in question belongs,”⁹³ a definition that, notably, does not include the “power to render a particular judgment” adjunct that had insinuated itself into pre-1964 case law.⁹⁴ The court then observed that, under the current scheme, Illinois circuit courts’ authority in non-administrative actions “is conferred entirely by [the] state constitution” and extends over all “justiciable matters.”⁹⁵ As the Supreme Court explained in *Belleville Toyota*, the amendments marked a “stark contrast to the significant role previously exercised by the legislature” under former constitutional schemes,⁹⁶ and “radically changed the legislature’s role in determining the jurisdiction of the circuit court.”⁹⁷

88. ILL. CONSTITUTION RESEARCH GRP., CON-CON: ISSUES FOR THE ILLINOIS CONSTITUTIONAL CONVENTION 199 (1970) (“Most Illinois jurisdictional problems were eliminated with the passage of the 1964 amendment.”).

89. MILLER, *supra* note 86, at 49 (“The 1970 Constitution essentially kept that court system but made some changes, especially in the powers of the Illinois Supreme Court and the structure of the judicial disciplinary system.”).

90. ILL. CONST. art. VI, § 9.

91. 770 N.E.2d 177 (Ill. 2002).

92. *Id.* at 183.

93. *Id.* at 184.

94. *See supra* notes 73–76 and accompanying text (explaining the problems with defining jurisdiction as the power to render a particular judgment).

95. *Belleville Toyota*, 770 N.E.2d at 184 (citing ILL. CONST. art. VI, § 9).

96. *Id.* at 185.

97. *Id.* at 186.

Aside from its ability to “create new justiciable matters by enacting legislation that creates rights and duties that have no counterpart at common law or in equity,”⁹⁸ the legislature retained no authority to control court jurisdiction in non-administrative actions.⁹⁹

This revelation brought with it immense ramifications for the jurisdictional principles announced in case law predating the 1964 amendments. It rendered obsolete case law premised on the idea that courts exercised limited or statutory jurisdiction,¹⁰⁰ as well as related case law holding that “unless the statutory requirements were satisfied, a court lacked jurisdiction to grant the relief requested.”¹⁰¹ It thus repudiated the then-prevalent theory that the legislature could impose “conditions precedent” to circuit court jurisdiction by inserting statutory conditions on liability.¹⁰² As the Illinois Supreme Court explained in another case, *Steinbrecher v. Steinbrecher*,¹⁰³ the amendments to the judicial article also eviscerated the previously extant “‘inherent authority’ requirement,” which applies now only to “courts of limited jurisdiction and administrative agencies.”¹⁰⁴

Accordingly, for the parties in *Belleville Toyota*, because the legislature had no power to abridge the jurisdiction of the courts, the statute of limitations was not a jurisdictional bar that could render a circuit court judgment void.¹⁰⁵ Instead, statute-of-limitations problems, like any other discrepancy between a circuit court ruling and a relevant statute, created errors correctable on direct appeal but not jurisdictional problems that could allow the case to be reopened even after the appeal process was exhausted.

As *Belleville Toyota* and *Steinbrecher* make clear, many of the above-discussed ideas regarding circuit court jurisdiction, such as the idea that courts exceeded their jurisdiction when they acted without statutory authority, the idea that court decrees would be void if entered without “inherent authority”¹⁰⁶ conferred by the legislature, and the idea that the legislature had power to curb circuit court jurisdiction, should

98. *Id.* at 184–85.

99. *Id.* at 185.

100. *Id.* at 186 (“In light of these changes, the precedential value of case law which examines a court’s jurisdiction under the pre-1964 judicial system is necessarily limited to the constitutional context in which those cases arose.”).

101. *Id.* at 185.

102. *Id.*

103. 759 N.E.2d 509 (Ill. 2001).

104. *Id.* at 518–19.

105. *Belleville Toyota*, 770 N.E.2d at 186–88.

106. For a note on the phrase “inherent authority,” see *supra* note 49.

have collapsed upon the adoption of the 1964 constitutional revisions to circuit court jurisdiction. Since these ideas were the very foundation of the void sentence rule, the rule should have collapsed with them; indeed, *Steinbrecher* expressly repudiated several of the cases on which the void sentence rule was premised.¹⁰⁷ The void sentence rule persisted nonetheless.

2. Illinois Courts Ignore the Constitutional Amendments

a. The Constitutional Change Was Generally Ignored

Instead of reconsidering the jurisdictional principles on which the common law had relied under previous constitutional judicial systems, Illinois courts continued to repeat them without taking notice of the constitutional changes that should have rendered them obsolete.¹⁰⁸ Thus, Illinois case law is now littered with decisions that continue to hold, based on pre-1964 ideas of limited jurisdiction, that the concept of subject matter jurisdiction includes not only the power of a court to hear and decide a justiciable matter but also the power to render the particular judgment entered.

The Illinois Appellate Court's 1984 decision in *People ex rel. Illinois Department of Human Rights v. Arlington Park Race Track Corp.*¹⁰⁹ typifies the problem. In *Arlington Park*, the appellate court determined that the circuit court had improperly entered a permanent injunction in a case brought under a statute that contemplated only temporary relief.¹¹⁰ The court cited a 1930 Illinois Supreme Court decision, without acknowledging the intervening fundamental constitutional changes, for the proposition that "if a court is one of general jurisdiction, when its power to act in a particular matter is controlled by statute, the court is governed by the rules of limited jurisdiction."¹¹¹ Having invoked the

107. *Steinbrecher*, 759 N.E.2d at 518–19 (explaining the obsolescence of, among other cases, *In re M.M.*, 619 N.E.2d 702 (Ill. 1993), *People v. Wade*, 506 N.E.2d 954 (Ill. 1987), and *Armstrong v. Obucino*, 133 N.E. 58 (Ill. 1921)). *Steinbrecher* tempered its repudiation with language that was construed to save the void sentence rule. See *infra* notes 154–72 and accompanying text.

108. *Belleville Toyota* marked a concerted effort to correct the pervasive failure of bench and bar to take note of the constitutional shift begun in 1964. *Belleville Toyota* cited and explicitly overruled several opinions that had overlooked the constitutional change and had instead relied on decisions based on the previous constitutional scheme. See *Belleville Toyota*, 770 N.E.2d at 186 ("Nonetheless, pre-1964 rules of law continue to be cited by Illinois courts, without qualification, creating confusion and imprecision in the case law."). It implicitly overruled many more opinions it did not mention.

109. 461 N.E.2d 505 (Ill. App. Ct. 1984).

110. *Id.* at 507–08.

111. *Id.* at 508 (citing *Brown v. VanKeuren*, 172 N.E. 1, 3 (Ill. 1930)).

obsolete concepts of limited jurisdiction, the court pressed forward in the same vein by relying on a 1938 Illinois Supreme Court case for the notion that “[s]ubject matter jurisdiction includes not only the power to hear and determine a class of cases . . . but the power to grant the particular relief requested.”¹¹² The propositions for which *Arlington Park* cited the 1930 case and the 1938 case were based explicitly on concepts of limited or statutory jurisdiction that were long outdated by the time the Illinois Appellate Court decided *Arlington Park*.¹¹³

Unfortunately, *Arlington Park* is no forgotten aberration; in fact, it was later repeated and amplified. Nine years after the Illinois Appellate Court issued *Arlington Park*, the Illinois Supreme Court endorsed it in *In re M.M.*,¹¹⁴ an opinion that, remarkably, both explains and disregards the 1964 shift in Illinois law on jurisdiction. In *M.M.*, the Supreme Court considered “whether the circuit court, when terminating parental rights and appointing a guardian with power to consent to adoption, may condition the guardian’s power to consent” when the relevant statute contemplated no such conditions.¹¹⁵ The court answered that question in the negative, on the basis that adoption is “statutorily derived” and thus that the circuit court’s authority in adoption proceedings “derives exclusively from statute.”¹¹⁶ One paragraph after declaring, erroneously, that the circuit court derived its authority from statute, the court acknowledged the appellants’ argument that the circuit court did not lack jurisdiction because, under the 1970 Constitution, the circuit court enjoyed “original jurisdiction over all justiciable matters.”¹¹⁷ The court even acknowledged the rule that “[t]he circuit court now derives its jurisdiction directly from the Constitution and not from any statute or pleading.”¹¹⁸ However, the court made no attempt to reconcile, or even acknowledge the tension between these competing rules. Instead, in the very next paragraph, after citing the new concepts of jurisdiction that rendered principles of limited jurisdiction obsolete,

112. *Id.* (citing *J.L. Simmons Co. v. Capital Dev. Bd.*, 424 N.E.2d 821, 822 (Ill. App. Ct. 1981) (citing *Thayer v. Vill. of Downers Grove*, 16 N.E.2d 717, 719 (Ill. 1938))).

113. *See Brown*, 172 N.E. at 3 (“Whatever the rank of the court exercising a special statutory jurisdiction, it is governed by the same rules as courts of limited jurisdiction.”); *Thayer*, 16 N.E.2d at 719 (“Where the court entering the judgment has exceeded its jurisdiction and such judgment or decree transcends the statute conferring jurisdiction on the court, such judgment or decree is void.”).

114. 619 N.E.2d 702 (Ill. 1993).

115. *Id.* at 705.

116. *Id.* at 709.

117. *Id.* (internal quotation marks omitted).

118. *Id.* (quoting *McGinnis Plumbing Co. v. Zeus Dev. Corp.*, 457 N.E.2d 1059, 1061 (Ill. App. Ct. 1983)) (internal quotation marks omitted).

the court returned to those familiar obsolete principles and reiterated the rule that “[s]ubject matter jurisdiction refers to the power of the court to adjudge concerning the general question involved . . . as well as the power to grant the particular relief requested.”¹¹⁹ For this principle, *M.M.* relied on *Arlington Park* as well as on case law based on *Modern Woodmen of America v. Circuit Court of Washington County*,¹²⁰ a 1931 Illinois Supreme Court decision applying antiquated concepts of limited jurisdiction.¹²¹

Having invoked the outdated concepts of limited jurisdiction, then quoted the modern constitutional tenets that contradicted those rules, and then restated the old rules, the court in *M.M.* wavered yet again in its next paragraph, to offer, “[i]n the interest of clarity,” that, “[w]ith the exception of administrative review actions, where jurisdiction is conferred upon the circuit court by the legislature, jurisdiction is conferred by [the] constitution.”¹²² The court’s fealty to clarity was short-lived, however, because it went on to explain that “[j]uvenile court proceedings qualify as special statutory proceedings,” and thus any circuit court action in derogation of relevant statutes on the matter “exceed[s] [the court’s] statutory authority.”¹²³

The confusing, internally incongruous, and largely misleading decision in *M.M.*¹²⁴ continues to muddle the law; it and *Arlington Park* spawned a litany of court decisions that cited their misguided

119. *Id.*

120. 179 N.E. 441 (Ill. 1931).

121. *In re M.M.*, 619 N.E.2d at 709 (citing *People ex rel. Rice v. App. Ct.*, 268 N.E.2d 420, 421 (Ill. 1971); *People ex rel. Ill. Dep’t of Human Rights v. Arlington Park Race Track Corp.*, 461 N.E.2d 505, 508 (Ill. App. Ct. 1984); *J.L. Simmons Co v. Capital Dev. Bd.*, 424 N.E.2d 821, 821 (Ill. App. Ct. 1981)). *J.L. Simmons Co.* was cited in *Arlington Park*. See *supra* note 112. *Rice* relied on *Modern Woodmen*, which was one of the cases in the progeny of *Siman*. See *supra* notes 81–82.

122. *In re M.M.*, 619 N.E.2d at 709.

123. *Id.* at 710. This holding was, of course, based on concepts of limited jurisdiction and on authority predating the 1964 constitutional amendments. See *id.* (citing *People v. Piccolo*, 114 N.E. 145, 145 (Ill. 1916); *In re Sneed*, 363 N.E.2d 37, 41 (Ill. App. Ct. 1997); *In re Dependency of Rosmis*, 167 N.E.2d 826, 828 (Ill. App. Ct. 1960)). The Supreme Court cited *Sneed*, the only case decided after the 1964 amendments, for the proposition that “in a special statutory proceeding, the court could exercise no power not specially given” by the statute. *Id.*

The Court in *M.M.* also attempted to justify its result by stating it in terms of the legislature’s defining a “justiciable matter,” but that effort, too, was clouded by the Court’s reliance on rules of limited jurisdiction from case law predating the 1964 constitutional amendments, see *id.* (citing *Brown v. VanKeuren*, 172 N.E. 1, 3 (Ill. 1930)), or from cases involving administrative review, the only area in which the concept of limited jurisdiction survives, see *id.* (citing *Freedman Bros. Furniture Co. v. Dep’t of Revenue*, 486 N.E.2d 893, 895–96 (Ill. 1985)).

124. A concurring opinion in *M.M.* pointed out the majority’s contravention of modern jurisdictional law. *Id.* at 714 (Miller, J., concurring).

formulations of Illinois law on jurisdiction.¹²⁵ Some authority that relied on *M.M.* was subsequently overruled in *Belleville Toyota*,¹²⁶ which also implicitly rejected *M.M.*'s premise that the legislature may curtail circuit court jurisdiction¹²⁷ and thus implicitly overruled *M.M.*¹²⁸ However, *Belleville Toyota* stopped short of explicitly overruling *M.M.* and, accordingly, did not stunt *M.M.*'s influence, which continues to grow.

What is worse, *M.M.*'s discussion of jurisdiction was almost entirely gratuitous. *M.M.* was a direct appeal from the circuit court's judgments, not a collateral attack on them. The circuit court's violation of the statute was an error that was quite correctable on direct appeal even if the circuit court had jurisdiction to make the error.¹²⁹ Thus, when the appellants argued that the circuit court had no jurisdiction to enter the orders in derogation of a statute, the Supreme Court should have rejected the argument as irrelevant and instead considered whether the

125. All of the following cases cite either *Arlington Park*, 461 N.E.2d 505, or *M.M.*, 619 N.E.2d 702, or cite cases in their progeny, for the notion that jurisdiction includes the power to render a particular judgment and/or can be limited by statute: *People v. Brown*, 866 N.E.2d 1163, 1169 (Ill. 2007); *In re Jaime P.*, 861 N.E.2d 958, 966 (Ill. 2006); *In re A.H.*, 748 N.E.2d 183, 188 (Ill. 2001); *In re Estate of Gebis*, 710 N.E.2d 385, 387 (Ill. 1999); *Am. Mgmt. Consultant, LLC v. Carter*, 915 N.E.2d 411, 429 (Ill. App. Ct. 2009); *In re Dontrell H.*, 888 N.E.2d 627, 631 (Ill. App. Ct. 2008); *In re Gilberto G.-P.*, 873 N.E.2d 534, 537–38 (Ill. App. Ct. 2007); *In re D.D.*, 788 N.E.2d 10, 20–21 (Ill. App. Ct. 2002); *In re O.H.*, 768 N.E.2d 799, 802 (Ill. App. Ct. 2002); *CPM Prods., Inc. v. Mobb Deep, Inc.*, 742 N.E.2d 393, 397 (Ill. App. Ct. 2000); *In re Marriage of Fields*, 681 N.E.2d 166, 170 (Ill. App. Ct. 1997); *In Interest of M.V.*, 681 N.E.2d 532, 534–35 (Ill. App. Ct. 1997); *In Interest of Rami M.*, 673 N.E.2d 358, 361 (Ill. App. Ct. 1996); *In re Chiara C.*, 665 N.E.2d 404, 406–07 (Ill. App. Ct. 1996); *In re Estate of Austwick*, 656 N.E.2d 779, 786 (Ill. App. Ct. 1995); *In re Estate of Nelson*, 621 N.E.2d 81, 84 (Ill. App. Ct. 1993); *In re Ardedia L.*, 618 N.E.2d 804, 807 (Ill. App. Ct. 1993); *Deking v. Urban Inv. & Dev. Co.*, 508 N.E.2d 377, 379 (Ill. App. Ct. 1987). Although most of these opinions seem unaware that they cling to outdated law, others are more purposeful. In *Gilberto G.-P.*, the majority opinion cites rules derived from a limited jurisdiction scheme in spite of both a special concurrence pointing out the conflict with the current constitution, *see* 873 N.E.2d at 538–40 (Grometer, J., concurring), and one of the parties citing current constitutional principles, *see id.* at 538. The *Gilberto G.-P.* majority addressed the party's constitutional argument with the single, conclusory, and incorrect retort that the party's citation to current constitutional principles did not "address the specific statutory exclusion of jurisdiction contained" in the statute. *Id.* at 538.

126. *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 770 N.E.2d 177, 185 (Ill. 2002) (overruling *In re Marriage of Fields*, 681 N.E.2d 166 (Ill. App. Ct. 1997)).

127. *See id.* (rejecting the view that "the circuit court may exercise only that jurisdiction which the legislature allows").

128. *In re Alex T.*, 873 N.E.2d 1015, 1017 (Ill. App. Ct. 2007) ("We deem the supreme court to have largely overruled *M.M.* in *Steinbrecher*, the earliest of [three cases including *Belleville Toyota*]."); *see also id.* at 1017 n.1 (explaining that *Belleville Toyota* disapproved of the majority opinion in *M.M.* and actually relied on the idea expressed in the special concurrence).

129. Indeed, the concurring opinion in *M.M.* comes quite close to making this very point. *See* 619 N.E.2d at 714 (Miller, J., concurring) ("[T]he constitutional source of a circuit court's jurisdiction does not carry with it a license to disregard the language of a statute.").

deviation from the statute constituted reversible error. If the Supreme Court in *M.M.* had so explained, without resorting unnecessarily to concepts of jurisdiction, it could have avoided perpetuating a flaw in the common law.¹³⁰ The Supreme Court's failure to take that path, paired with its inaccurate analysis of the jurisdictional law it unnecessarily discussed, places *M.M.* among the many opinions that have failed to honor the 1964 amendments that shifted the landscape of Illinois circuit court jurisdiction.

b. The Confusion Regarding the Amendments Extended to the Void Sentence Rule

Illinois jurisprudence surrounding the void sentence rule tracked the remainder of Illinois law following the 1964 constitutional amendments: it persisted, heedless of the fundamental change effected by those amendments. In 1971, the Illinois Supreme Court cited a 1951 opinion on the void sentence rule and applied it without further analysis.¹³¹ In its next case to take up the void sentence rule, *In re T.E.*,¹³² the Illinois Supreme Court engaged in a slightly more protracted discussion that would form the basis of most current articulations of the rule.¹³³ In *T.E.*, after four minors' probation was revoked, the court considered the effect on subsequent proceedings of the original orders placing them on indefinite terms of probation when the relevant statute contemplated only definite terms.¹³⁴ The minors argued that the original orders were void and thus could be attacked at any time.¹³⁵ The Supreme Court agreed. As in the many other decisions resurrecting limited jurisdiction concepts that should have

130. The *M.M.* majority seems to have approached, but not quite reached, this realization. Among its conflicting paragraphs addressing the appellants' argument is the following passage: "Reasoning that the court's jurisdiction over this matter is constitutionally derived, appellants suggest to us that the court may, therefore, proceed in derogation of the statute. The practical effect of appellants' reasoning would render any statutory law a nullity. We, therefore, reject their reasoning as unsound." *Id.* at 710 (majority opinion). The Court was correct that the appellants' argument would nullify statutory law, but it then misidentified that revelation's effect on the case at hand. Instead of responding that a circuit court's jurisdiction over a case does not protect its errors from correction on direct appeal—the natural and correct response to the appellants' argument—the Court responded that the circuit court lacked jurisdiction to enter the judgment it reached.

131. *People v. Simkins*, 268 N.E.2d 386, 389 (Ill. 1971) (citing *People v. Hamlett*, 96 N.E.2d 547, 550 (Ill. 1951)).

132. 423 N.E.2d 910 (Ill. 1981).

133. *See infra* note 136 and accompanying text. This is true despite the fact that *T.E.* was a case involving juvenile delinquency.

134. *In re T.E.*, 423 N.E.2d at 911; *see also id.* at 913 (concluding that the relevant statute did not contemplate indefinite terms of probation).

135. *Id.* at 913.

been put to rest with the 1964 constitutional amendments, the decision in *T.E.* reached its result by relying on cases predating the 1964 amendments without taking any note of the jurisdictional change that had taken place since those cases were decided. With those cases as support, the court declared that “[t]he established rule is that where a court having jurisdiction over both the person and the offense imposes a sentence in excess of what the statute permits, the legal and authorized portion of the sentence is not void, but the excess portion of the sentence is void.”¹³⁶ Thus, the Supreme Court held, “the [circuit] courts lacked the statutory authority . . . to place the minors on an indefinite term of probation” and its orders were “consequently void and of no effect.”¹³⁷

The opinion in *T.E.* drew a short but persuasive dissent from three of the court’s seven justices.¹³⁸ The dissent opined that it was “undisputed that the [circuit] courts . . . had jurisdiction of the subject matter . . . and of the persons . . . involved” and thus that the improper orders “were simply errors, correctable like any other error, by appeal.”¹³⁹ Accordingly, the dissent would have held that “[t]he erroneous orders were voidable, not void, and, no appeal having been taken, the errors were waived.”¹⁴⁰ The three dissenting justices thus championed the wholesale repudiation of what later developed into the void sentence rule, so much so that they would have held that the imprisoned minors had forgone their right to challenge their erroneous sentences.

A fourth justice, apparently the deciding vote in the case, penned a separate concurrence in which he offered that “while the majority and dissent express[ed] different views of jurisdiction . . . , by accepting either approach the same result can be reached.”¹⁴¹ This statement

136. *Id.* (citing *People v. Hamlett*, 96 N.E.2d 547, 550 (Ill. 1951); *People ex rel. Barrett v. Sbarbaro*, 54 N.E.2d 559, 563 (Ill. 1944); *People v. Williams*, 365 N.E.2d 404, 408 (Ill. App. Ct. 1977)). Although *Williams* postdates the 1964 constitutional amendments, it relies on *Sbarbaro* for the statement for which *T.E.* cited it. See *Williams*, 365 N.E.2d at 408 (quoting *Sbarbaro*, 54 N.E.2d at 563). *Williams* also offered *Watson v. Auburn Iron Works, Inc.*, 318 N.E.2d 508 (Ill. App. Ct. 1974), as additional support, but *Watson*, like *Williams*, relies on *Sbarbaro*. Thus, *T.E.*’s holding was based on the two previous Illinois Supreme Court cases, *Sbarbaro* and *Hamlett*. Both, as stated, were decided when Illinois still employed a system of limited circuit court jurisdiction. *Hamlett* relied on *People ex rel. Weed v. Whipp*, 186 N.E. 135 (Ill. 1933), a case within the progeny of *People ex rel. Maglori v. Siman*, 119 N.E. 940 (Ill. 1918). See *supra* notes 82 and 84. *Barrett* relied on federal authority, which, as explained above, is an improper analogy. See *supra* notes 57–66 and accompanying text.

137. *In re T.E.*, 423 N.E.2d at 914.

138. *Id.* at 915 (Underwood, J., dissenting).

139. *Id.*

140. *Id.*

141. *Id.* (Simon, J., concurring).

sounds a cautionary note against judicial compromise on the reasoning used to reach a shared result. Whether the same result could have been reached in that particular case regardless of the law on jurisdiction, the choice of a particular line of reasoning in *T.E.* had consequences that reached far beyond the result in that case.¹⁴² By casting the void sentence rule with the imprimatur of a majority opinion, the Illinois Supreme Court perpetuated the rule in spite of the problems identified in the dissent. Again, as was the case following *Siman*, subsequent decisions repeated the law as stated in the *T.E.* majority while ignoring the dissent, and, by force of repetition, the void sentence rule became boilerplate while the concerns raised in the *T.E.* dissent faded into obscurity.¹⁴³

3. The Current State of the Law

The result of this repetition is a void sentence rule so “well settled” that it is cited, and accepted, without explanation.¹⁴⁴ The rule is, however, an anomaly whose rationale—that a circuit court has no authority to enter a sentence not delineated by statute—is a “vestige of a now-supplanted constitutional scheme”¹⁴⁵ and is unreservedly contrary to the precept that circuit court jurisdiction flows not from statutes but from the constitution.¹⁴⁶ Thus, while the void sentence rule itself has become “settled,” its effect on Illinois law has been anything but settling. Indeed, as the void sentence rule advanced to permanence, it left a bemused body of precedent straining unsuccessfully to reconcile the rule with the remainder of Illinois law.

Despite its repeated efforts to clarify Illinois jurisdictional law, the Illinois Supreme Court’s jurisprudence has greatly exacerbated Illinois courts’ confusion regarding the current jurisdictional scheme. In *Steinbrecher v. Steinbrecher*,¹⁴⁷ a property dispute case that set the stage for *Belleville Toyota*’s ultimate clarification of the reach of circuit

142. See *supra* note 8 and accompanying text.

143. See, e.g., *People v. Hauschild*, 871 N.E.2d 1, 11 (Ill. 2007) (citing *People v. Arna*, 658 N.E.2d 445, 448 (Ill. 1995)); *People v. Thompson*, 805 N.E.2d 1200, 1203 (Ill. 2004) (citing *People ex rel. Waller v. McKoski*, 748 N.E.2d 175, 179–80 (Ill. 2001); *People v. Williams*, 688 N.E.2d 1153, 1155 (Ill. 1997); *Arna*, 658 N.E.2d at 448; *People v. Wade*, 506 N.E.2d 954, 955–56 (Ill. 1987); *T.E.*, 423 N.E.2d at 913; *People v. Simmons*, 628 N.E.2d 759, 760 (Ill. App. Ct. 1993); *People v. Perruquet*, 537 N.E.2d 351, 353 (Ill. App. Ct. 1989)).

144. *People v. Petrenko*, 931 N.E.2d 1198, 1207 (Ill. 2010).

145. *People v. Sharifpour*, 930 N.E.2d 529, 553 (Ill. App. Ct. 2010) (O’Malley, J., concurring).

146. See *supra* notes 85–107 and accompanying text.

147. 759 N.E.2d 509 (Ill. 2001).

court jurisdiction under the current Illinois Constitution,¹⁴⁸ a majority of the Illinois Supreme Court rejected the fallacious argument, advanced by three dissenting justices, that a circuit court order was void for lack of jurisdiction because it deviated from relevant statutory provisions.¹⁴⁹ To support the flawed argument that a circuit court loses jurisdiction where it “fail[s] to follow the very statute empowering the court”¹⁵⁰ or “exceed[s] its authority,”¹⁵¹ the *Steinbrecher* dissent cited several of the cases underlying the void sentence rule, including most notably *M.M.*, the oft-cited case discussed at length above,¹⁵² and *Armstrong v. Obucino*, a 1921 case to which the modern incarnation of the void sentence rule may be traced.¹⁵³ In response, the majority explained that these cases were rendered obsolete by the current constitution.¹⁵⁴ If the majority had stopped there, it might have bestowed much needed clarity on Illinois jurisdictional law. However, the majority went on to distinguish another of the dissent’s jurisdiction authorities on the basis that the decision “discusse[d] jurisdiction in the context of criminal proceedings.”¹⁵⁵ The majority continued: “Criminal proceedings that involve the power to render judgments or sentences address a separate set of concerns not at issue in the present matter.”¹⁵⁶

This one statement—an offhand attempt to distinguish a criminal case and an attempt that was unnecessary in light of the clear constitutional principles the majority had already announced—forsook whatever progress *Steinbrecher* might have compelled and instead insulated the void sentence rule beneath a vague, amorphous reference to “separate concerns” in criminal cases. After *Steinbrecher*, those few courts that paused to consider the propriety of the void sentence rule

148. See *In re Alex T.*, 873 N.E.2d 1015, 1017 (Ill. App. Ct. 2007) (identifying *Steinbrecher*, 759 N.E.2d 509, as the first of three decisions in the “*Belleville Toyota* trio” of opinions). The third case of the *Belleville Toyota* trio, *People ex rel. Graf v. Village of Lake Bluff*, 975 N.E.2d 281 (Ill. 2003), came after *Belleville Toyota*.

149. *Steinbrecher*, 759 N.E.2d at 518–20.

150. *Id.* at 526.

151. *Id.* (quoting *People v. Davis*, 619 N.E.2d 750, 754 (Ill. 1993)) (internal quotation marks omitted).

152. See *supra* notes 114–30 and accompanying text.

153. See *Steinbrecher*, 759 N.E.2d at 526–27 (citing *People v. Arna*, 658 N.E.2d 445, 448 (Ill. 1995); *People v. Wade*, 506 N.E.2d 954, 955–56 (Ill. 1987); *Armstrong v. Obucino*, 133 N.E. 58, 59–60 (Ill. 1921); see also *supra* note 4 (tracking *Armstrong*’s influence on the void sentence rule).

154. *Steinbrecher*, 759 N.E.2d at 518–19 (repudiating *In re M.M.*, 619 N.E.2d 702 (Ill. 1993); *Wade*, 506 N.E.2d 954; *Armstrong*, 133 N.E. 58).

155. *Id.* at 520 (quoting *People v. Davis*, 619 N.E.2d 750, 754 (Ill. 1993)) (internal quotation marks omitted).

156. *Id.*

confronted not only the rule's tension with the Illinois Constitution but also language from *Steinbrecher* distinguishing the jurisdictional principles at play in criminal sentencing cases from those at play in all other cases.

For example, in *In re Alex T.*,¹⁵⁷ the Illinois Appellate Court addressed the question of whether a circuit court order forcing the respondent's involuntary admission to a mental health facility was void for lack of jurisdiction because the relevant statute purported to deny the circuit court jurisdiction under the facts of the case.¹⁵⁸ The court identified its "primary concern" as reconciling the statute with the current constitution's provision granting circuit courts general jurisdiction over all justiciable matters.¹⁵⁹ However, relying on *Steinbrecher*, as well as *People v. McCarty*,¹⁶⁰ another Supreme Court decision that suggested a criminal-civil distinction for jurisdictional purposes,¹⁶¹ the court concluded that any order "significantly restricting a person's liberty" requires "statutory authorization" in order "for a court to have jurisdiction to enter it."¹⁶² This attempted distinction between criminal and civil cases, however, is ultimately untenable, because the Illinois Constitution grants the circuit court jurisdiction over all justiciable matters without distinguishing criminal cases.¹⁶³ Indeed, the Illinois Supreme Court has stated in criminal cases the same jurisdictional principles of general circuit court jurisdiction that it explained in *Belleville Toyota*.¹⁶⁴ However, even though the distinction

157. 873 N.E.2d 1015 (Ill. App. Ct. 2007).

158. The statute at issue stated that "[t]he circuit court has jurisdiction under this Chapter over persons not charged with a felony who are subject to involuntary admission," and the respondent had been charged with a felony. *Id.* at 1016 (quoting 705 ILL. COMP. STAT. 5/3-100 (2004)).

159. *Id.* (citing ILL. CONST. art. VI, § 9; *People ex rel. Graf v. Vill. of Lake Bluff*, 795 N.E.2d 281, 286–88 (Ill. 2003); *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 770 N.E.2d 177, 186 (Ill. 2002); *Steinbrecher*, 759 N.E.2d at 518).

160. 445 N.E.2d 298 (Ill. 1983).

161. *McCarty* stated, "[A] conviction or an order significantly restricting the liberty of a defendant must have statutory authorization and is a nullity otherwise." *Id.* at 303. In its discussion of that issue, *McCarty* relied on pre-1964 case law, *see id.* (citing *People v. Edge*, 94 N.E.2d 359, 362 (Ill. 1950)), and *T.E.* and its progeny, *see id.* (citing *In re R.R.*, 442 N.E.2d 252, 253 (Ill. 1982) (citing *T.E.*, 423 N.E.2d 910, 913 (Ill. 1981)); *In re T.E.*, 423 N.E.2d at 914. *T.E.* is discussed *supra* at notes 132–43 and accompanying text.

162. *In re Alex T.*, 873 N.E.2d at 1019.

163. ILL. CONST. art. VI, § 9; *In re Nathan A.C.*, 904 N.E.2d 112, 120 (Ill. App. Ct. 2008) ("The 1970 Illinois Constitution does not differentiate between civil and criminal subject-matter jurisdiction.").

164. *See, e.g., People v. P.H.*, 582 N.E.2d 700, 705 (Ill. 1991) ("The Illinois Constitution provides that all circuit courts have original jurisdiction over all justiciable matters except where the supreme court is specified to have original and exclusive jurisdiction."); *see also In re Luis R.*, 941 N.E.2d 136, 140–42 (Ill. 2010) (applying *Belleville Toyota's* teachings to a juvenile delinquency case).

between criminal and civil jurisdiction has no legal basis, the fact that Illinois case law has proposed it illustrates Illinois courts' confusion with the void sentence rule.

A later Illinois Appellate Court decision, *In re Nathan A.C.*,¹⁶⁵ recognized the problem with the distinction upon which *Alex T.* relied¹⁶⁶ and attempted its own reconciliation. Relying on a special concurrence from another decision, the *Nathan A.C.* court reasoned that the discrepancy between *Belleville Toyota* and decisions that seemed to ignore *Belleville Toyota* could be explained by parsing "jurisdiction" into three separate issues: "(1) personal jurisdiction—or power over the individual; (2) subject[-]matter jurisdiction—or the ability to entertain a particular type of case; and (3) the power to render a particular disposition."¹⁶⁷ *Nathan A.C.* suggested that *Belleville Toyota*, unlike some seemingly conflicting decisions that held jurisdiction was controlled by statute, did not implicate the third type of jurisdictional issue.¹⁶⁸ That is, according to *Nathan A.C.*, in *Belleville Toyota* "the statutory provisions the trial court purportedly failed to comply with did not define the power to render a particular decision."¹⁶⁹

Although *Nathan A.C.* was right to question the civil-criminal distinction cited in *Alex T.*, its own attempted reconciliation fares no better. To harmonize the law on this point, *Nathan A.C.* resurrected the "power to render a particular decision" adjunct the Illinois Supreme Court had conspicuously omitted from its definition of "jurisdiction" in *Belleville Toyota*.¹⁷⁰ The Supreme Court discarded this adjunct for good reason: it had no legitimate basis in Illinois law,¹⁷¹ it conflated a court's power to hear a case (jurisdiction) with its power to reach a particular result,¹⁷² and it created an inscrutable distinction between regular errors and errors that implicate a court's "power to render a particular decision."¹⁷³

As *Alex T.* and *Nathan A.C.* demonstrate, the void sentence rule's survival, in the face of constitutional principles that should have eviscerated it, has left Illinois jurisdictional law a hodgepodge of

165. 904 N.E.2d 112.

166. *Id.* at 120 (criticizing *In re Alex T.*, 873 N.E.2d 1015).

167. *Id.* (quoting *In re Gilberto G.-P.*, 873 N.E.2d 534, 539 (Ill. App. Ct. 2007) (Grometer, J., concurring) (internal quotation marks omitted)).

168. *Id.* at 121.

169. *Id.*

170. *See supra* note 94 and accompanying text.

171. *See supra* notes 57–66 and accompanying text.

172. *See supra* notes 73–74 and accompanying text.

173. *See supra* notes 75–76 and accompanying text.

irreconcilable ideas. So long as the void sentence rule persists, it will continue to undermine any efforts—including the Illinois Supreme Court’s efforts in *Belleville Toyota* and related cases¹⁷⁴—to clarify the state’s jurisdictional principles. The Supreme Court’s attempted corrections will never fully take hold until they are no longer forced to compete with the void sentence rule. Thus, this study of Illinois law leads inexorably to but one conclusion: the Illinois Supreme Court must recognize, as the dissenting opinions in *Siman* and *T.E.* recognized from the start, that the void sentence rule has no basis in Illinois law and should be repudiated.

This solution, however, raises a new problem. Although the abolition of the void sentence rule would clear away the morass of incongruous jurisdictional law described above, it would also offend the normative principle, set forth at the outset of this article, that parties should enjoy the right to challenge an illegal sentence at any time. Indeed, as *Siman* and *T.E.* demonstrate, even in the face of argument irrefutably demonstrating the error of the void sentence rule, Illinois courts have refused to renounce it where doing so would leave parties with no vehicle for challenging improper sentences. Hence, as a practical matter, renunciation is but half of the solution; the other half requires that the void sentence rule be replaced with some workable basis for allowing collateral attacks on improper sentences. Accordingly, either to replace Illinois’ void sentence rule or, more likely, to provoke Illinois courts’ repudiation of the rule, some new basis for correcting sentences must be emplaced. As will be seen, the Illinois legislature could provide just such a new basis very easily.

III. APPROACHES TAKEN IN OTHER STATES

Even if its void sentence rule cannot withstand scrutiny, Illinois hardly stands alone in its ultimate view that an improper sentence may be challenged at any time. Such challenges may be made by a defendant, and sometimes by the State or by the court itself, in federal courts,¹⁷⁵ as well as courts in every state except Arkansas,¹⁷⁶

174. See *In re Alex T.*, 873 N.E.2d 1015, 1017 (Ill. App. Ct. 2007) (referencing the “*Belleville Toyota* trio” of opinions); see also *In re Luis R.*, 941 N.E.2d 136, 140 (Ill. 2010) (reiterating the holding of *Belleville Toyota*).

175. FED. R. CRIM. P. 35 (“The court may correct an illegal sentence at any time.”); *Hill v. United States*, 368 U.S. 424, 430 (1962) (“Rule 35 . . . permit[s] correction at any time of an illegal sentence . . .”).

176. Arkansas has a statute providing, “Any circuit court, upon receipt of petition by the aggrieved party for relief and after notice of the relief has been served on the prosecuting attorney, may correct an illegal sentence at any time” ARK. CODE ANN. § 16-90-111(a) (West 2010); see *Reeves v. State*, 5 S.W.3d 41, 44 (Ark. 1999) (“Our statutes provide that a

Arizona,¹⁷⁷ and Maine.¹⁷⁸ A survey of those jurisdictions' rationales for correcting erroneous sentences provides several alternatives—some workable, some not—to Illinois' current voidness rationale for correcting improper sentences.

A. *Other-State Approaches that Would Not Work in Illinois*

Of the states that allow challenges to improper sentences at any time, relatively few base their positions on concepts of jurisdiction and voidness. However, those few states that do rely on jurisdiction and voidness principles—Alabama,¹⁷⁹ Montana,¹⁸⁰ Ohio,¹⁸¹ Oregon,¹⁸² and

circuit court may correct an illegal sentence at any time.”). However, the Arkansas Supreme Court has ruled that the statute is superseded by a court rule setting forth a time limitation. *State v. Wilmoth*, 255 S.W. 419, 424 (Ark. 2007).

177. *See* ARIZ. R. CRIM. P. 24.3 (“The court may correct any unlawful sentence or one imposed in an unlawful manner *within 60 days of the entry of judgment . . .*” (emphasis added)); ARIZ. R. CRIM. P. 32.2 (listing exceptions to the rule precluding collateral challenges based on arguments that could have been raised on direct appeal, and not including illegal-sentence issues among the exceptions); *see also* *State v. Dawson*, 792 P.2d 741, 749 (Ariz. 1990) (“[W]e will continue to decline correction of illegally lenient sentences in the absence of proper appeals or cross-appeals by the state.”); *State v. Williams*, 2 CA-CR 2009-0354-PR, 2010 WL 972577, at *2 (Ariz. Ct. App. Mar. 17, 2010) (holding that defendant was precluded from raising an illegal-sentence claim after exhausting his direct appeals); *State v. Bryant*, 200 P.3d 1011, 1014–15 (Ariz. Ct. App. 2008) (rejecting the view that illegal sentences are void or that illegal sentences raise jurisdictional issues, and holding that the State lost its ability to challenge an illegal trial court order when the State failed to appeal).

178. *Compare* ME. R. CRIM. P. 35(a) (“On motion of the defendant or the attorney for the state, or on the court’s own motion, *made within one year after a sentence is imposed*, the justice or judge who imposed sentence may correct an illegal sentence . . .” (emphasis added)), and ME. REV. STAT. ANN. tit. 15, § 2128(5) (2009) (placing one-year time limit on collateral postconviction relief from illegal sentences), *with, e.g.*, FED. R. CRIM. P. 35 (“The court may correct an illegal sentence at any time.”). Maine is also unusually restrictive in its provision for normal sentencing challenges, even on direct review. Maine requires defendants to raise such challenges by application to the Maine Supreme Court. *Id.* § 2151; *State v. Frechette*, 687 A.2d 628, 629 (Me. 1996) (“Review of the ‘propriety’ of a sentence is committed to the sentence review process.”). The Maine Supreme Court will intervene only in the event of a “misapplication of principle.” *State v. Bolduc*, 638 A.2d 725, 727 (Me. 1994). *See generally* Aaron T. Morel, Department of Corrections v. Superior Court: *Hear No Evil*, 48 ME. L. REV. 123, 132–34 (1996) (describing Maine’s sentence review process). Maine does, however, allow defendants to circumvent the sentence review process to raise illegal-sentence issues on direct appeal without applying to the Maine Supreme Court. *See, e.g.*, *State v. Parker*, 372 A.2d 570, 572 (Me. 1977) (“Since [an illegal sentence] . . . would be ‘jurisdictional’ in nature, it would, as such, be cognizable on direct appeal even if asserted for the first time at the appellate level.”).

179. Alabama law holds that “[a] challenge to an illegal sentence . . . is a jurisdictional matter than can be raised at any time.” *Ex parte Batey*, 958 So. 2d 339, 342 (Ala. 2006).

180. In Montana, “[a]n illegal sentence is void to the extent it exceeds statutory authority; only the portion of the sentence beyond the district court’s statutory authority is illegal.” *State v. Coluccio*, 214 P.3d 1282, 1288 (Mont. 2009); *see also* *DeShields v. State*, 132 P.3d 540, 543 (Mont. 2006) (“A sentence in excess of one prescribed by law is not void ab initio because of the excess, but is good insofar as the power of the court extends and is invalid only as to the excess.”). This mirrors the limited voidness approach taken in Illinois, *see supra* note 55, and

Virginia¹⁸³—provide no real departure from the current, flawed Illinois approach and therefore provide no alternative to the void sentence rule.¹⁸⁴

Other states—Georgia,¹⁸⁵ New York,¹⁸⁶ Pennsylvania,¹⁸⁷ and possibly New Hampshire¹⁸⁸—cite their trial courts' inherent authority

Virginia, *see infra* note 183.

181. Under Ohio law, a sentence unauthorized by law is “unlawful” and thus “a nullity and void.” *State v. Simpkins*, 884 N.E.2d 568, 575 (Ohio 2008), *superseded on other grounds by statute*, OHIO REV. CODE ANN. § 2929.191 (West 2006), *as explained in State v. Singleton*, 920 N.E.2d 958, 962–65 (Ohio 2009). “A trial court’s jurisdiction over a criminal case is limited after it renders judgment, but it retains jurisdiction to correct a void sentence and is authorized to do so.” *Id.*

182. Voidness is but one of two approaches in Oregon. *See State v. Pinkowski*, 826 P.2d 10, 12 (Or. Ct. App. 1992). Oregon’s second approach is discussed *infra* at notes 235–36. Oregon’s voidness approach states that “any non-conforming sentence is void for lack of authority and thus totally without legal effect.” *State v. Leathers*, 531 P.2d 901, 903 (Or. 1975).

183. In reaching an illegal-sentence issue that might otherwise have been defaulted, the Virginia Supreme Court reasoned that “[w]ant of subject matter jurisdiction may be raised by motion” and that “a circuit court may correct a void or unlawful sentence at any time.” *Rawls v. Commonwealth*, 683 S.E.2d 544, 547 (Va. 2009) (quoting *Va. Dep’t of Corr. v. Crowley*, 316 S.E.2d 439, 443 (Va. 1984)). Virginia law considers only the excessive portion of the sentence void, however; the remainder of the sentence is valid up to the legal maximum. *Id.* This mirrors the limited voidness approach taken in Illinois, *see supra* note 55, and Montana, *see supra* note 180.

184. Three of these five states have trial courts of limited jurisdiction. *See* ALA. CONST. amend. 328, § 6.04(b) (“The circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law.”); OHIO CONST. art. 4, § 4.04(B) (“The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters . . . as may be provided by law.”); VA. CONST. art. VI, § 1 (“Subject to [limitations not relevant here], the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth.”). Of the remaining two states, Oregon does not rely exclusively on jurisdiction and voidness principles, *see supra* note 182, and Montana’s voidness analysis eschews reliance on jurisdictional principles but provides no alternative basis, *see DeShields v. State*, 132 P.3d 540, 542–43 (Mont. 2006).

185. *See Harper v. State*, 686 S.E.2d 786, 786 n.1 (Ga. 2009) (stating that the theory allowing correction of erroneous sentences “[is] that a sentencing court retains jurisdiction to correct a void sentence at any time” (quoting *Williams v. State*, 523 S.E.2d 857, 860 (Ga. 1999))).

186. *People v. Williams*, 925 N.E.2d 878, 886 (N.Y. 2010) (noting that “[New York] precedent has long recognized that courts have the inherent authority to correct illegal sentences” even after the expiration of the normal one-year statutory period for the State to file a motion to correct the sentence under N.Y. CRIM. PROC. LAW § 440.40 (McKinney 2005)).

187. *Commonwealth v. Holmes*, 933 A.2d 57, 65 (Pa. 2007) (stating that the trial courts’ corrections of the sentences at issue “[fell] within the limited class of cases amenable to the exercise by a trial court of the inherent power to correct patent errors despite the absence of traditional jurisdiction”).

188. The source of New Hampshire courts’ authority to correct erroneous sentences is not immediately clear. The New Hampshire Supreme Court recently stated that “the trial court has the authority to reduce, modify or correct [an illegal sentence] at any time.” *State v. Fletcher*, 965 A.2d 1000, 1003 (N.H. 2009). For this proposition, it relied on *State v. Thompson*, 263 A.2d 675, 677 (N.H. 1970), and *State v. Richard*, 106 A.2d 194, 196 (N.H. 1954). *Thompson* relied on *Richard* as well as another case, *Doyle v. O’Dowd*, 159 A. 301, 302 (N.H. 1932). *Richard* in turn

(or continuing jurisdiction) to correct erroneous sentences at any time. The difficulty with this approach echoes one of the difficulties with Illinois' current void sentence rule: this inherent authority idea assumes that sentencing courts retain jurisdiction over their orders to reopen and correct them long after they had been assumed closed and final. This idea contravenes one of the most basic principles of appellate review, which holds, with limited exceptions not applicable in this context, that a reviewing court may review only a final order.¹⁸⁹ If a final order that has been appealed becomes retroactively non-final, or retroactively void in full, then any appeal from that order would likewise become retroactively void as having been taken prior to a final order or taken from an order that never existed.¹⁹⁰ To avoid this analytical problem, any workable rule for correcting erroneous sentences must begin as a separate action from the action underlying the sentence, not as a delayed continuation of the underlying action.

Still other states allow defendants to challenge improper sentences via collateral civil proceedings. California,¹⁹¹ Missouri,¹⁹² New

relied on *Doyle*. *Doyle* appears to cite only the proposition that a court may correct a clerical error at any time. See *Doyle*, 159 A. at 302 (“Apparently the [mistake] by the trial justice was a mere inadvertence. If so, he has jurisdiction to correct the record to accord with the facts.”).

189. See *supra* notes 67–72 and accompanying text.

190. See *supra* notes 67–72 and accompanying text.

191. Under California law, a challenge to an unauthorized sentence will not be procedurally barred on habeas corpus review if it was previously rejected or never raised. *People v. Scott*, 885 P.2d 1040, 1054 (Cal. 1994) (citing *In re Harris*, 855 P.2d 391, 405–06 (Cal. 1993), and *Neal v. California*, 357 P.2d 839, 842 (Cal. 1961), for the proposition that California courts entertain habeas corpus review of unauthorized sentences). California allows habeas corpus relief only for limited grounds that do not expressly include illegal sentences. See CAL. PENAL CODE § 1487 (West 2010). However, among the enumerated grounds for habeas corpus relief is the idea that “the jurisdiction of [a detaining] Court or officer has been exceeded.” *Id.* California law has developed a broad definition of the term “jurisdiction” for purposes of its habeas corpus statute. See *Neal*, 357 P.2d at 841 (“The word jurisdiction is not limited to its conventional meaning of jurisdiction of the cause or the parties when the right to review a decision by a prerogative writ is the question for decision.”). This broad definition of “jurisdiction” gives defendants the right to challenge improper sentences via habeas corpus. *Id.* at 841–42; see also *People v. Andrade*, 121 Cal. Rptr. 2d 923, 925 (Ct. App. 2002) (“Claims involving unauthorized sentences or sentences entered in excess of jurisdiction can be raised at any time.”).

192. Missouri’s habeas corpus statute contains the following provision:

No person shall be entitled to the benefit of the provisions of this chapter for the reason that the judgment by virtue of which such person is confined was erroneous as to time or place of imprisonment; but in such cases it shall be the duty of the court or officer before whom such relief is sought to sentence such person to the proper place of confinement and for the correct length of time from and after the date of the original sentence, and to cause the officer or other person having such prisoner in charge to convey him forthwith to such designated place of imprisonment.

MO. REV. STAT. § 532.400 (2002); see also *Thomas v. Dormire*, 923 S.W.2d 533, 533 (Mo. Ct. App. 1996) (holding that defendant who did not challenge the legality of his sentence on direct

Mexico,¹⁹³ South Carolina,¹⁹⁴ Tennessee,¹⁹⁵ and Texas¹⁹⁶ entertain such challenges in habeas corpus actions; Massachusetts,¹⁹⁷ Mississippi,¹⁹⁸ Nebraska,¹⁹⁹ North Carolina,²⁰⁰ Oklahoma,²⁰¹

appeal nonetheless could do so in a collateral proceeding); *Merriweather v. Grandison*, 904 S.W.2d 485, 487 (Mo. Ct. App. 1995) (applying section 532.400 to an improper-sentence case).

193. N.M. R. CRIM. P. 5-502 (governing habeas corpus review); *see* N.M. R. CRIM. P. 5-801(A) (“The court may correct an illegal sentence at any time pursuant to Rule 5-802”); *State v. Corbin*, 809 P.2d 57, 62 (N.M. Ct. App. 1991) (“The district court may correct an illegal sentence at any time.” (citing Rule 5-801(A) and correcting a clerical error)).

194. *State v. Johnston*, 489 S.E.2d 228, 231 (S.C. Ct. App. 1998) (holding that defendant had waived his challenge to illegal sentence on direct appeal but noting that he could pursue his claim via a writ of habeas corpus), *rev'd on other grounds*, 510 S.E.2d 423, 425 (S.C. 1999) (agreeing with appellate court analysis but allowing the defendant relief on direct appeal due to “exceptional circumstances” of the case). A defendant seeking habeas corpus relief for a matter cognizable under South Carolina’s Uniform Post Conviction Procedure Act, S.C. CODE ANN. §§ 17-27-10 to -160 (2003), however, is limited to pursuing the South Carolina Supreme Court’s discretionary constitutional habeas corpus review. *Simpson v. State*, 495 S.E.2d 429, 431 (S.C. 1998) (citing S.C. CONST. art. V, § 5). That review allows the South Carolina Supreme Court to correct “violation[s] which, in the setting, constitute[] a denial of fundamental fairness shocking to the universal sense of justice.” *Simpson*, 495 S.E.2d at 431 n.4 (quoting *Butler v. State*, 397 S.E.2d 87, 88 (S.C. 1990) (internal quotation marks omitted)). Illegal sentences fall within this definition. *Johnston*, 489 S.E.2d at 231.

195. TENN. CODE ANN. §§ 29-21-101 to -130 (2005); *Summers v. State*, 212 S.W.3d 251, 256 (Tenn. 2007) (“A habeas corpus petition . . . is the proper procedure for challenging an illegal sentence.”). Although Tennessee law states that it will allow habeas corpus relief only from void judgments, it defines “void judgments” differently than does Illinois law. While the term “void” in Illinois denotes a jurisdictional defect, in Tennessee it refers to judgments that are “facially invalid because the court did not have the statutory authority to render such judgment.” *Summers*, 212 S.W.3d at 256.

196. TEX. CODE CRIM. PROC. ANN. art. 11.01–.65 (West 2005); *see Ex Parte Beck*, 922 S.W.2d 181, 182 (Tex. Crim. App. 1996) (applying habeas corpus relief to an improper sentence, relying on concepts of voidness). Texas courts may also on their own motions grant habeas corpus relief to a defendant. TEX. CODE CRIM. PROC. ANN. art. 11.16 (West 2005).

197. MASS. R. CRIM. P. 30(a) (allowing collateral relief at any time to correct sentences “imposed in violation of the Constitution or laws of the United States or the Commonwealth of Massachusetts”); *Commonwealth v. Ravenell*, 612 N.E.2d 1142, 1142 (Mass. 1993) (stating that a defendant may file a motion to correct an illegal sentence at any time).

198. MISS. CODE ANN. § 99-39-5(1)(a) (West 2006) (allowing postconviction relief on the ground “[t]hat the conviction or the sentence was imposed in violation of the Constitution of the United States or the Constitution or laws of Mississippi”). Although Mississippi’s Post Conviction Relief Act contains a time limitation, MISS. CODE ANN. § 99-39-5(2) (West 2006), Mississippi courts have held that the time limit does not apply to erroneous-sentence claims, *Ivy v. State*, 731 So. 2d 601, 603 (Miss. 1999).

199. NEB. REV. STAT. § 29-3001 (2008) (“A prisoner in custody under sentence and claiming a right to be released on the ground that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, may file a verified motion at any time in the court which imposed such sentence, stating the grounds relied upon, and asking the court to vacate or set aside the sentence.”); *State v. Lotter*, 771 N.W.2d 551, 559 (Neb. 2009) (stating that there is no time limit for a defendant’s filing for relief under section 29-3001). There is, however, some Nebraska precedent that relies on voidness concepts for challenges to sentences. *See State v. Lotter*, 586 N.W.2d 591, 633 (Neb. 1998) (“When a sentence imposed is unauthorized under law, it is void

Washington,²⁰² and Wisconsin²⁰³ entertain such challenges through their versions of what Illinois calls the Post-Conviction Hearing Act.²⁰⁴ Although Illinois law allows for either type of proceeding,²⁰⁵ neither is easily amenable to incorporating a replacement for the void sentence rule, for the simple reason that Illinois law currently allows the State to challenge a sentence below the statutory range just as it allows a defendant to challenge a sentence above the statutory range.²⁰⁶ Both civil remedies, however, are designed to be instigated by a defendant or on a defendant's behalf, not by the State (or a court).²⁰⁷ Thus,

. . . .”). *But see* *Hickman v. Fenton*, 231 N.W. 510, 512 (Neb. 1930) (rejecting the argument that an illegal sentence is void). *Hickman* was cited in the line of cases leading to *Lotter's* contrary statement in 1998. *See Lotter*, 586 N.W.2d at 633 (citing *State v. Wilcox*, 479 N.W.2d 134, 136 (Neb. 1992) (citing, *inter alia*, *State v. Gaston*, 214 N.W.2d 376, 377 (Neb. 1974) (citing, *inter alia*, *Hickman*, 231 N.W. at 512))). The later cases presumably control, despite their dubious pedigree.

200. N.C. GEN. STAT. § 15A-1415(b)(8) (2007) (listing among grounds for relief that “[t]he sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record . . . , or is otherwise invalid as a matter of law”); *State v. Morgan*, 425 S.E.2d 1, 4 (N.C. Ct. App. 1993) (stating that section 1415(b)(8) allows a defendant to bring a motion arguing the illegality of his or her sentence).

201. OKLA. STAT. tit. 22, § 1080(c) (2010) (allowing a collateral attack on a sentence on the ground that “the sentence exceeds the maximum authorized by law” and stating no time limitation); *King v. State*, 29 P.3d 1089, 1091 (Okla. Crim. App. 2001) (collecting cases in which defendants were allowed to raise illegal-sentence challenges collaterally).

202. WASH. R. APP. P. 16.4(c)(2) (listing among grounds for relief that “the sentence . . . was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington”); *In re Call*, 28 P.3d 709, 717 (Wash. 2001) (applying Rule 16.4(c)(2) to a collateral attack on an unauthorized sentence). Although Washington's statute imposes a one-year time limit on collateral relief, WASH. REV. CODE § 10.73.090 (2010), Washington courts have exempted improper-sentence challenges from the time limit, *In re Goodwin*, 50 P.3d 618, 621–22 (Wash. 2002).

203. WIS. STAT. ANN. § 974.06 (West 2008) (allowing postconviction relief on ground that “the sentence was in excess of the maximum authorized by law” and allowing defendant to file a motion for such relief “at any time”); *see State v. Coolidge*, 496 N.W.2d 701, 708 (Wis. Ct. App. 1993) (granting relief to defendant arguing an illegal sentence under section 974.06), *abrogated on other grounds by State v. Tjepelman*, 717 N.W.2d 1, 2 (Wis. 2006). Wisconsin's postconviction remedy is actually not collateral, but is “part of the original criminal action.” WIS. STAT. ANN. § 974.06(2). This postconviction remedy is one of two avenues Wisconsin provides for correcting erroneous sentences. *See infra* note 208.

204. 725 ILL. COMP. STAT. 5/122-1 to -8 (2008).

205. *Id.* (Post-Conviction Hearing Act); 735 ILL. COMP. STAT. 5/10-101 to -137 (2008) (habeas corpus).

206. *See People v. Malchow*, 739 N.E.2d 433, 443 (Ill. 2000) (explaining that a sentence below the statutory minimum may be corrected on review even though the State may not normally challenge a defendant's sentence on appeal).

207. 725 ILL. COMP. STAT. 5/122-1 (“Any person imprisoned in the penitentiary may institute a proceeding under [the Post-Conviction Hearing Act]”); 735 ILL. COMP. STAT. 5/10-102 (“Every person imprisoned or otherwise restrained of his or her liberty . . . may apply for habeas corpus”); *id.* § 5/10-103 (“Application [for habeas corpus relief] shall be made by complaint

incorporation of improper-sentence claims into Illinois' Post-Conviction or habeas corpus statutes would do nothing to preserve the State's ability to challenge an illegally lenient sentence upon the exhaustion of a direct appeal. Illinois must, therefore, look elsewhere for its solution to the void sentence problem.

The same difficulty—the absence of recourse for the State in the event of an erroneously lenient sentence—afflicts Michigan and Wisconsin statutes that otherwise perfectly codify Illinois' view of erroneous sentences by declaring only the excess void and the remainder (up to the maximum) valid.²⁰⁸ Those states' solutions therefore also fail as alternatives for Illinois' void sentence rule.

B. Other-State Approaches that Would Work in Illinois

If Illinois were to eschew its void sentence rule, as it should, none of the above approaches would work as viable replacements to allow Illinois law to preserve its preferred result that a sentence that deviates from statutory limits may be corrected at any time. The approaches used in the remaining U.S. states, however, avoid all of the above problems, yet still accomplish sentence correction through a very simple solution: statutes or court rules stating that courts may entertain motions at any time to correct illegal sentences.

By far the most popular iteration of this approach is the course taken in federal courts as well as a strong plurality of twenty states. These jurisdictions have adopted (in some place other than rule or statutory provisions regarding habeas corpus or Post-Conviction remedies) a

signed by the person for whose relief it is intended, or by some person in his or her behalf . . ."). Incorporation of the void sentence rule into the Post-Conviction Hearing Act would also require modification of the Act's time restrictions, 725 ILL. COMP. STAT. 5/122-1(c), its waiver provisions, *id.* § 5/122-3, and the res judicata preclusion of issues that could have been raised on direct appeal, *People v. Williams*, 807 N.E.2d 448, 452 (Ill. 2004), by carving out exceptions for improper sentences.

208. Michigan's statute provides that whenever a punishment is imposed in excess of that allowed by law, "the judgment shall not for that reason alone be judged altogether void, nor be wholly reversed and annulled by any court of review"; rather, "the same shall be valid and effectual to the extent of the lawful penalty, and shall only be reversed or annulled on writ of error or otherwise, in respect to the unlawful excess." MICH. COMP. LAWS § 769.24 (2006); *see also* *People v. Thomas*, 523 N.W.2d 215, 216 (Mich. 1994) (ordering correction of a defendant's illegal sentence pursuant to a motion he filed "[s]everal months after" his sentence). Wisconsin's statute provides, "In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings." WIS. STAT. § 973.13 (2008); *see also* *State v. Mikulance*, 713 N.W.2d 160, 164 (Wis. Ct. App. 2006) (explaining that procedural waiver bars do not apply to illegal-sentence corrections under section 973.13). Wisconsin also allows defendants to move to correct erroneous sentences through collateral civil proceedings. *See supra* note 203.

statute or court rule akin to Rule 35 of the Federal Rules of Criminal Procedure, which provides, “The court may correct an illegal sentence at any time.”²⁰⁹ This language, or very similar language, has been adopted by rule or statute in Alaska,²¹⁰ Colorado,²¹¹ Connecticut,²¹² Delaware,²¹³ Florida,²¹⁴ Hawaii,²¹⁵ Idaho,²¹⁶ Iowa,²¹⁷ Kansas,²¹⁸ Louisiana,²¹⁹ Maryland,²²⁰ Minnesota,²²¹ Nevada,²²² North Dakota,²²³

209. FED. R. CRIM. P. 35(a).

210. ALASKA R. CRIM. P. 35(a) (“The court may correct an illegal sentence at any time.”); *Thibedeau v. State*, 617 P.2d 759, 761 (Alaska 1980) (quoting Rule 35(a)).

211. COLO. R. CRIM. P. 35(a) (“The court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time”); *People v. Rockwell*, 125 P.3d 410, 414 (Colo. 2005) (“[A] court may correct an illegal sentence at any time.”).

212. CONN. SUPER. CT. R. 43-22 (“The judicial authority may at any time correct an illegal sentence or other illegal disposition”); *State v. Tabone*, 902 A.2d 1058, 1062 (Conn. 2006) (stating that a court may correct an illegal sentence at any time).

213. DEL. SUPER. CT. R. CRIM. P. 35(a) (“The court may correct an illegal sentence at any time”); *Boyer v. State*, No. 418,2002, 2003 WL 21810824, at *2 (Del. Aug. 4, 2003) (providing that the court may “correct an illegal sentence at any time”); *State v. Lewis*, 797 A.2d 1198, 1203 (Del. 2002) (Steele, J., dissenting) (explaining that an illegal sentence may be corrected at any time before disputing the majority’s interpretation of a related point of law).

214. FLA. R. CRIM. P. 3.800(a) (“A court may at any time correct an illegal sentence imposed by it”); *Carter v. State*, 786 So. 2d 1173, 1176 (Fla. 2001) (reciting history of Florida’s rule that an illegal sentence may be corrected at any time).

215. HAW. R. PENAL P. 35(a) (“The court may correct an illegal sentence at any time”); *State v. Fry*, 602 P.2d 13, 16 (Haw. 1979) (“The court can always reform an illegal sentence.”).

216. IDAHO CRIM. R. 35(a) (“The court may correct a sentence that is illegal from the face of the record at any time.”); *State v. Clements*, 218 P.3d 1143, 1145 (Idaho 2009) (“Idaho Criminal Rule 35 is a narrow rule that allows a trial court to correct an illegal sentence at any time”).

217. IOWA R. CRIM. P. 2.24(5)(a) (“The court may correct an illegal sentence at any time.”); *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010) (“[I]llegal sentences may be corrected at any time.”).

218. KAN. STAT. ANN. § 22-3504(1) (West 2010) (“The court may correct an illegal sentence at any time.”); *State v. McCoin*, 101 P.3d 1204, 1207 (Kan. 2004) (stating the rule that the court may “correct an illegal sentence at any time”).

219. LA. CODE CRIM. PROC. ANN. art 882(A) (2008) (“An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.”); *State v. Sanders*, 876 So. 2d 42, 42 (La. 2004) (per curiam) (stating that courts may correct sentences outside the statutory range at any time).

220. MD. R. 4-345(a) (“The court may correct an illegal sentence at any time.”); *State v. Wilkins*, 900 A.2d 765, 767 (Md. 2006) (“The court may correct an illegal sentence at any time.”).

221. MINN. R. CRIM. P. 27.03, subdiv. 9 (“The court may at any time correct a sentence not authorized by law.”); *State v. Cook*, 617 N.W.2d 417, 418 (Minn. Ct. App. 2000) (“The district court has jurisdiction at any time to correct a sentence that is not authorized by law.”).

222. NEV. REV. STAT. § 176.555 (2010) (“The court may correct an illegal sentence at any time.”); *Edwards v. State*, 918 P.2d 321, 324 (Nev. 1996) (explaining that time limitations do not apply to a trial court’s power to correct an illegal sentence).

223. N.D. R. CRIM. P. 35(a) (“The sentencing court may correct an illegal sentence at any time”); *State v. Leingang*, 763 N.W.2d 769, 773 (N.D. 2009) (explaining that a sentence outside statutory limits is an “illegal sentence” and that Rule 35 allows “a sentencing court [to] correct an

Rhode Island,²²⁴ South Dakota,²²⁵ Utah,²²⁶ Vermont,²²⁷ West Virginia,²²⁸ and Wyoming.²²⁹ This simple rule avoids the troublesome jurisdictional lexicon that plagues Illinois jurisprudence on the subject, reaches the same result as the “inherent power” states without resorting to concepts of interminable sentencing court jurisdiction, by its language does not suffer from the time (and other) constraints that hinder defendants’ habeas corpus or Post-Conviction remedies, and is not limited to relief for defendants as are the Michigan and Wisconsin statutes.

The three remaining states—Indiana, Kentucky, and New Jersey—as well as Oregon, which provides two avenues for correction of illegal sentences,²³⁰ have devised unique statutes or court rules to confront the erroneous-sentence problem. Indiana law provides, “If [a] convicted person is erroneously sentenced, the mistake does not render the sentence void”; instead, the sentence should be corrected after notice to the defendant.²³¹ Through two separate court rules, Kentucky allows a prisoner to bring a motion attacking his or her sentence on the ground that it is either “subject to collateral attack”²³² or that the judgment

illegal sentence at any time”).

224. R.I. R. CRIM. P. 35(a) (“The court may correct an illegal sentence at any time.”); *State v. Linde*, 965 A.2d 415, 416 (R.I. 2009) (stating that sentences correctable at any time under Rule 35(a) include those in excess of statutory limits).

225. S.D. CODIFIED LAWS § 23A-31-1 (Rule 35) (2010) (“A court may correct an illegal sentence at any time”); *State v. Kramer*, 754 N.W.2d 655, 656 (S.D. 2008) (quoting Rule 35).

226. UTAH R. CRIM. P. 22(e) (“The court may correct an illegal sentence . . . at any time.”); *State v. Candedo*, 232 P.3d 1008, 1016 (Utah 2010) (stating that a sentence beyond statutory limits is illegal and that illegal sentences may be corrected at any time).

227. VT. R. CRIM. P. 35(a) (“The court may correct an illegal sentence at any time”); *State v. Oscarson*, 898 A.2d 123, 126 (Vt. 2006) (stating that an illegal sentence is one not authorized by statute and that such sentences may be corrected at any time).

228. W. VA. R. CRIM. P. 35(a) (“The court may correct an illegal sentence at any time”); *State v. McBride*, 658 S.E.2d 547, 554 (W. Va. 2007) (quoting and applying Rule 35(a)).

229. WYO. R. CRIM. P. 35(a) (“The court may correct an illegal sentence at any time.”); *Endris v. State*, 223 P.3d 578, 583 (Wyo. 2010) (“Our rules of criminal procedure authorize a trial court to correct an illegal sentence at any time.” (quoting *Sarr v. State*, 166 P.3d 891, 895 (Wyo. 2007))).

230. *See supra* note 182; *infra* notes 235–36.

231. IND. CODE § 35-38-1-15 (2004); *see also* *Robinson v. State*, 805 N.E.2d 783, 785–86 (Ind. 2004) (holding that section 35-38-1-15 provides an alternative avenue of collateral relief from an illegal sentence, without any time limitation). This statute, unlike those in Michigan and Wisconsin, *see supra* note 208, does not limit its application to excessive sentences.

232. KY. R. CRIM. P. 11.42(1); *see* *Myers v. Commonwealth*, 42 S.W.3d 594, 596 (Ky. 2001) (identifying Rule 11.42(1) as an avenue to challenge an illegal sentence), *overruled on other grounds* by *McClanahan v. Commonwealth*, 308 S.W.3d 694 (Ky. 2010). The rule’s reference to grounds for a “collateral attack” likely stems from its history as an attempt to modernize, and thus displace, traditional habeas corpus remedies. *See generally* John S. Gillig, *Kentucky Post-*

warrants extraordinary relief.²³³ In addition to the voidness rationale described above,²³⁴ Oregon also has a statute stating that a sentencing court “retain[s] authority irrespective of any notice of appeal after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors or to delete or modify any erroneous term in the judgment”;²³⁵ this language has been interpreted to apply to sentences that fall outside the statutory range.²³⁶ New Jersey has a court rule providing that “[a] motion may be filed and an order may be entered at any time . . . correcting a sentence not authorized by law.”²³⁷

If adopted in place of the void sentence rule, any of these latter approaches—the approach based on Rule 35 of the Federal Rules of Criminal Procedure, and the four unique approaches taken in Indiana, Kentucky, New Jersey, and Oregon—would relieve the tension between the void sentence rule and incompatible constitutional principles. The Rule 35 approach, however, promises something the unique approaches cannot: the trappings of conformity. If it were to adopt a rule akin to that used in federal courts and twenty state courts, Illinois would appropriate a ready-made and extensive library of authority illuminating the nuances of the rule in each of the jurisdictions that use it. That possibility—an Illinois scheme for correcting sentences that is cohesive not just with the remainder of Illinois law but also with a plurality of United States jurisdictions—strongly commends Rule 35 to Illinois law.

C. How Illinois Could Adopt Rule 35 of the Federal Rules of Criminal Procedure

The above discussion thus suggests a somewhat ironic solution to the void sentence problem. The problem, created by the Illinois courts’ improper reliance on statutes to define their jurisdictional reach, can be solved by the enactment of a statute. The difference, of course, is that a new statute adopting Rule 35 would not purport to define circuit court

Conviction Remedies and the Judicial Development of Kentucky Rule of Criminal Procedure 11.42, 83 KY. L.J. 265 (1994–1995) (discussing Kentucky law for collateral challenges to incarceration).

233. KY. R. CIV. P. 60.02; *see Myers*, 42 S.W.3d at 596 (citing Rule 60.02 as an avenue to challenge an illegal sentence).

234. *See supra* note 182.

235. OR. REV. STAT. § 138.083 (2010).

236. *State v. Graham*, 923 P.2d 664, 665–66 (Or. Ct. App. 1996).

237. N.J. R. CT. 3:21-10(b); *see State v. Murray*, 744 A.2d 131, 134–36 (N.J. 2000) (discussing challenges to illegal sentences that could be filed under former version of Rule 3:22-12, which had an illegal-sentence provision that is now contained in Rule 3:21-10(b)).

jurisdiction; rather, it would create a justiciable matter (a challenge to a sentence) with no statutory time limit.

As for how this statutory change could be implemented, the solution is quite simple. Section 2-1401 of the Illinois Code of Civil Procedure²³⁸ already contains a scheme through which parties may obtain relief from judgments, including criminal judgments.²³⁹ In fact, section 2-1401 has been used to challenge sentences under the void sentence rule.²⁴⁰ As it now reads, section 2-1401 provides that, with three specific exceptions, a petition for relief “must be filed not later than 2 years after the entry of the order or judgment” unless the party seeking relief was under duress or disability or the ground for relief was fraudulently concealed.²⁴¹ It would be a simple matter indeed for the legislature to add a fourth exception by adopting Rule 35’s language that “[t]he court may correct an illegal sentence at any time.” In so doing, the legislature would compel Illinois courts not only to acknowledge the problems created by the void sentence rule but also to fix them by renouncing the rule in favor of the new legislative enactment.

There are but two immediate difficulties with the solution that Illinois incorporate Rule 35 of the Federal Rules of Criminal Procedure into its section 2-1401, and neither difficulty is significant. First, because section 2-1401 provides for a collateral action for relief from judgment, it could not confer to parties the opportunity to correct an improper sentence on direct review (i.e., disregard any forfeiture caused by the failure to raise the sentencing issue before the trial court). Thus, if the void sentence rule were to be replaced through changes to section 2-1401, Illinois law would have to make two more changes to accommodate the interests of defendants and the State to challenge improper sentences on direct appeal. To vindicate defendants’ interests, courts would have to invoke Illinois Supreme Court Rule 615(a),²⁴²

238. 735 ILL. COMP. STAT. 5/2-1401 (2008).

239. *People v. Harvey*, 753 N.E.2d 293, 295 (Ill. 2001) (“Although a section 2-1401 petition is usually characterized as a civil remedy, its remedial powers extend to criminal cases.”).

240. *E.g.*, *People v. Wuebbels*, 919 N.E.2d 1122, 1127 (Ill. App. Ct. 2009) (upholding defendant’s section 2-1401 challenge to an order providing that his sentences be served consecutively, because the order was void for lack of statutory authority). There is some authority to suggest that section 2-1401 petitions should be confined to relief due to factual, rather than legal, errors. *See People v. Pinkonsly*, 802 N.E.2d 236, 243–44 (Ill. 2003). However, to the extent this distinction exists, the prevalence of section 2-1401 challenges to “void” sentences demonstrates that the distinction has never precluded challenges to erroneous sentences under section 2-1401.

241. 735 ILL. COMP. STAT. 5/2-1401(c).

242. ILL. SUP. CT. R. 615(a).

which allows reviewing courts to reach unpreserved issues (issues raised for the first time on appeal) when the claimed error is so serious that it affects the defendant's substantial rights.²⁴³ To ensure the State's chance to challenge an improperly lenient sentence on direct review, the Illinois Supreme Court would have to amend Supreme Court Rule 604(a),²⁴⁴ which limits the orders the State may challenge on direct appeal.

The second immediate, but ultimately insignificant, difficulty with amending section 2-1401 to allow for challenges to illegal sentences at any time is that doing so would create a potentially confusing scheme in which a defendant must invoke different collateral proceedings (habeas corpus proceedings, Post-Conviction proceedings, and section 2-1401 proceedings) for different remedies. Although such a scheme might normally unduly hinder a defendant's attempts to obtain collateral relief, Illinois common law has already devised a panacea for any such confusion. Illinois law now holds that, regardless of the statutory provision invoked by a defendant seeking collateral review, the trial court may consider the challenge under the most appropriate statutory provision.²⁴⁵ This rule would surely apply to allow a court to recharacterize as a section 2-1401 action a defendant's otherwise labeled challenge to an illegal sentence. With these two minor difficulties addressed, the incorporation of Rule 35 into section 2-1401 would provide a tenable means to correct erroneous sentences and thus displace the misbegotten void sentence rule.

IV. CONCLUSION

Illinois' void sentence rule contravenes the Illinois Constitution by holding that the circuit court has no jurisdiction to impose sentences beyond statutory limits. Despite this problem, however, the rule has, through repetition alone, become entrenched in Illinois law. So long as

243. *Id.* ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court."); *People v. Piatkowski*, 870 N.E.2d 403, 409–10 (Ill. 2007) (explaining the plain-error rule). Applying the plain-error rule to erroneous sentences would not require an appreciable leap. See *People v. Dover*, 728 N.E.2d 90, 98 (Ill. App. Ct. 2000) ("Because the 'right to be lawfully sentenced is a substantial right,' 'impermissible or illegal sentences may be attacked on appeal as plainly erroneous'" (quoting *People v. Whitney*, 697 N.E.2d 815, 817 (Ill. App. Ct. 1998))).

244. ILL. SUP. CT. R. 604(a).

245. See *People v. Shellstrom*, 833 N.E.2d 863, 867–70 (Ill. 2005). In *Shellstrom*, the Illinois Supreme Court explained at length the rationale behind allowing the trial court to consider a defendant's collateral challenge under the proper statutory provision; those reasons all centered on the policy of ensuring that a defendant's collateral challenge receives a fair hearing. See *id.* at 867–68 (articulating policy rationale).

Illinois law continues to suffer the rule, it will reflect, and perpetuate, longstanding confusion regarding the state's fundamental jurisdictional principles. To reverse this confusion, Illinois should cease its repetition of the void sentence rule, and renounce it.

As a practical matter, however, Illinois courts likely will not do so until the rule has been displaced by some viable alternative that compels the same result: that sentences outside statutory bounds may be corrected at any time. Rule 35 of the Federal Rules of Criminal Procedure provides just such an alternative, and one that would bring Illinois law into harmony with that of federal courts and courts in twenty sister states. Thus, to supplant the void sentence rule, the Illinois legislature should incorporate Rule 35 of the Federal Rules of Criminal Procedure into section 2-1401 of the Illinois Code of Civil Procedure. Only then can Illinois law turn back the accumulated weight of repetition buttressing the void sentence rule and replace those words with something more substantial: a rule that honors the jurisdictional principles of the Illinois Constitution.