

VOID JUDGMENT CASE LAW (Texas)

Judicial action taken after the trial court's plenary power has expired is void. See *State ex. rel Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995); see also *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (defining a void judgment as one rendered when a court has no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court).

A party affected by void judicial action need not appeal. *State ex rel. Latty*, 907 S.W.2d at 486. If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case.

"A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001).

Only void convictions are subject to collateral attack. *Christian v. State*, 865 S.W.2d 198, 201 (Tex. App.-Dallas 1993, pet. ref'd) (challenge to voidable error in conviction, raised on appeal from revocation order, was impermissible collateral attack).

A Void Judgment Is a Void Judgment Is a Void Judgment-Bill of Review and Procedural Due Process in Texas, 40 *Baylor L. Rev.* 367, 378-79 (1988). See *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a void judgment).

A judgment is void only when it is clear that the court rendering judgment had no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court. When appeal is taken from a void judgment, the appellate court must declare the judgment void. Because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm'n*, 874 S.W.2d 192, 194 (Tex. App.--Houston [14th Dist.] 1994, no writ); see also *Evans v. C. Woods, Inc.*, No. 12-99-00153-CV, 1999 WL 787399, at *1 (Tex. App.--Tyler Aug. 30, 1999, no pet. h.).

A void judgment is a "nullity" and can be attacked at any time. *Deifik v. State*, No. 2-00-443-CR (Tex.App. Dist.2 09/14/2001)

"A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack *Ex parte Williams*, No. 73,845 (Tex.Crim.App. 04/11/2001).

"A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring).

Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack. See *Ex parte Shields*, 550 S.W.2d at 675 a void judgment can be collaterally attacked. See *Glunz v. Hernandez*, 908 S.W.2d 253, 255 (Tex. App.-San Antonio 1995, writ denied); *Tidwell v. Tidwell*, 604 S.W.2d 540, 542 (Tex. Civ. App.- Texarkana 1980, no writ) (finding that a void judgment may be collaterally attacked by a suit to set aside the judgment after it has become final if such void judgment becomes material).

We agree. A collateral attack is any proceeding to avoid the effect of a judgment which does not meet all the requirements of a valid direct attack. See *Glunz*, 908 S.W.2d at 255.

There is neither a set procedure for a collateral attack nor a statute of limitations. See *Glunz*, 908 S.W.2d at 255; *Davis v. Boone*, 786 S.W.2d 85, 87 (Tex. App.-San Antonio 1990, no writ).

Collateral attacks may be only used to set aside a judgment which is void, or which involved fundamental error. See *Glunz*, 908 S.W.2d at 255.

Fundamental error for this purpose means cases where the record shows the court lacked jurisdiction or that the public interest is directly and adversely affected as that interest is declared in the statutes or the Constitution of Texas. See *id.* The cases distinguish between judgments which are void, and therefore may be set aside by a collateral attack, and those which are voidable and must be attacked by a valid direct attack. See *id.* A judgment is void if it is shown that the court lacked jurisdiction 1) over a party or the property; 2) over the subject matter; 3) to enter a particular judgment; or 4) to act as a court. Jurisdiction could not be conferred by waiver or retroactively *ELNA PFEFFER ET AL. v. ALVIN MEISSNER ET AL.* (11/23/55) 286 S.W.2d 241.

Strictly speaking a void judgment is one which has no legal force or effect whatever. It is an absolute nullity and such invalidity may be asserted by any person whose rights are affected, at any time and at any place. It need not be attacked directly, but may be attacked collaterally whenever and wherever it is interposed. Usually it carries the evidence of its invalidity upon its face, while a voidable judgment is one apparently valid, but in truth wanting in some material respect; in other words, one that is erroneous. Such vice may be the want of jurisdiction over the person or other similar fundamental deficiency, but which vice does not affirmatively appear upon the face of the judgment." *BILLY DUNKLIN v. A. J. LAND ET UX.* 297 S.W.2d 360 (12/21/56).

Where a void judgment has been rendered and the record in the cause, or judgment roll, reflects the vice, then the court has not only the power but the duty and even after the expiration of the term to set aside such judgment. *Harrison v. Whiteley*, Tex.Com.App., 6 S.W.2d 89.

This court in *Neugent v. Neugent*, Tex.Civ.App., 270 S.W.2d 223, followed and applied the rule announced in the *Harrison-Whiteley* case.

The Supreme Court, speaking through Folley, Commissioner, in *Bridgman v. Moore*, 143 Tex. 250, 183 S.W.2d 705, at page 707, said: "The court has not only the power but the duty to vacate the inadvertent entry of a void judgment at any time, either during the term or after the term, with or without a motion therefore." We will not extend this discussion further than to state that we here reaffirm the holding on the point involved as announced by Justice Hightower in the former appeal (301 S.W.2d 181). While this holding was premature in view of the action of the Supreme Court (304 S.W.2d 265) reversing our holding, it was not upon the points discussed in Justice Hightower's opinion, but was on the point that since the judgment appealed from was an interlocutory one and not final, the appeal should be dismissed. However, we think our holding then is now appropriate. A void judgment has been termed mere waste paper, an absolute nullity; and all acts performed under it are also nullities.

Again, it has been said to be in law no judgment at all, having no force or effect, conferring no rights, and binding nobody. It is good nowhere and bad everywhere, and neither lapse of time nor judicial action can impart validity. *Commander v. Bryan*, 123 S.W.2d 1008, (Tex.Civ.App., Fort Worth, 1938, n.w.h.); 34 Tex.Jur., Sec. 262, page 177; *Maury v. Turner*, 244 S.W. 809, (Tex.Com.App., 1922).

Also, a void judgment has been defined as "one which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at anytime and at any place directly or collaterally." Black's Law Dictionary; Reynolds v. Volunteer State Life Ins. Co., 80 S.W.2d 1087, (Tex.Civ.App., Eastland, 1935, writ ref.); Gentry v. Texas Department of Public Safety, 379 S.W.2d 114, 119, (Tex.Civ.App., Houston, 1964, writ ref., n.r.e., 386 S.W.2d 758).

It has also been held that "It is not necessary to take any steps to have a void judgment reversed, vacated, or set aside. It may be impeached in any action direct or, collateral.' Holder v. Scott, 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.).