

2011 IL App (1st) 093097-U
No. 1-09-3097

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION
FILED: August 1, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 96 CR 26144
)	
PETE GREEN,)	The Honorable,
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Hall and Justice Lampkin concurred
in the judgment.

O R D E R

Held: Circuit court's dismissal of post-conviction petition following a third-stage evidentiary hearing affirmed where its determination that defendant failed to establish his lack of culpable negligence for the untimely filing of the petition was not manifestly erroneous.

¶ 1 Defendant Pete Green appeals from the dismissal of his petition for relief under the Post-Conviction Hearing Act (Act)

(725 ILCS 5/122-1 *et seq.* (West 2008)) following an evidentiary hearing on the issue of his culpable negligence for the untimely filing of his petition. On appeal, defendant contests the propriety of that ruling, and further claims that the trial court improperly considered the inadmissible statements of his co-defendant from a contemporaneous, severed trial to convict him, and that he was denied due process and a fair trial where the State's closing and rebuttal arguments were improper.

¶ 2 The record shows, in relevant part, that in 1999, defendant was found guilty of two counts of first degree murder for the shooting death of Danielle Ruth, aggravated discharge of a firearm, and the attempted first degree murder of Larry Holmes. At sentencing, the court merged the murder and firearm convictions and sentenced defendant to a 45-year term of imprisonment for first degree murder, and a concurrent 10-year term for attempted first degree murder. This court affirmed that judgment on direct appeal. *People v. Green*, No. 1-99-1730 (2000) (unpublished order under Supreme Court Rule 23).

¶ 3 On October 26, 2005, defendant, through counsel, filed a petition for post-conviction relief raising several issues including, as pertinent to this appeal, that he was denied due process and a fair trial where the trial court considered inadmissible statements of a co-defendant from a contemporaneous, severed trial to convict him, and where the State made improper

closing and rebuttal arguments. Defendant further claimed that appellate counsel was ineffective for failing to raise these issues on direct appeal, and he attached 51 exhibits in support of his petition.

¶ 4 Defendant also maintained that he was not culpably negligent for the untimely filing of his petition. He claimed that he retained University Legal Services (ULS) to represent him in his post-conviction proceedings, and was in correspondence with the company from December 28, 2001, to September 12, 2003. However, on May 7, 2004, John Wilson, doing business as ULS, was preliminarily enjoined from engaging in the unauthorized practice of law after the Illinois Attorney General's office brought suit against him. After the Illinois Department of Corrections brought this to the attention of defendant on May 26, 2004, he obtained material from the Cook County Public Defender regarding the filing of a *pro se* post-conviction petition. His family then helped him to retain private counsel in August 2004. Counsel then "took the time necessary" to prepare his petition.

¶ 5 Defendant's petition was advanced to the second stage of proceedings, and on December 11, 2007, the State filed a motion to dismiss it, asserting, *inter alia*, that defendant was culpably negligent for its untimely filing, and that his due process claims were waived. Defendant responded that he was not culpably negligent for the late filing, and that his due process claims

were not waived because he alleged that appellate counsel was ineffective for failing to raise them. The court heard argument on the State's motion and denied it on December 1, 2008, without stating any specific reasons for its ruling.

¶ 6 Thereafter, the State filed a "Motion for Clarification Regarding the Ruling Granting an Evidentiary Hearing" to determine which issues had entailed an evidentiary hearing. Defendant responded that the court had granted a hearing on all the issues raised in defendant's petition. On March 11, 2009, the court informed the parties that it would first hold a hearing on the issue of defendant's culpable negligence.

¶ 7 The parties filed additional pleadings, and a hearing was held on July 30, 2009. At that hearing, defendant testified, in relevant part, that he received a letter from his appellate counsel dated October 4, 2000, notifying him that his appeal had been denied on September 21, 2000. Although defendant was imprisoned at Pinckneyville Correctional Facility, the letter was addressed to Menard Correctional Facility, and he did not receive it until the second or third week of October 2000. In the letter, counsel explained to him the process of appealing to the supreme court and informed him that he had until October 26, 2000, to do so.

¶ 8 At some point during the next two weeks, defendant called that same counsel and asked him to handle his appeal, and counsel

agreed to do so for a fee. Counsel told him that it would take several months, or possibly more than a year, to hear back from the supreme court, and defendant reminded him that the deadline to file his petition for leave to appeal (PLA) was just a few days away. Although defendant thought that counsel would be filing his appeal to the supreme court, he did not think counsel would be filing a post-conviction petition for him; and, at the time, he thought he had three years from April 20, 1999, the date of his sentencing, to do so.

¶ 9 However, in November or December 2001, defendant called counsel and learned that counsel had not filed his PLA to the supreme court. He then went to the prison law library to seek assistance with his post-conviction petition. He also contacted a few places for help, but could not afford a private attorney and did not know how to prepare his own petition. The only response he received was from ULS, a company he had heard about from IDOC's orientation manual and brochures in the prison law library.

¶ 10 When defendant called ULS in December 2001, he spoke with John Wilson and told him that he wanted to file a post-conviction petition. Wilson told him that he could research the issues for his post-conviction petition and then refer his case to an attorney who would write it. He also asked defendant to send him a letter detailing the issues he sought to raise, which defendant

sent on December 24, 2001. Defendant further informed Wilson of the dates of his conviction and the denial of his appeal, and Wilson assured him that ULS could meet any deadlines. When defendant received a letter in response from Wilson and Mary Halper of ULS, he had his girlfriend call ULS and inquire into hiring the company.

¶ 11 About January 2, 2002, defendant received another letter from ULS, called, and was instructed to send his case materials and have someone contact the company regarding payment. His grandfather subsequently sent ULS \$900 or \$950. The letter that he had received included documents titled "Terms and Conditions" and "The Importance of Research," which led him to believe that ULS was working on his petition and would refer his case to an attorney. He also received a client reference number about January 9, 2002, which further indicated to him that he had retained ULS to handle his petition.

¶ 12 On January 11, 2002, defendant called Wilson and was told to send his case materials, that ULS would begin researching his case, and that it would then refer his case to an attorney. Defendant complied with the request, and received a letter from Wilson acknowledging his receipt of the case materials. He also received a letter from Wilson requesting that he describe the night of his arrest in his own words, and obtained a copy of a letter sent to his grandfather which acknowledged that he had

sent ULS defendant's case documents.

¶ 13 In late March, defendant sent a letter requesting a status update. He received a response on May 8, 2002, reminding him to send his version of the events that transpired the night he was arrested, and stating that his petition could be filed on time. He complied with the request and received a letter acknowledging that it had been received. Defendant also received a letter in late July or early August 2002, informing him that ULS was still working on his petition, and one in late October 2002, stating that someone from ULS was being sent to the Cook County Clerk's office to review his files. Although defendant continued to receive letters from ULS, they tapered off after about a year had passed. However, he called every month to inquire about the status of his petition, and received assurances that his petition was still being researched and that ULS was searching for an attorney.

¶ 14 In a letter dated August 25, 2003, ULS indicated that defendant would be receiving the final research results, and in mid-September 2003, he received those results in an unsigned document. Although he lost one of the pages, he stated that he was informed that the research was complete, that his case would be referred to an attorney to write the petition, and that he would need to pay a \$500 referral fee. Defendant later received a letter from ULS acknowledging that his grandfather had paid it.

¶ 15 Defendant then called Wilson, who told him that he would refer his case to an attorney to write the petition, and that he would send defendant a copy of it to review before it was filed. Although defendant asked for the name of the attorney, Wilson told him that he would get the attorney's name when he received the petition. Defendant never received a petition, and eventually discovered that ULS was a fraud after receiving a letter from the warden and watching the news.

¶ 16 Defendant contacted his family and told them that he needed a private attorney. It took about three months for him to hire one because his family had to save enough money and was trying to get money back from Wilson. When the court asked defendant if he knew that Wilson and ULS were not lawyers, defendant responded that he thought they were legal analysts, and did not think Wilson was an attorney.

¶ 17 On cross-examination, defendant acknowledged that in his letter of October 4, 2000, appellate counsel informed him that he would not be representing him further, and stated,

"After carefully reading the Court's opinion, I do not believe that the Court's reasoning gives rise to any issue of sufficient legal merit to justify continued representation by this office. However, if you wish, you can try to take your case further on your own."

He also acknowledged that the letter explained the procedure for filing a PLA in the supreme court, informed defendant of the deadline for doing so, and closed, "I assure you that every aspect of your case has been fully considered. Unfortunately, there is simply nothing more I can do." Defendant also admitted to knowing that he did not have an attorney as of October 4, 2000. He further testified that he thought his post-conviction petition was due three years from the date of his conviction, but that he did not read the statute and did not know the petition was due six months before he hired ULS.

¶ 18 On October 8, 2009, the court dismissed defendant's petition, finding it untimely under the statute of limitations in effect when it was filed, and that he failed to show a lack of culpable negligence for the late filing. The court found that his claim that appellate counsel failed to file a PLA in the supreme court had no significance with respect to his culpable negligence for filing an untimely petition, and that, in any event, it found the claim to be without merit in light of the letter counsel sent to defendant on October 4, 2000. The court also found that, at the time defendant contacted Wilson and ULS, he was already past the deadline for filing his petition.

¶ 19 In this appeal from that judgment, defendant first contends that he was not culpably negligent for the untimely filing of his petition. Before addressing that issue, we must first consider

defendant's further claim that the statute of limitations in effect when he filed his petition had no filing deadline. The parties agree that we should apply the statute of limitations in effect at the time defendant filed his petition (*People v. Rissley*, 206 Ill. 2d 403, 413 (2003)), and our review of that statute is *de novo* (*People v. Carter*, 213 Ill. 2d 295, 301 (2004)).

¶ 20 Section 122-1(c) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(c) (West 2004)) provides that a post-conviction petition is untimely and must be accompanied by facts showing a lack of culpable negligence if it is filed: (1) more than six months after proceedings in the United States Supreme Court have concluded; (2) if a petition for *certiorari* is not filed, more than six months from the date for filing such a petition; and (3) if defendant does not file a direct appeal, more than three years from the date of his conviction. The parties agree that the first and third deadlines do not apply here because there were no proceedings in the supreme court and defendant filed a direct appeal.

¶ 21 Defendant, however, claims that the second deadline did not apply to him either. He maintains that because he did not file a PLA in the supreme court, he could not have filed a writ of *certiorari* to the United States Supreme Court, and, consequently, that the six-month deadline triggered by that event did not apply

to him. The State responds that where defendant failed to file a PLA in the supreme court, the appellate court's judgment affirming his conviction became final 21 days later, and his post-conviction petition was due six months from that date. Since he did not file his petition until October 2005, the State contends that it was untimely.

¶ 22 In *People v. Wallace*, 406 Ill. App. 3d 172 (2010), this court applied the deadline at issue under circumstances similar to the case at bar. In that case, defendant's sentence was affirmed by this court on January 13, 2006, and he did not file a PLA in the supreme court. *Wallace*, 406 Ill. App. 3d at 173. He then filed a post-conviction petition in October 2006, and the circuit court granted the State's motion to dismiss it as untimely. *Wallace*, 406 Ill. App. 3d at 173-74. This court affirmed that dismissal on appeal, finding that, where defendant did not file a PLA, the judgment of the appellate court became final after 21 days pursuant to Illinois Supreme Court Rule 315(b) (eff. Sept. 23, 1996), at which point defendant could not have filed a writ of *certiorari* with the United States Supreme Court, and the six-month clock of section 122-1(c) began to run. *Wallace*, 406 Ill. App. 3d at 177.

¶ 23 Here, likewise, this court affirmed defendant's conviction on September 21, 2000, and defendant did not file a PLA in the supreme court. As a result of that inaction, our judgment became

final 21 days later, and defendant lost his opportunity to file for writ of *certiorari* in the United States Supreme Court.

Consistent with our finding in *Wallace*, we conclude here that defendant had six months from the date that this court's judgment became final to file his post-conviction petition under section 122-1(c), and since he did not file it until October 2005, his petition was untimely.

¶ 24 Defendant takes issue with this conclusion, claiming that reading a "presumptive deadline" into the statute of limitations, *i.e.*, having the date his judgment became final stand as the date on which he could have filed a petition for *certiorari*, is improper under *People v. Reed*, 302 Ill. App. 3d 1007 (1999). We find *Reed* distinguishable. First, the *Reed* court addressed an earlier version of the statute of limitations which contained statutory language different from that at issue here. *Reed*, 302 Ill. App. 3d at 1008. Second, and most importantly, our unwillingness to read that version of the statute as imposing a presumptive deadline for filing a PLA was in response to an argument made by the State which would have nullified the three-year limitation period contained therein, and was thus limited to those particular circumstances. *Reed*, 302 Ill. App. 3d at 1008-09. Therefore, defendant's reliance on *Reed* is unavailing, and we conclude that his post-conviction petition was untimely under the statute of limitations in effect at the time it was filed.

¶ 25 That said, we turn to defendant's contention that he was not culpably negligent for the untimely filing of his petition.

Although the supreme court has defined culpable negligence as something more than ordinary negligence, and akin to recklessness (*People v. Bocclair*, 202 Ill. 2d 89, 108 (2002)), this court has noted that it is very difficult to establish a lack of culpable negligence (*People v. Turner*, 337 Ill. App. 3d 80, 86 (2003)). Moreover, where, as here, the circuit court has held a third-stage evidentiary hearing involving fact-finding and credibility determinations, we will not reverse the court's decision unless it is manifestly erroneous (*People v. Pendleton*, 223 Ill. 2d 458, 473 (2006)), *i.e.*, error that is clearly evident, plain, and indisputable (*People v. Morgan*, 212 Ill. 2d 148, 155 (2004)).

¶ 26 The evidence adduced at that hearing showed that the judgment entered on defendant's convictions was affirmed on September 21, 2000, and that defendant did not file a PLA in the supreme court or a petition for writ of *certiorari*, nor did he file his post-conviction petition within the six-month deadline of section 122-1(c). Instead, defendant thought he had three years to file his petition despite having never read the statute of limitations, and, even then, did not file it until five years later on October 26, 2005.

¶ 27 Defendant now claims, as he did in the circuit court, that appellate counsel had agreed over the phone to handle his appeal

to the supreme court and that it delayed the filing of his post-conviction petition. However, the circuit court found that claim to be without merit in light of the letter counsel sent to defendant in October 2000, stating that counsel would no longer be representing him, that he found no further issues of merit in defendant's case, and that defendant could appeal to the supreme court on his own. We find no basis for concluding that the court's determination on that matter was manifestly erroneous. *Pendleton*, 223 Ill. 2d at 473.

¶ 28 Defendant also claims that the fraud of ULS contributed to the untimely filing of his petition. To the contrary, the circuit court found that the statutory due date for filing his petition had already elapsed when defendant first contacted ULS in December 2001, and, therefore, that fraud did not contribute to the untimely filing of his petition. On this record, we find nothing to suggest that the court's determination in that regard was manifestly erroneous. *Pendleton*, 223 Ill. 2d at 473.

¶ 29 In sum, we conclude that the circuit court's dismissal of defendant's petition for failing to establish that he was not culpably negligent for its untimely filing (725 ILCS 5/122-1(c) (West 2004)), was not manifestly erroneous. Having so found, we need not address the other issues raised by defendant in this appeal. We therefore affirm the third-stage dismissal of defendant's petition for post-conviction relief by the circuit

1-09-3097

court of Cook County.

¶ 30 Affirmed.