

2011 IL App (1st) 093409-U
No. 1-09-3409

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).

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. 07 CR 12859
)	
MELVIN HUDSON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

Held: Circuit court erred in recharacterizing defendant's post-conviction petition as a motion to withdraw his guilty plea and denying that motion as untimely.

¶ 1 Defendant Melvin Hudson appeals from the dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2008). He contends that the trial court erred in characterizing his postconviction petition as a motion to withdraw his guilty plea and denying the motion as untimely. For the reasons that follow, we reverse the judgment of the circuit court and remand the cause for second-stage postconviction proceedings.

¶ 2 The record shows, in relevant part, that defendant was charged with 16 counts of

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aggravated criminal sexual assault, 2 counts of criminal sexual assault, 15 counts of aggravated kidnapping, 3 counts of kidnapping, 2 counts of attempted first degree murder, and 2 counts of aggravated battery. On April 15, 2009, defense counsel informed the court that an agreement had been reached whereby defendant would plead guilty to one count of aggravated criminal sexual assault and one count of aggravated battery in exchange for consecutive, respective terms of 14 and 2 years' imprisonment.

¶ 3 The court admonished defendant of the punishment he faced for these two offenses, including the applicable terms of mandatory supervised release (MSR), and of the rights he would be waiving. Defendant indicated his understanding of these matters and his wish to plead guilty. Thereafter, the State proffered a factual basis for defendant's plea, and defense counsel stipulated to those facts. The court then found defendant guilty of aggravated criminal sexual assault and aggravated battery, and ultimately sentenced him to the agreed upon term of imprisonment and admonished him of his appeal rights. Defendant did not file a motion to withdraw his plea of guilty and vacate the judgment, or otherwise attempt to perfect an appeal of the judgment entered thereon.

¶ 4 On June 2, 2009, however, defendant filed a *pro se* motion requesting his trial transcripts and the common law record which the trial court denied as untimely and failing to state a purpose. On July 8, 2009, defendant filed a second *pro se* motion for his trial transcripts and common law record, stating, *inter alia*, that he was seeking to appeal his guilty plea, and that he received inadequate legal representation. The court denied this motion as well, noting that it was untimely.

¶ 5 On October 9, 2009, defendant filed a *pro se* petition for postconviction relief alleging that the State engaged in prosecutorial misconduct in violation of his right to due process and equal protection where it had no evidence tying him to the crime. He also alleged, essentially, that he received ineffective assistance of counsel. Defendant claimed that counsel "coerced" him

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into taking the plea offer with the "threat" of his receiving a sentence of 18 to 120 years' imprisonment if he did not, that this was the only time she spoke with him, and that she "never thought of a defense." He also claimed that she told him that he had to prove his innocence, that she would not file anything, and that if he filed any *pro se* motions he would have to represent himself, leaving him "no other re-Course [*sic*] *** but to take the guilty plea agreement."

¶ 6 Defendant further alleged that the trial judge violated "every Judicial Canon *** of professional responsibility" where he "demeaned[,] degraded [and] disrespected" him regarding the *pro se* motions he filed, and also "breached the plea agreement by including an extended [t]erm." On October 16, 2009, the court reviewed defendant's petition, noted that it was "in the nature of a motion to withdraw a guilty plea," then characterized it as such and denied the motion as untimely.

¶ 7 In this appeal from that order, defendant contends that the trial court erred in characterizing his postconviction petition as a motion to withdraw his guilty plea. As a result, defendant maintains that his petition was not meaningfully reviewed under the Act, and that his case should be remanded to the circuit court for second stage proceedings.

¶ 8 The State responds that the court properly exercised its discretion in treating his petition as a motion to withdraw his guilty plea, and, alternatively, that his petition was properly dismissed because defendant failed to establish the gist of a constitutional claim. In his reply brief, defendant confines his argument to the propriety of the trial court's decision to recharacterize his petition, and does not address its substantive merits.

¶ 9 Our supreme court has recognized the authority of the circuit court to recharacterize a *pro se* pleading under certain circumstances. See, e.g., *People v. Shellstrom*, 216 Ill. 2d 45, 51 (2005); *People v. Pinkonsly*, 207 Ill. 2d 555, 566 (2003); *People ex rel. Palmer v. Twomey*, 53 Ill. 2d 479, 484 (1973). The reasons for doing so include the opportunity for the issues to be properly framed and to avoid the possible harshness of holding a *pro se* litigant to whatever label

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he affixed to his pleading. *Shellstrom*, 216 Ill. 2d at 51-52.

¶ 10 Here, defendant clearly labeled his pleading as a "Petition for Post Conviction Relief and Production of Petitioner," but the court nevertheless *sua sponte* recharacterized it as a motion to withdraw his guilty plea. Since the petition was filed well beyond the 30-day period in which the circuit court maintained jurisdiction to rule on a motion to withdraw a guilty plea, the court no longer had authority to address such a motion on the merits and summarily dismissed it as untimely. Reviewing the petition's content, however, we note that Defendant cited to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)), in the introductory paragraph of his petition, and further cited to several provisions of the United States Constitution, thereby reflecting his intent to advance a constitutionally based claim. As such, defendant filed a postconviction petition and the circuit court erred in recharacterizing the petition as a motion to withdraw his guilty plea. Moreover, the circuit court did not, as required, independently review the petition within 90 days of its filing and determine whether the petition sets forth the "gist" of a constitutional claim, or is frivolous or patently without merit. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001) (citing 725 ILCS 5/122-2.1(a)(2) (West 1998)). If the court does not dismiss the petition "pursuant to this [s]ection," it must be docketed for further consideration under the Act. 725 ILCS 5/122-2.1(b) (West 2008).

¶ 11 Accordingly, we reverse the order of the circuit court of Cook County recharacterizing defendant's postconviction petition as a motion to withdraw his guilty plea and denying the same as untimely, and remand the cause for further consideration at a second-stage postconviction proceeding pursuant to the Act.

¶ 12 Reversed and remanded.