

No. 1-08-2164

FIFTH DIVISION
February 25, 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. 85 C 8448
)	
DONZELL HARRIS,)	Honorable
)	Marjorie C. Laws,
Defendant-Appellant.)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Justices Howse and Epstein concurred in the judgment.

O R D E R

HELD: The circuit court did not err in imposing filing fees on defendant who filed a frivolous post-conviction petition, and the Department of Corrections is statutorily authorized to collect those amounts from defendant's prison trust account.

Defendant, Donzell Harris, is serving the sentence of life imprisonment which was imposed on his 1986 jury conviction of first degree murder, and affirmed on direct appeal. *People v. Harris*, No. 1-86-1595 (1998) (unpublished order under Supreme Court Rule 23). He presently appeals from an order of the

circuit court denying his request for leave to file his eighth *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008))¹. He raises no issue regarding the substantive matters alleged in his petition, but contends that he was improperly assessed certain filing fees and costs for filing a frivolous petition.

Defendant contends that the circuit court's imposition of a \$90 filing and \$15 mailing fee pursuant to section 22-105 of the Code of Civil Procedure (735 ILCS 5/22-105 (West 2008)) violates his constitutional rights to due process and equal protection. He argues that his state and federal constitutional rights are violated by section 22-105, which unfairly subjects indigent prisoners to pecuniary punishment for attempting to exercise a state-granted post-conviction remedy, thereby infringing upon a prisoner's due process right to meaningful access to the courts, and deters only prisoners from exercising their post-conviction rights with no rational basis for doing so.

These arguments have been repeatedly rejected by this court (see, *e.g.*, *People v. Jarrett*, 399 Ill. App. 3d 715, 729 (2010), *appeal denied*, 237 Ill. 2d 573 (2010); *People v. Smith*, 383 Ill. App. 3d 1078, 1096 (2008), *appeal denied*, 231 Ill. 2d 650

¹ A detailed chronology of defendant's prior challenges to his judgment of conviction is set forth in *People v. Harris*, Nos. 1-06-0910 & 1-06-1765 cons. (2008) (unpublished order under Supreme Court Rule 23).

(2009)), and we find no reason to depart from our previous decisions on these matters. We note that the supreme court has granted leave to appeal in *People v. Alcozer*, No. 1-07-2092 (2009) (unpublished order under Supreme Court Rule 23), *appeal allowed*, 236 Ill. 2d 509 (2010), a case involving the same issues.

We have also previously distinguished the United States Supreme Court cases cited by defendant as instructive, and continue to reject the constitutional challenges to section 22-105 premised upon them. *Jarrett*, 399 Ill. App. 3d at 729; *Smith*, 383 Ill. App. 3d at 1094-96; *People v. Carter*, 377 Ill. App. 3d 91, 100-01 (2007). We remain unpersuaded that the cases cited by defendant warrant a different result here, and we thus reject his contention that the imposition of filing and mailing fees under section 22-105 violates his constitutional rights.

The same result obtains with respect to defendant's alternate contention that section 22-105 only permits the Department of Corrections to collect "court costs" from his prison trust account and not "filing fees." In *Smith*, 383 Ill. App. 3d at 1094, we determined that the legislature's use of the broad phrase "any court costs" in delineating a means of collection included the assessed "filing fees and actual court costs," and we likewise conclude here that section 22-105 permits

1-08-2164

the Department of Corrections to collect the \$90 filing fee from defendant's prison trust account.

For the reasons stated, we affirm the order of the circuit court of Cook County.

Affirmed.