

No. 1-09-1515

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. 79 C 7021
)	
JAMES FORD,)	Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Garcia and Justice R.E. Gordon concurred in the judgment.

ORDER

Held: The circuit court properly imposed \$105 in costs and fees under section 22-105 of the Code of Civil Procedure (735 ILCS 5/22-105 (West 2008)) on defendant's postjudgment filing. The judgment of the circuit court is affirmed.

Defendant James Ford appeals from the dismissal of his *pro se* postjudgment petition filed under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)), section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)), and the Habeas Corpus Act (735 ILCS 5/10-101 *et seq.* (West 2008)). Defendant's only contention on appeal is that the circuit court improperly imposed \$105 in costs and fees under section 22-105 of

1-09-1515

the Code (735 ILCS 5/22-105 (West 2008)). He argues that this was his first section 2-1401 petition and the statute only applies to a second or subsequent filing of such a petition. For the following reasons, we affirm.

Following a 1981 jury trial, defendant was found guilty of murder and armed robbery and subsequently sentenced to life imprisonment, with a concurrent term of 60 years. This court affirmed defendant's conviction on direct appeal. *People v. Ford*, 118 Ill. App. 3d 59 (1983). Defendant then filed a *pro se* postconviction petition, the dismissal of which also was affirmed on appeal. *People v. Ford*, 368 Ill. App. 3d 562 (2006).

On February 27, 2009, defendant, *pro se*, filed this postjudgment petition, entitled "PETITION FOR RELIEF UNDER THREE (3) STATUTES CONTAINED IN THE ILLINOIS COMPILED STATUTES[.]" He stated he was seeking relief from his void sentence under the Act, section 2-1401 of the Code and the Habeas Corpus Act, with citations to all three statutes.

Defendant also appended to his petition a motion to vacate his judgment as void. The caption on the motion stated that it was a postconviction petition, a section 2-1401 petition and a habeas corpus petition. Defendant alleged therein that his sentence was unconstitutional because it violated the principles set forth in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), among other United States Supreme Court cases.

Noting that defendant previously had raised his *Apprendi* argument on collateral review, the circuit court found defendant's petition meritless under all three statutes. The court dismissed defendant's postjudgment filing and also assessed fees and costs of \$105 under section 22-105 of the Code for the frivolous filing.

On appeal, defendant challenges only the imposition of the monetary penalty. Section 22-105 of the Code provides:

"If a prisoner confined in an Illinois Department of Corrections facility files a pleading, motion, or other filing which purports to be a legal document in a

case seeking post-conviction relief under Article 122 of the Code of Criminal Procedure of 1963, *** in a habeas corpus action under Article X of this Code, *** or a second or subsequent petition for relief from judgment under Section 2-1401 of this Code *** and the Court makes a specific finding that the pleading, motion, or other filing which purports to be a legal document filed by the prisoner is frivolous, the prisoner is responsible for the full payment of filing fees and actual court costs." 735 ILCS 5/22-105(a) (West 2008); see also 705 ILCS 105/27.2a (West 2008).

Defendant argues that under the plain language of the statute, the monetary assessment was unauthorized because this was his first section 2-1401 petition filed.

The State does not dispute that the fee may be imposed only on the second or subsequent filing of a section 2-1401 petition. But, the State argues that defendant's petition here not only encompassed section 2-1401 of the Code, but also the Act and the Habeas Corpus Act. The State argues that under the plain language of section 22-105, the fee was properly imposed. We agree.

In construing the meaning of a statute, our primary objective is to ascertain and give effect to the intention of the legislature. *People v. De Filippo*, 235 Ill. 2d 377, 383 (2009). The language of the statute must be afforded its plain, ordinary, and popularly understood meaning. *De Filippo*, 235 Ill. 2d at 383.

Here, section 22-105 does not limit the number of times the monetary assessment may be applied to frivolous postconviction or habeas filings (see 735 ILCS 5/22-105 (West 2008)). In one pleading, defendant filed a claim under those two acts that he had raised earlier. The court found the claim frivolous, and defendant does not now contest that finding. The imposition of the monetary penalty therefore was proper.

We affirm the judgment of the circuit court of Cook County.

Affirmed.