

Nos. 1-08-3501)
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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).

FIFTH DIVISION
May 13, 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. 03 CR 25021
)	
ELI CUNNINGHAM,)	The Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court. Presiding Justice Fitzgerald-Smith and Justice Epstein concurred in the judgment.

O R D E R

Held: Defendant's initial *pro se* postconviction petition was summarily dismissed. Defendant filed a notice of appeal and then a timely motion to reconsider the dismissal of his postconviction petition. His motion to reconsider was denied.

This court dismissed defendant's appeal (No. 1-08-3501) relating to the summary dismissal of his postconviction petition. Defendant's motion to reconsider nullified the notice of appeal in that case. This court affirmed the denial of defendant's motion to reconsider (No. 1-10-1036). This court held defendant lacked standing to challenge his postconviction petition based on the absence of his handwritten signature and he was not improperly assessed costs and fees.

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In No. 1-08-3501, defendant Eli Cunningham appeals from the first-stage dismissal of his *pro se* petition filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)). Defendant contends that, in accordance with Supreme Court Rule 137 (eff. Feb. 1, 1994), the court was required to strike his petition because he did not sign it. He asks that we vacate the summary dismissal of his petition and remand the case with directions for the circuit court to strike the petition. Defendant also contends that he was improperly assessed fees and costs in violation of his due process and equal protection rights. In No. 1-10-1036, defendant appeals from the court's denial of his motion to reconsider his postconviction petition. We consolidated the appeals. We now dismiss appeal No. 1-08-3501 and affirm the court's denial of defendant's motion to reconsider in appeal No. 1-10-1036.

Defendant is serving a 16-year term of imprisonment imposed on his bench conviction of attempted murder. Trial evidence showed that defendant struck his cousin with a car, which resulted in the amputation of his cousin's lower leg. Defendant filed a direct appeal in which he claimed, *inter alia*, that defense counsel was constitutionally ineffective for failing to present a self-defense claim. This court rejected his claim and affirmed defendant's conviction. *People v. Cunningham*, 376 Ill. App. 3d 298 (2007).

On August 27, 2008, defendant filed a *pro se* postconviction

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petition. But for the words "*pro se*" in the title, the petition is typewritten. After the petition's conclusion, appears the following typewritten notation: "Respectfully Submitted, S/Eli Cunningham." Although defendant's prison number and address also appear at the end of the document, there is no handwritten signature. Defendant's petition was accompanied by a certificate of service from attorney Jennifer Bonjean, stating that she personally filed the postconviction petition with the circuit clerk and sent a copy to the State's Attorney.

The circuit court found defendant's claim, again challenging the effectiveness of defense counsel, was barred by *res judicata* and lacked sufficient support. On October 22, 2008, the court dismissed the petition as frivolous and patently without merit. The circuit court assessed \$105 against defendant under section 22-105 of the Code of Civil Procedure (735 ILCS 5/22-105 (West 2006)) for the frivolous filing.

Defendant appealed (No. 1-08-3501). On February 19, 2010, while his appeal was pending, defendant filed a motion to reconsider the summary dismissal of his postconviction petition. Defendant claimed that Bonjean was not retained as his attorney, and he did not authorize Bonjean to file the postconviction petition on his behalf. He claimed that Bonjean filed the petition without defendant's knowledge. He requested that the court withdraw his postconviction petition so that he could refile anew without prejudice. In support of his claim, he attached two signed letters from Bonjean in which she stated she

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had requested the transcripts in his case and soon would arrange a meeting regarding his postconviction petition.

The circuit court denied the motion for lack of jurisdiction. Defendant also appealed that decision (No. 1-10-1036).

We first address appeal No. 1-10-1036, from the circuit court's denial of defendant's motion to reconsider the dismissal of his postconviction petition. Although defendant does not now raise any "argument relating to the substance of the allegations contained in his Motion for Reconsideration," we nevertheless consider appeal No. 1-10-1036 because it affects our authority to decide defendant's remaining contentions.

The State contends that appeal No. 1-10-1036 must be dismissed for lack of jurisdiction. The State argues that the trial court lacked jurisdiction to consider defendant's motion to reconsider the dismissal of his postconviction petition because it was not timely filed within 30 days following the final judgment on his petition. The State also argues that the notice of appeal filed in case No. 1-08-3501 prior to the motion to reconsider divested the trial court of jurisdiction over the matter. For the following reasons, we disagree.

Although postconviction proceedings are civil, appeals in such cases are governed by criminal appeals Rule 606(b) (eff. March 20, 2009). See *People v. Powers*, 376 Ill. App. 3d 63, 65 (2007); *People v. Dominguez*, 366 Ill. App. 3d 468, 472-73 (2006). Rule 606(b) requires a notice of appeal to be filed with the

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circuit court clerk within 30 days of, either the final judgment or the order disposing of a timely motion directed against the final judgment. A motion directed against the final judgment is timely if filed within 30 days of the judgment. See *People v. Dominguez*, 366 Ill. App. 3d 468, 472 (2006). If such a motion is filed, Rule 606(b) states that any notice of appeal filed before the entry of the order disposing of the postjudgment motion "shall have no effect and shall be stricken by the trial court." Ill. S. Ct. R. 606(b) (eff. March 20, 2009).

Defendant argues that under the mailbox rule, he timely filed his motion to reconsider the dismissal of his postconviction petition within the requisite 30 days, and the circuit court therefore had jurisdiction to consider the motion. In support, defendant notes that he mailed the motion on November 21, 2008, within 30 days of the October 22 judgment dismissing his postconviction petition. A pleading is considered timely filed on the day it is placed in the prison mail system by an incarcerated inmate. *People v. Jennings*, 279 Ill. App. 3d 406, 413 (1996). We agree with defendant that his motion to reconsider was timely filed and under Rule 606(b) the trial court therefore had jurisdiction to consider it.

However, as a result of defendant's timely motion to reconsider, the notice of appeal from the dismissal of defendant's postconviction petition in No. 1-08-3501 now must be stricken. See *Dominguez*, 366 Ill. App. 3d at 472. According to Rule 606(b), defendant's timely motion to reconsider nullified

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the notice of appeal. We therefore dismiss appeal No. 1-08-3501. See *Dominguez*, 366 Ill. App. 3d at 473.

Although we lack jurisdiction in appeal No. 1-08-3501, we have jurisdiction in appeal No. 1-10-1036, from the trial court's denial of defendant's motion to reconsider. This allows us to review the dismissal of defendant's postconviction petition. See *Dominguez*, 366 Ill. App. 3d at 473. While the notice of appeal in No. 1-10-1036 specifically assigns error solely to the denial of defendant's motion to reconsider, the dismissal of the petition was a step in the procedural progression leading to that denial. See *Dominguez*, 366 Ill. App. 3d at 473. Liberally construing defendant's claims in his brief, we proceed in our review.

Defendant's principal contention is that under Rule 137, his postconviction petition must be stricken because he did not sign it. He makes no argument regarding the substance of his petition.

Rule 137 (eff. Feb. 1, 1994) requires that every pleading be signed by the record attorney or *pro se* party. If a pleading is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits. *Nelson v. Chicago Park District*, Nos. 1-09-0238 & 1-10-0505 Cons., slip op. at 23 (March 15, 2011).

The State responds that defendant failed to timely challenge

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his unsigned petition under Rule 137 and Rule 137 does not require courts to "*sua sponte* examine pleadings, or strike them if they are not properly signed."

We decline to address the merits of this case because we conclude that defendant lacks standing to raise the present claim. "Standing" is defined as a party's right to make a legal claim or seek judicial enforcement of a duty or right. *People v. Steward*, 406 Ill. App. 3d 82, 90 (2010). Defendant now asks this court to nullify his unsuccessful postconviction petition because he failed to sign it, presumably, so he can file another initial postconviction petition. Defendant, apparently, wants two bites at the apple. However, defendant cites no authority, nor has our research revealed any, permitting a moving party to request for the first time on appeal that their pleading be stricken based on their own error. Rule 137 was not intended to serve as a failsafe for the moving party to withdraw any unsigned document following an unfavorable ruling.

Moreover, defendant cannot even legitimately claim there was no signature on his petition when an "S/" appeared immediately before his typewritten name, thus signifying that he had signed the document. The Post-Conviction Hearing Act does not expressly require handwritten signatures. In a variety of contexts, the law consistently has interpreted "signed" to embody not only the act of subscribing a document, but also anything which can reasonably be understood to symbolize or manifest the signer's intent to adopt a writing as his or her own and be bound by it.

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Just Pants v. Wagner, 247 Ill. App. 3d 166, 173-74 (1993). This may be accomplished in a multitude of ways, only one of which is a handwritten subscription. *Wagner*, 247 Ill. App. 3d at 173-74. Defendant's claim fails.

Defendant next contends that the \$105 in fees and costs imposed by the court must be vacated because section 22-105 of the Code of Civil Procedure violates the state and federal constitutional rights of due process and equal protection. Defendant specifically contends that section 22-105 denies prisoners meaningful access to the courts by unfairly subjecting them to pecuniary punishment for attempting to exercise a state-granted postconviction remedy and targets prisoners to the exclusion of other petitioners. Our review of this matter is *de novo*. *People v. Alcozer*, No. 108109, slip op. at 9 (March 24, 2011).

In *Alcozer*, No. 108109, slip op. at 9-15, the supreme court recently considered and rejected the same challenges to section 22-105, and found no constitutional infirmities in its application. Following *Alcozer*, defendant's claim fails.

Based on the foregoing, we dismiss appeal No. 1-08-3501 and affirm the denial of defendant's motion to reconsider in appeal No. 1-10-1036.

No. 1-08-3501, Appeal dismissed.

No. 1-10-1036, Affirmed.