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recharacterize it as a petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)), and in dismissing it as untimely.

¶ 3 The record shows, in relevant part, that on April 17, 2003, defendant entered a negotiated plea of guilty to armed robbery in four separate cases (01-CR-20811, 01-CR-20812, 01-CR-20814, and 01-CR-20815) in exchange for concurrent terms of 28 years' imprisonment which would run concurrently with the sentences he received in three other cases (01-CR-19771, 01-CR-19772, and 01-CR-27469). Before accepting defendant's guilty plea, the trial court admonished him: "Those are all Class X felonies and as such you could be punished by six to thirty years in the penitentiary plus three years of mandatory supervised release." At the sentencing phase of the proceedings, the court did not refer to the three-year term of mandatory supervised release (MSR) that attached to his sentence. Notwithstanding, defendant did not file a motion to vacate his guilty plea or attempt to perfect a direct appeal from the judgment entered on it.

¶ 4 Six years later, defendant filed a *pro se* section 2-1401 petition alleging that he was denied due process where a three-year MSR term was added to the sentence imposed pursuant to his negotiated plea, and that he was not adequately admonished of such term. As relief, he requested a comparable reduction in his sentence.

¶ 5 The certificate of service shows that copies of the petition addressed to the State and the clerk of the circuit court of Cook County (clerk) were placed in the institutional mail at Shawnee Correctional Center on June 4, 2009, for mailing through the United States Postal Service. The petition was stamped "Received" by the clerk on June 11, 2009, and a half-sheet entry made by the clerk shows that the petition was filed on July 28, 2009.¹ The next half-sheet entry on August 24, 2009, reads, "Transfer to Room 103 for further proceedings 8-28-09," and when defendant's petition came up on the call that day, the court stated, "[T]he Court is in receipt today

¹ Although the file-stamp on the petition appears to read July 29, 2009, the parties refer to the filing date entered on the half-sheet.

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of a petition for relief from judgment that was filed by the defendant July 28, 2009." The case was continued, and on September 18, 2009, the court dismissed defendant's section 2-1401 petition, noting that he had been fully admonished as to his MSR, that he had no legal basis for relief from judgment, and that his petition was untimely. Defendant now challenges the dismissal of his section 2-1401 petition, and we review that dismissal *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 6 Defendant first contends that the trial court's *sua sponte* dismissal of his petition was improper under the supreme court's decision in *People v. Laugharn*, 233 Ill. 2d 318 (2009). In that case, the supreme court held that the circuit court erred in *sua sponte* dismissing a section 2-1401 petition seven court days after its filing, and before the 30-day period to answer or otherwise plead had concluded. *Laugharn*, 233 Ill. 2d at 323.

¶ 7 Defendant claims that the 30-day period for the filing of responsive pleadings referred to in *Laugharn* began to run on August 24, 2009, the date the petition was docketed, and that the circuit court erred in dismissing his petition 25 days later on September 18, 2009. The State responds that the 30-day period for the filing of such pleadings began to run on July 28, 2009, the date the petition was filed, and that the circuit court's *sua sponte* dismissal of the petition 53 days later was proper.

¶ 8 It is well-settled that proceedings under section 2-1401 are subject to the usual rules of civil practice, and that petitions filed thereunder are, essentially, complaints inviting responsive pleadings. *Vincent*, 226 Ill. 2d at 8. As such, the State must be given notice of the filing of a section 2-1401 petition in accordance with Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989). Ill. S. Ct. R. 106 (eff. Aug. 1, 1985). That rule provides that the notice must state, *inter alia*, "that a pleading *** has been filed and that a judgment by default may be taken against [the State] for the new or additional relief unless [it] files an answer or otherwise files an appearance in the office of the clerk of the court within 30 days after service, [or] receipt by certified or registered mail." Ill. S. Ct. R. 105(a). Rule 105 thus presumes that "a pleading *** has been

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filed" and specifies that the 30-day period for the filing of responsive pleadings begins to run after the State has received notice by certified or registered mail.

¶ 9 Although nothing in the rule links the 30-day period to the docketing of the petition, defendant attempts to conflate the "filing" of his section 2-1401 petition with its "docketing." He states, "The trial court erred when it *sua sponte* dismissed [defendant's] petition for relief from judgment 25 days after it was docketed, prior to expiration of the 30-day period following the filing of the petition." However, we note that the act of filing, itself, is defined as, "*To deliver a legal document to the court clerk or record custodian for placement into the official record.*" Black's Law Dictionary 660 (8th ed. 2004) (emphasis added). A document is thus considered "filed" upon its delivery to the court clerk (*Valio v. Board of Fire & Police Commissioners of the Village of Itasca*, 311 Ill. App. 3d 321, 327 (2000)), and defendant has no basis for using "filing" and "docketing" interchangeably.

¶ 10 Defendant, nonetheless, argues that the 30-day period for the filing of responsive pleadings began to run when the petition was docketed, relying solely on the supreme court's decision in *People v. Brooks*, 221 Ill. 2d 381 (2006). In that case, defendant filed a post-conviction petition which was received by the clerk of the circuit court on September 13, 2002, stamped "Filed" on September 20, 2002, and summarily dismissed on December 18, 2002. *Brooks*, 221 Ill. 2d at 389-90. On the same day the petition was file-stamped, the clerk's office made an entry on the half-sheet reading, "9/20/02 Petition for Post-Conviction Relief, Filed Hearing Date Set: 9/30/02." *Brooks*, 221 Ill. 2d at 389. The Act required that the circuit court review the petition within 90 days after its "filing and docketing," and the parties disputed when that 90 days began to run by ascribing different meanings to the word "docketing." *Brooks*, 221 Ill. 2d at 390. The supreme court held that defendant's post-conviction petition was "docketed" when the circuit court clerk entered the petition into the case file and set it for a hearing, on September 20, 2002. *Brooks*, 221 Ill. 2d at 391.

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¶ 11 We find *Brooks* inapposite to the instant case. The issue in *Brooks* was specific to the Act in that the statutory language explicitly tied the running of the 90-day review period to the "filing and docketing" of the petition. Here, on the other hand, Rule 105 contains no such mention of docketing in setting forth the 30-day period for the filing of responsive pleadings. We thus conclude that where defendant mailed notice to the State on June 4, 2009, and the petition was deemed filed by the circuit court clerk on July 28, 2009, the trial court did not err in *sua sponte* dismissing the petition more than 30 days later on September 18, 2009, after the period for filing responsive pleadings had elapsed. *Laugharn*, 233 Ill. 2d at 323.

¶ 12 Defendant also maintains that the court should have recharacterized his section 2-1401 petition as a post-conviction petition. Although a trial court may recharacterize a *pro se* pleading as a post-conviction petition, the supreme court has made it clear that a trial court has no obligation to do so. *People v. Shellstrom*, 216 Ill. 2d 45, 53 n.1 (2005). Moreover, in *People v. Stoffel*, 239 Ill. 2d 314, 324 (2010), the supreme court held that the decision of the circuit court not to recharacterize defendant's *pro se* pleading as a post-conviction petition cannot be reviewed for error. Accordingly, we are without authority to address whether the trial court should have recharacterized defendant's section 2-1401 petition as a post-conviction petition. *Stoffel*, 239 Ill. 2d at 324.

¶ 13 Defendant finally maintains that the court erred in dismissing his section 2-1401 petition on the grounds of timeliness. In support, he cites *People v. Malloy*, 374 Ill. App. 3d 820, 823 (2007) where this court concluded that the two-year time period in section 2-1401 is a statute of limitation rather than a jurisdictional prerequisite, that it must be asserted by the State as an affirmative defense, and that, consequently, the trial court may not *sua sponte* dismiss a section 2-1401 petition on the grounds of timeliness. Defendant has not addressed, however, the fact that the trial court also dismissed his section 2-1401 petition on its merits.

¶ 14 Defendant substantively alleged in his section 2-1401 petition that he was not adequately admonished that a 3-year MSR term would be added to the sentence imposed pursuant to his

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negotiated plea, a potential due process violation recognized by the supreme court in *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005). Nevertheless, relief under *Whitfield* is not available to defendant because he pleaded guilty on April 17, 2003, did not perfect an appeal from the judgment entered on his plea, and, therefore, his conviction became final before the new rule in that case was announced on December 20, 2005. *People v. Morris*, 236 Ill. 2d 345, 366 (2010). Thus, defendant's petition is without merit, and any error on the part of the trial court in dismissing it on the grounds of timeliness was harmless. *Malloy*, 374 Ill. App. 3d at 824-25.

¶ 15 For these reasons, we affirm the *sua sponte* dismissal of defendant's section 2-1401 petition by the circuit court of Cook County.

¶ 16 Affirmed.