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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 91—CF—29
)	
MARTIN GOMEZ,)	Honorable
)	Victoria A. Rossetti,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: (1) The trial court did not abuse its discretion in characterizing defendant’s freestanding “Petition to Vacate Judgment” as a *habeas corpus* complaint, as the filing had no obvious best construction; (2) the characterization did not trigger the requirements of *Pearson* and *Shellstrom*, as those cases apply only when a trial court recharacterizes as a postconviction petition a filing labeled as a different cognizable action.

Defendant, Martin Gomez, appeals from the dismissal of his “Petition to Vacate Judgment.”

In a motion to dismiss, the State characterized the filing as a *habeas corpus* complaint, and the court accepted that characterization. Defendant now asserts that it was error for the trial court to construe his petition as a *habeas* complaint, given that, in his circumstances, no state *habeas* relief could

possibly be available. The court, he asserts, should have construed the filing as a petition under section 2—1401 of the Code of Civil Procedure (735 ILCS 5/2—1401 (West 2008)). He further argues that under the rules of *People v. Pearson*, 216 Ill. 2d 58 (2005), and *People v. Shellstrom*, 216 Ill. 2d 45 (2005), he “should have been notified of the court’s intent to *** characterize his pleading [as a *habeas* complaint,] warned of the limited scope of the habeas corpus remedy, and given the opportunity to amend his pleadings.” We hold that the treatment of the filing as a *habeas* complaint was as reasonable as any other available characterization. We further hold that, because this was not a recharacterization, the rules from *Pearson* and *Shellstrom* were inapplicable under the circumstances. We therefore affirm.

BACKGROUND

On April 15, 1991, defendant pleaded guilty to one count of unlawful delivery of 15 to 100 grams of a substance containing cocaine. In exchange for the plea, the State agreed to drop two other counts in the indictment.

On September 22, 2009, while in federal custody on another offense, he filed a document entitled “Petition to Vacate Judgment.” In it, he asserted that the court had jurisdiction under the “Illinois Code of Criminal Procedures.” He further asserted that he had received ineffective assistance of counsel at his 1991 plea hearing because counsel had abandoned him, had failed to tell him of the immigration consequences of the conviction, and had failed to inform him of his right to appeal. Finally, he asserted that his plea was not voluntary.

Twenty-four days later, the State filed a motion to dismiss the filing. It assumed without explanation that the filing was a *habeas* complaint, and it asserted that defendant had not stated a basis for *habeas* relief. The motion did not contain a proof of service; that same day, the court told

the State that it should send defendant a copy of the motion so that he could respond. The court set November 13, 2009, as the next status date.

Nevertheless, on November 2, 2009, the court entered a written order dismissing the filing. In the order, it too described the filing as a *habeas* complaint without explaining why it was doing so.

Defendant filed a motion for leave to file a late notice of appeal, and we granted it.

He now makes the arguments that we have described above. He does not raise any claim of error concerning insufficient notice of the State's motion or of the dismissal.

ANALYSIS

We start by discussing defendant's claim that the court improperly characterized his "Petition to Vacate Judgment" as a *habeas* complaint. We conclude that defendant did not clearly designate the action as any form of action in particular. Applying the rule in *People v. Helgesen*, 347 Ill. App. 3d 672, 675-77 (2004)—that a court may characterize a filing with an uncertain or invalid label in any way that is reasonable—we detect no error. We next consider defendant's claim that the rules in *Pearson* and *Shellstrom* apply so as to have required the court to admonish defendant of the consequences of the characterization. We conclude that *Pearson* and *Shellstrom* do not apply for two reasons: (1) this was not a recharacterization; and (2) the court did not characterize defendant's filing as a petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122—1 *et seq.* (West 2008)).

The court's decision to treat the "Petition to Vacate Judgment" as a *habeas* complaint was not error. In *Helgesen*, we recognized that prisoners who act *pro se* do not always label their filings as recognized forms of motions or initial pleadings. *Helgesen*, 347 Ill. App. 3d at 676. If the court

is to consider such a filing,¹ it must construe it so that it falls into some recognized category. The trial court has discretion to make a reasonable choice of a category. See *Helgesen*, 347 Ill. App. 3d at 676. A reasonable choice is one that allows the court to consider the filing on its merits, or one that is at least not self-defeating. See *Helgesen*, 347 Ill. App. 3d at 676 (explaining why it was within the court’s discretion to construe a “ ‘Motion to Vacate Void Judgment’ ” as a postconviction petition). For reasons that we explain in the following paragraphs, the court’s choice to treat defendant’s filing as a *habeas* complaint was a reasonable one, and so within the court’s discretion.

No obvious best construction existed for defendant’s “Petition to Vacate Judgment,” and no construction existed that would have likely allowed the court to consider it on its merits. Three primary avenues exist for collateral attack on a criminal conviction: (1) postconviction petitions under the Act; (2) section 2—1401 petitions; and (3) *habeas* complaints. None would be an obvious choice for defendant.

The postconviction-petition avenue is closed to those who have fully served the sentence for the conviction in question, regardless of the use of the conviction as an aggravating factor in a later prosecution. *People v. West*, 145 Ill. 2d 517, 518-19 (1991). Defendant has fully served his sentence.

Section 2—1401 has a two-year limitations period for claims of the type that defendant was making (see 735 ILCS 5/2—1401(c) (West 2008)). Thus, had the court chosen to characterize

¹Nothing forces a court to construe a filing so that it may consider it. If a filing is not structured as an initial pleading—a section 2—1401 petition or a postconviction petition, for example—and jurisdiction over the original matter has lapsed, then the law poses no obstacle to the court’s stating its lack of jurisdiction as the basis for refusing to consider the filing.

defendant's filing as a section 2—1401 petition, it would not have reached the merits of any of his claims. (This is assuming that the State would not have waived or forfeited the defense. The assumption strikes us as safe under the circumstances.) Moreover, section 2—1401 is unavailable to raise an ineffective-assistance-of-counsel claim such as defendant's; because such a claim "do[es] not challenge the factual basis for the judgment," it is not cognizable under section 2—1401. *People v. Pinkonsly*, 207 Ill. 2d 555, 567 (2003).

Habeas "is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release." *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008). Defendant has not raised either sort of claim.

No obviously superior choice of characterization existed. Therefore, the court's choice of *habeas* was not an abuse of discretion.

Defendant argues that he should have received admonishments concerning the effects of the characterization as set out in *Pearson* and *Shellstrom*. So holding would work an unjustifiable expansion of those cases. *Pearson* and *Shellstrom* apply only when a court recharacterizes a pleading that "a *pro se* litigant has labeled as a different action cognizable under Illinois law." *Pearson*, 216 Ill. 2d at 68; *Shellstrom*, 216 Ill. 2d at 57. Here, defendant did not clearly label his filing as a known action.² Furthermore, both cases concerned the recharacterization of filings as

²Although the label that defendant gave his filing, "Petition to Vacate Judgment," sounds something like "Petition for Relief from Judgment," which is the typical label for section 2—1401 petitions, the similarity is not so great as to be conclusive. Moreover, defendant stated he was

postconviction petitions. *Pearson*, 216 Ill. 2d at 62-63; *Shellstrom*, 216 Ill. 2d at 48-49. That trial courts had acted to recharacterize as postconviction petitions filings that were not postconviction petitions was at the heart of the supreme court's rationale for requiring the admonishments. The court noted that, with such a recharacterization, the severe restrictions on successive postconviction petitions would become applicable to defendants who had not at the time intended to file postconviction petitions, and the loss of the right to intentionally file a postconviction petition was a significant loss. *Pearson*, 216 Ill. 2d at 67; *Shellstrom*, 216 Ill. 2d at 54-57. The *habeas* provisions do not contain any similar constraints on successive petitions (see 735 ILCS 5/10—101 *et seq.* (West 2008)), so characterization or recharacterization as a *habeas* complaint does not raise similar concerns. We thus see no justification for extending the reach of the rules in *Pearson* and *Shellstrom* to a characterization as a *habeas* complaint.

CONCLUSION

For the reasons stated, we affirm the dismissal of defendant's "Petition to Vacate Judgment."

Affirmed.

bringing his filing under the "Illinois Code of Criminal Procedures," whereas section 2—1401 is located in the Code of Civil Procedure and is considered a collateral civil proceeding.