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2011 IL App (3d) 090503-U

Order filed August 29, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-09-0503
v.	)	Circuit No. 01-CF-344
	)	
RONALD WELLS,	)	Honorable
	)	Stuart P. Borden,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Where the court's earlier rulings were not arbitrary or improper, the trial court did not err in dismissing defendant's petition for postjudgment relief. Where an appeal had been taken from the court's earlier rulings, the trial court did not err in dismissing defendant's petition based on lack of jurisdiction.

¶ 2 Defendant Ronald Wells appeals the trial court's order dismissing his petition for postjudgment relief. We affirm.

¶ 3 Defendant was found guilty of first degree murder and concealment of a homicide. He was sentenced to terms of natural life for murder and five years in prison for concealment.

¶ 4 Thereafter, defendant filed a *pro se* petition for postconviction relief, raising numerous trial errors. The petition was filed stamped by the clerk of circuit court on March 14, 2005. The State moved to dismiss the petition as untimely because it had not been filed within six months of the Illinois Supreme Court's denial of defendant's petition for leave to file a direct appeal. See *People v. Wells*, 209 Ill. 2d 599 (2004) (issued on May 26, 2004).

¶ 5 The trial court conducted a hearing on July 20, 2007, and issued a written decision on August 13, 2007, dismissing defendant's petition as untimely. In its decision, the court found that defendant signed his postconviction petition on November 24, 2004, but did not mail the petition "until more than three months later and well beyond the deadline."

¶ 6 On September 19, 2007, defendant filed a motion to reconsider and a motion for substitution of judge for cause. Both motions were denied on June 17, 2008. Within 30 days, defendant filed a notice of appeal, which was docketed as appeal No. 3-08-0528.

¶ 7 On October 22, 2008, defendant filed a *pro se* petition entitled "Petition For Relief From Judgment." The petition claimed that under section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2008)), the order of June 17, 2008, was null and void because Judge Stuart Borden lacked the "inherent power" to enter the order based on his bias. Specifically, the petition and attached affidavit alleged that Judge Borden (1) denied defendant a fair hearing in July of 2007 by refusing to remove his handcuffs, making it impossible for him to address his postconviction claims, and (2) made arbitrary and erroneous factual findings as to the timeliness of his petition. Defendant asked to court to vacate the order of June 17, 2008, and set the matter for a new hearing

on his motion for substitution of judge and his motion to reconsider the court's August 13, 2007, order.

¶ 8 The trial court found that defendant's October 2008 petition was a "self styled 2-1401 petition," seeking to attack the court's previous orders. The court noted that defendant's *pro se* petition was actually a motion to reconsider the orders of August 13, 2007, and June 17, 2008. The court then found that it was "without jurisdiction since Ronald Wells still has a pending appeal," and dismissed defendant's petition with prejudice.

¶ 9 On August 13, 2010, this court entered an order in appeal No. 3-08-0528, affirming the trial court's June 17, 2008, ruling. See *People v. Wells*, No. 3-09-0503 (2010) (unpublished order under Supreme Court Rule 23). We found that defendant failed to comply with Rule 12(b)(3) because he did not attach a signed certificate or affidavit attesting the time and place he mailed the postconviction petition. Thus, we concluded that the record did not support defendant's contention that he filed his March 2005 petition in a timely manner. *Wells*, No. 3-09-0503 (2010).

¶ 10

I

¶ 11 Defendant first argues that the trial court erred in dismissing his October 2008 petition on the merits. Specifically, he argues that the trial court's "arbitrary and erroneous" ruling on the timeliness of his 2005 postconviction petition required that a different judge hear his motion to reconsider that ruling. Thus, the June 17, 2008, should be vacated.

¶ 12 There is no absolute right to a substitution of judge in a postconviction proceeding. 735 ILCS 5/2-1001(a)(3)(ii)(West 2008); 725 ILCS 5/114-5(d) (West 2008); *People v. Reyes*, 369 Ill. App. 3d 1 (2006). To meet the statutory requirements, a petition for substitution must allege grounds that, if true, would justify granting substitution for cause. *In re Estate of Wilson*, 238 Ill. 2d 519

(2010) A trial judge named in a petition for substitution for cause may make the initial determination as to whether the petition should be referred to another judge for consideration on the merits. *Estate of Wilson*, 238 Ill. 2d at 555. To obtain a remand to a new judge, the defendant must show "hostility, ill will, or distrust" or "arbitrariness." *Reyes*, 369 Ill. App. 3d at 25. Where bias or prejudice is invoked as the basis for seeking substitution, it must stem from an extrajudicial source. *Estate of Wilson*, 238 Ill.2d at 554. A judge's prior rulings "almost never constitute a valid basis for a claim of judicial bias." *Id.*

¶ 13 Here, defendant argues that the trial court's bias is manifest in its ruling that the March 2005 petition was untimely and in its refusal to consider additional evidence to support defendant's claim that the 2005 petition was mailed on November 24, 2004. The record before the trial court at the July 20, 2007, hearing contained only a petition bearing the circuit clerk's file stamp of March 14, 2005. As noted in our previous order, defendant did not include a signed proof of service, as mandated by Supreme Court Rule 12(b), in support of his claim that he mailed the petition to the clerk on November 24, 2004. Thus, the trial court properly concluded that defendant's 2005 postconviction petition was untimely. Since the record provides no basis that the trial court's actions were arbitrary or improper, a different judge was not required to consider defendant's motion for substitution. Accordingly, the trial court did not exceed its authority when it dismissed the 2005 petition.

¶ 14

II

¶ 15 Defendant also argues that the trial court erred in dismissing his 2008 petition on the procedural ground that it lacked jurisdiction because an appeal had been taken from the court's earlier rulings.

¶ 16 A section 2-1401 petition for relief from a final judgment is the proper forum in which to correct all errors of fact occurring in the prosecution of a criminal case, unknown to the defendant and the court at the time judgment was entered, which, if known, would have prevented the outcome. *People v. Berland*, 74 Ill. 2d 286 (1979). When properly made, section 2-1401 petitions are new actions that a trial court may hear despite the pendency of an appeal. *People v. Gray*, 247 Ill. App. 3d 133 (1993). However, points and issues previously raised at trial and in other collateral proceedings cannot form the basis of a section 2-1401 petition for relief. *Berland*, 74 Ill. 2d at 314-15. In reviewing a court's ruling on a petition for postjudgment relief, we apply a *de novo* standard of review. *People v. Haynes*, 192 Ill. 2d 437 (2000).

¶ 17 In this case, defendant's October 2008 petition asked the trial court to reconsider its orders entered on August 13, 2007, and June 17, 2008. Those judgments were already pending appellate review in appeal No. 3-08-0528. Although defendant's 2008 petition was entitled "petition for relief from judgment," the pleading was, as the trial court stated, actually a motion to reconsider the court's previous orders. Defendant's petition was a section 2-1401 petition in name only; it did not constitute a new action. Thus, the trial court properly dismissed defendant's petition based on lack of jurisdiction. *Cf. Gray*, 247 Ill. App. 3d at 142.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Peoria County is affirmed.

¶ 20 Affirmed.