

to Supreme Court Rule 23 (eff. July 1, 1994)). On June 15, 2009, the petitioner filed a petition labeled as a petition for postjudgment relief, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)).

¶ 5 On July 1, 2009, the circuit court found the petition to be frivolous and patently without merit and dismissed it *sua sponte*, citing *People v. Johnson*, 352 Ill. App. 3d 442 (2004). On July 23, 2009, the petitioner filed a *pro se* notice of appeal in this court. On July 28, 2009, he was directed to show cause why the appeal should not be dismissed because his notice of appeal was not filed in the circuit court. In response, the petitioner filed a notice of appeal in the circuit court on August 10, 2009, which was filed in this court on August 17, 2009.

¶ 6 The petitioner then filed a motion in this court to find the appeal timely taken or, in the alternative, seeking leave to file a late appeal. On November 5, 2009, this court entered an order that held the motion to be moot because the appeal was considered timely filed under *People v. Lilly*, 291 Ill. App. 3d 662 (1997).

¶ 7 Next, the petitioner filed a brief challenging the *sua sponte* dismissal of the section 2-1401 petition before the 30-day period to answer, citing *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009). The State filed a confession of error regarding this issue.

¶ 8 On February 10, 2011, this court ordered the parties to rebrief the issues. The order stated as follows:

"[T]he fact that the circuit court deemed the petition to be 'frivolous and patently without merit' and dismissed it under *Johnson* appears to indicate that the circuit court treated the 2-1401 petition as a postconviction petition, just as the court did in *Johnson*, 352 Ill. App. 3d at 444. Thus, the circuit court seemed to characterize the petition as a postconviction petition, as did this court. The

characterization of the petition as a postconviction petition allowed this court to hold it timely under *Lilly* in the November 5, 2009, order. Thus, the current briefs are not relevant regarding a postconviction petition, and the issues must be rebriefed."

The parties have provided supplemental briefs.

¶ 9

CONTENTIONS ON APPEAL

¶ 10

In the petitioner's supplemental brief, he alleges that if the circuit court recharacterized the section 2-1401 petition as a successive postconviction petition, the circuit court failed to give the required admonishments. However, the petitioner alleges that if the section 2-1401 petition was not recharacterized, then the circuit court's *sua sponte* dismissal of the petition before the conclusion of the 30-day answer period was premature.

¶ 11

In response, the State argues that the admonishments were not required because the circuit court had already advanced the petition to the first stage of postconviction proceedings.

¶ 12

ANALYSIS

¶ 13

On appeal, after careful review, we decided that the circuit court construed the petitioner's section 2-1401 petition as a postconviction petition, and thus, this court allowed a late notice of appeal under *Lilly*, 291 Ill. App. 3d 662, which is only applicable to postconviction petitions. Therefore, we will address the arguments pertaining to this recharacterization.

¶ 14

When a circuit court decides to recharacterize a defendant's pleading, the supreme court in *People v. Shellstrom*, 216 Ill. 2d 45, 51 (2005), has set forth admonishments that must be given to the defendant to ensure that the defendant is aware of the consequences of the recharacterization and to allow for the defendant to amend or withdraw the petition. In *People v. Pearson*, 216 Ill. 2d 58, 68 (2005),

the supreme court reiterated the *Shellstrom* admonishments, in light of successive postconviction petitions, as follows:

"[T]he circuit court must (1) notify the *pro se* litigant that the court intends to recharacterize the pleading, (2) warn the litigant that this recharacterization means that the petition will be subject to the restrictions on successive postconviction petitions, and (3) provide the litigant an opportunity to withdraw the pleading or to amend it so that it contains all the factors and arguments appropriate to a successive postconviction petition that the litigant believes he or she has."

We review *de novo* the circuit court's compliance with applicable procedures. *People v. Helgesen*, 347 Ill. App. 3d 672, 675 (2004).

¶ 15 In the case at hand, no admonishments were given at the time of the recharacterization. Thus, the petitioner argues that, under *Pearson*, a remand for admonishments is necessary. However, the State contends that the circuit court advanced the petition to the first stage of postconviction proceedings and that, thus, the admonishments were not required. To support this argument the State relies on the recent supreme court case of *People v. Stoffel*, 239 Ill. 2d 314 (2010). However, we find *Stoffel* distinguishable from the present case. In *Stoffel*, the court held that admonitions are not necessary when the defendant's *pro se* petition is advanced to the next stage of postconviction proceedings and counsel is appointed. Unlike the present case, the defendant in *Stoffel* had appointed counsel and the holding in that case hinges on that fact. Moreover, our interpretation of the record does not support the State's argument that the petition was automatically advanced to further postconviction proceedings.

¶ 16 We conclude that the present case is similar to *Pearson*. Therefore, we find that admonishments were necessary, and like the court in *Pearson*, we remand to the

circuit court with directions to give the petitioner the required admonishments.

¶ 17

CONCLUSION

¶ 18

For the foregoing reasons, we reverse the circuit court's *sua sponte* dismissal and remand with directions to provide the proper admonishments.

¶ 19

Reversed; cause remanded with directions.