NOTICE
Decision filed 09/09/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 100319-U

NO. 5-10-0319

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Marion County.
	)	
v.	)	No. 08-CF-41
	)	
COURTNEY J. SPEARS,	)	Honorable
	)	Michael D. McHaney,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Goldenhersh and Donovan concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the defendant's petition for relief from judgment is *sua sponte* dismissed by the circuit court before the 30-day time period to answer had expired, the circuit court's dismissal is reversed and the cause is remanded for further proceedings.

¶ 2 The defendant, Courtney J. Spears, appeals from the circuit court's *sua sponte* dismissal of his petition for relief from judgment filed pursuant to section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)). He prays that this court will reverse the circuit court's order and remand the cause for further proceedings. The State has filed a confession of error. We find the defendant's contention and the State's concession to be well-taken and grant the requested relief.

¶ 3 BACKGROUND

¶ 4 The defendant was convicted of unlawful possession with intent to deliver a controlled substance under section 401(d) of the Illinois Controlled Substances Act (720

ILCS 570/401(d) (West 2008)) and sentenced to 10 years of imprisonment. The defendant's conviction was affirmed on direct appeal. *People v. Spears*, No. 5-09-0108 (2010) (unpublished order pursuant to Illinois Supreme Court Rule 23 (eff. May 30, 2008)).

¶ 5 On May 28, 2010, the defendant filed a section 2-1401 petition. On June 9, 2010, the circuit court *sua sponte* dismissed the defendant's section 2-1401 petition. The defendant filed this timely appeal.

¶ 6 ANALYSIS

¶ 7 We review *de novo* the circuit court's decision to dismiss *sua sponte* a petition for relief from judgment. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). "To obtain relief under section 2-1401, the defendant 'must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief.' " *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003) (quoting *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986)). "However, where *** a petitioner seeks to vacate a final judgment as being void [citation], the allegations of voidness 'substitute[ ] for and negate[ ] the need to allege a meritorious defense and due diligence.' " *Vincent*, 226 Ill. 2d at 7 n.2 (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)).

¶ 8 Petitions for relief from judgment "are subject to the usual rules of civil practice" and, thus, are "subject to dismissal for want of legal or factual sufficiency." *Vincent*, 226 Ill. 2d at 8. However, the supreme court has held that a circuit court's *sua sponte* dismissal of a petition for relief from judgment before the end of the 30-day window to answer or file a motion to dismiss is premature and requires the reversal of the circuit court's dismissal order. *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009).

¶ 9 In the instant case, the circuit court dismissed the defendant's petition *sua sponte* 12

days after the petition was filed, which was well before the 30-day time period to answer had expired. "The circuit court's dismissal short-circuited the proceedings and deprived the State of the time it was entitled to answer or otherwise plead." *Laugharn*, 233 Ill. 2d at 323. Thus, the petition was not ripe for adjudication. Accordingly, we reverse the circuit court's dismissal of the defendant's petition for relief from judgment and remand for further proceedings.

¶ 10 CONCLUSION

¶ 11 For the foregoing reasons, we reverse the circuit court's *sua sponte* dismissal of the defendant's petition for relief from judgment and remand the cause for further proceedings.

¶ 12 Reversed; cause remanded.