

No. 1-09-1933

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. ACC 09 0047
)	
HENRY HILL,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Where defendant was charged under a statute that did not provide for imprisonment as a remedy, he was not entitled to admonishments under Supreme Court Rule 401(a); (2) Where defendant, who was not a licensed attorney, prepared a postconviction petition on another person's behalf, and charged a fee to do so, the trial court properly found him in contempt for the unauthorized practice of law; and (3) Where the trial court only imposed \$600 in fines against defendant, it did not abuse its discretion.
- ¶ 2 Following a hearing, defendant Henry Hill was found to be in indirect contempt of court for the unauthorized practice of law, pursuant to the Illinois Attorney Act. 705 ILCS 205/1 *et seq.* (West 2008). Defendant appeals *pro se*, contending that: (1) the trial court failed to

1-09-1933

adequately admonish him of his right to counsel under Supreme Court Rule 401(a) (eff. July 1, 1984); (2) he was improperly found to be in contempt of court; and (3) the trial court abused its discretion in imposing a total of \$600 in fines. We affirm.

¶ 3 On March 6, 2009, the State filed a petition for rule to show cause why defendant should not be held in contempt of court alleging that defendant had violated section 1 of the Illinois Attorney Act. 705 ILCS 205/1 (West 2008). Specifically, the State alleged that defendant had, without a license to practice law, provided legal services to Milton Jones and charged Milton's mother, Shavella, a fee for services rendered.

¶ 4 On March 18, 2009, defendant told the court he did not want an appointed lawyer and that he wanted to represent himself. Defendant told the trial court he understood he had the right to an attorney and the trial court did not further admonish him about his rights.

¶ 5 At the contempt hearing, Shavella Jones testified that in July 2008, she had received a call from defendant who stated that he worked for the John Howard law firm and that Milton, who was in prison, had written the firm seeking *pro bono* representation. Defendant explained that the firm had no *pro bono* lawyers, but that he was a paralegal and would be willing to help Milton complete a postconviction petition for a total fee of \$600. Shavella paid defendant \$200 in total and gave him the transcripts from Milton's trial. Defendant gave Shavella the completed postconviction petition on August 15, 2008, which she mailed to Milton.

¶ 6 Milton Jones testified that he was currently serving a 37-year prison sentence and that after his first postconviction petition was denied, he sent letters seeking *pro bono* assistance, including one to the John Howard Association (Association). In August 2008, Milton received a package from Shavella with a second postconviction petition which he immediately signed and filed. However, after having it examined by the clerks in the prison law library, Milton filed a motion to withdraw the petition because it was incomplete. Milton admitted that defendant never

1-09-1933

gave him legal advice, never filed anything on his behalf, and never appeared in court on his behalf.

¶ 7 Charles Fasano, the director of the prisons and jail program for the Association, testified that although defendant worked for the Association at one time, he never had authority to perform any legal duties on behalf of the Association and never turned over fees to the Association that he had received from doing postconviction work. Fasano was aware that defendant had a paralegal service called Para-Legs. Further, Fasano was familiar with the prison law library rule that stated: "[y]ou do not have physical access to the Law Library. You may have access to legal materials by requesting them from the paralegal staff at [the prison]."

¶ 8 Andrew Oliva, a deputy registrar for the Attorney Registration and Disciplinary Committee, testified that defendant was not at that time, and had never been, on the list of attorneys licensed and authorized to practice law in Illinois.

¶ 9 Defendant presented several exhibits to the court, including, *inter alia*, a paralegal certificate he had received from an accredited paralegal program, a business registration for Para-Legs, and a flyer which advertised Para-Legs as a litigation support service.

¶ 10 The trial court found defendant to be in indirect contempt of court. Further, the court found that defendant was unjustly enriched by Shavella and entered a judgment against him in the amount of \$200 to be paid to Shavella. The court also assessed defendant with a \$400 fine for the contempt of court finding, to be paid to the general welfare fund for the Illinois Department of Corrections inmates.

¶ 11 On appeal, defendant first argues that the trial court erred by not admonishing him of a right to an attorney pursuant to Rule 401(a).

¶ 12 Supreme Court Rule 401(a) states that the trial court "shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment" without first informing the

1-09-1933

defendant, in open court, of: (1) the nature of his charge; (2) the minimum and maximum sentence prescribed by law; and (3) his right to counsel. Ill. S. Ct. R. 401(a) (West 2008). There has been a split in the districts of this court as to how to interpret the language "an offense punishable by imprisonment." The second district has interpreted it to mean an offense for which a sentence of imprisonment is actually imposed. *People v. MacArthur*, 313 Ill. App. 3d 864, 869 (2nd Dist. 2000). The third and fourth districts, on the other hand, have interpreted the same language to mean an offense for which imprisonment is available as a remedy. See *People v. Campbell*, 359 Ill. App. 3d 281, 284-85 (3rd Dist. 2005); *People v. Herring*, 327 Ill. App. 3d 259, 262 (4th Dist. 2002). The first district has yet to rule on this particular issue. However, regardless of the interpretation, defendant here has failed to show he is entitled to the Rule 401(a) admonishments.

¶ 13 Defendant was charged with statutory contempt under section 1 of the Illinois Attorney Act, which provides that the remedies available for violation of that section "include, but are not limited to: (i) appropriate equitable relief; (ii) a civil penalty not to exceed \$5,000, which shall be paid to the Illinois Equal Justice Foundation; and (iii) actual damages." 705 ILCS 205/1 (West 2008). The statute does not provide for a remedy of imprisonment and defendant has presented no evidence or legal authority that would suggest imprisonment was a possible punishment. Defendant merely states that the "trial court have [*sic*] full notice that Hill need [*sic*] legal counsel. The trial judge not [*sic*] once admonish Hill as to S.CT. Rule 401(a)." Furthermore, defendant was not actually punished with a sentence of imprisonment. Therefore, we conclude that defendant was not entitled to Rule 401(a) admonishments.

¶ 14 Defendant next contends that the trial court improperly found that he practiced law without a license. Defendant does not dispute that he prepared a legal document on behalf of

1-09-1933

Milton, but rather contends that his actions were permitted under the "*pro se* exception" to the general rule against the unauthorized practice of law.

¶ 15 Section 1 of the Illinois Attorney Act provides, "[a]ny person practicing, charging or receiving fees for legal services *** either directly or indirectly, without being licensed to practice as herein required, is guilty of contempt of court." 705 ILCS 205/1 (West 2008).

¶ 16 The *pro se* exception to what would otherwise be considered the unauthorized practice of law applies to "the preparation of documents in situations where the party preparing the legal documents does so for his or her own benefit in a transaction to which the preparer is a party." *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 14 (2005). However, the *pro se* exception is not available to the person who prepares a legal document but is neither a licensed attorney nor a party to the transaction. *King*, 215 Ill. 2d at 23.

¶ 17 The evidence here shows that although defendant is a certified paralegal, he is not a licensed attorney. Nonetheless, he prepared a postconviction petition for Milton to sign and file with the court, and accepted \$200 from Shavella to prepare the petition. Defendant maintains that he did not practice law because he did not appear or file anything in court on behalf of Milton, he did not give Milton legal advice, and he did not sign the pleading. However, our supreme court has held that "it is the *preparation* of the documents, *** not the mere furnishing of legal forms for use by another, that makes the activity unauthorized." *King*, 215 Ill. 2d at 22-23 (finding no unauthorized practice of law where mortgage lenders prepared loan documents for transactions to which they were parties). Here, defendant prepared the postconviction petition for someone other than himself and was not a party to the petition; thus, the *pro se* exception does not apply to his actions.

¶ 18 Furthermore, although defendant is a certified paralegal, we are aware of no exception that gives paralegals the authority to practice law without the supervision of a licensed attorney.

1-09-1933

See *In re Estate of Divine*, 263 Ill. App. 3d 799, 809 (1994) (observing that "paralegals do not independently practice law, but simply serve as assistants to lawyers"). Defendant argues that the prison uses paralegals to assist inmates, pointing to a prison law library rule that states: "[y]ou do not have physical access to the Law Library. You may have access to legal materials by requesting them from the Paralegal staff at [the prison]." However, this rule in no way suggests that paralegals are permitted to practice law and defendant cites to no authority to suggest otherwise. Under these circumstances, we conclude that the court properly found defendant in contempt of court for the unauthorized practice of law.

¶ 19 Finally, defendant contends that the trial court abused its discretion in imposing a total of \$600 in fines, relying on two distinguishable cases. See *U.S. v. Johnson*, 327 F. 3d 554 (2003); *Ramirez v. Smart Corporation*, 371 Ill. App. 3d 797 (2007). In *Johnson*, the seventh circuit found that the district court abused its discretion in imposing \$7,000 worth of punitive sanctions on the appellants where they were not found to be in contempt of court. *Johnson*, 327 F. 3d at 563. Here, in contrast, defendant was found to be in contempt and received no punitive sanctions. In general, *Ramirez* dealt with several claims a plaintiff brought against a medical record retrieval and copying service company, including unjust enrichment, but had nothing to do with the unauthorized practice of law. *Ramirez*, 371 Ill. App. 3d at 800. The court did find that the statute at issue did not provide for a private right of action for damages, but that question is not at issue here. *Ramirez*, 371 Ill. App. 3d at 808. Defendant gives no guidance as to why he cited to *Ramirez* beyond stating "[t]he trial court's statement: 'unjust enrichment' is a [*sic*] akin to the 'VOLuntary payment Doctrine.'" We find that neither of these cases are applicable to the instant case. Moreover, defendant provides no argument as to how the trial court abused its discretion.

1-09-1933

¶ 20 The Illinois Attorney Act authorizes remedies including, but not limited to, equitable relief, actual damages, and "a civil penalty not to exceed \$5,000, which shall be paid to the Illinois Equal Justice Foundation." 705 ILCS 201/1 (West 2008). Here, the court simply ordered defendant to pay back the \$200 he took from Shavella and fined defendant an additional \$400. Considering that the Illinois Attorney Act specifically allows for "a civil penalty not to exceed \$5000" we do not believe that a \$400 fine is unreasonable. Based on the facts before us, we see no evidence that the trial court abused its discretion. See *Taghert v. Wesley*, 343 Ill. App. 3d 1140, 1147 (2003) (finding a \$500 per day sanction until the defendants complied with the trial court order after finding them to be in contempt of court was not an abuse of discretion).

¶ 21 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 22 Affirmed.