2012 IL App (1st) 100674-U

FOURTH DIVISION
March 1, 2012

Nos. 1-10-0674; 1-10-3458 (Cons.)

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
Respondent-Appellee,	)	Cook County.
	)	
	)	No. 06 CR 19598-99,
v.	)	06 CR 19600-02
	)	
	)	Honorable
TYRON BOWENS,	)	Victoria A. Stewart,
	)	Paul P. Biebel, Jr.,
Petitioner-Appellant.	)	Judges Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

HELD: Trial court order striking a petition for post-conviction relief that had been filed by petitioner's mother on his behalf upheld where the mother did not possess a law license and was not authorized to file legal documents on petitioner's behalf.

¶1 Petitioner Tyron Bowens appeals a trial court order striking a petition for post-conviction relief that his mother had signed and filed on his behalf pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2008)). Petitioner contends that the trial court erred in

striking the petition because: (1) it failed to rule on the petition within the time limitations required by the Act; (2) the petition was properly filed by petitioner's mother who possessed power of attorney over him due to his incompetence; and (3) the petition set forth an arguable claim that he was denied effective assistance of trial counsel. Based on these purported errors, petitioner argues that the cause should be remanded and his petition should be advanced to second stage post-conviction proceedings. For the reasons set forth herein, we affirm the judgment of the trial court.

¶2 BACKGROUND

¶3 Petitioner was charged with five counts of residential burglary in connection with events that occurred between July 14, 2006, and August 15, 2006. On February 21, 2007, following a conference conducted in conformance with Supreme Court 402, petitioner elected to plead guilty to the charges. Upon determining that there was a sufficient factual basis for petitioner's guilty plea, the trial court accepted petitioner's plea and found him guilty of five counts of residential burglary. The court subsequently sentenced petitioner to six years' imprisonment for each of the counts, the sentences to be served concurrently. In accordance with the plea agreement, the court recommended that petitioner serve his time in bootcamp.

¶4 Thereafter, in April 2007, while in the custody of the Illinois Department of Corrections, petitioner was diagnosed with schizophrenia. Petitioner's diagnosis rendered him ineligible for bootcamp. On August 9, 2007, upon learning that petitioner was found ineligible for bootcamp, the trial court modified petitioner's sentence so that he could serve his time in the Cook County Department of Corrections bootcamp program. Petitioner, however, was also found ineligible for

the Cook County program as he did not pass the physical and mental examinations that were required to participate. Accordingly, on October 12, 2007, the trial court reinstated petitioner's original sentence of six years' imprisonment in the Illinois Department of Corrections and adjusted petitioner's pre-sentence credit to reflect 423 days of credit for the time he had already been in custody.

¶5 Petitioner did not appeal his conviction or his sentence. Instead, on November 4, 2009, petitioner's mother, Stephanie Bowens, appeared before Judge Howlett, and filed an application to defend as an indigent person and a "*pro se*" post-conviction petition on petitioner's behalf "due to his incompetence." At that time, the court made no inquiry about the petition or why Stephanie sought to file the petition on behalf of her son.[1]

¶6 Although the petition was identified as a *pro se* filing, the petition's claims were advanced using third-person rather than first-person language. In pertinent part, the petition alleged that petitioner's constitutional rights were violated when police "brutalized and intimidated and coerced" him into confessing to five burglaries and that counsel was ineffective for failing to suppress petitioner's statement and advising petitioner to plead guilty. The petition further alleged counsel was ineffective for advising petitioner "to do bootcamp" even though he was ineligible for

[1] We note that at the time Stephanie attempted to file the petition on behalf of her son, the pleading was timely (725 ILCS 5/122-1(c) (West 2008)). Had the court conducted any inquiry about the petition at this juncture, it could have directed Stephanie to obtain her son's signature and petitioner could have filed an actual "*pro se*" petition for post-conviction relief in a timely manner.

the program.

¶7 Thereafter, on December 4, 2009, petitioner's mother, Stephanie Bowens, appeared before Judge Stewart. Petitioner was not present and the court observed that the *pro se* post-conviction petition that his mother had filed did "not appear to be a *pro se*" filing. Ultimately, because the State had not been properly served with the filing, the court continued the case until January 21, 2010.

¶8 Petitioner did not appear in court on that date, so the cause was once again continued until February 18, 2010. On that date, petitioner appeared before Judge Biebel, who observed that he had "some papers that have been filed supposedly in your name by somebody else" when another judge presided over his courtroom. In response, petitioner confirmed that his mother had filed a petition for post-conviction relief and a writ of mandamus on his behalf. Petitioner explained that he did not file the document because he did not "know nothing [*sic*] about law." Petitioner's mother, who was also present, acknowledged that she had filed and signed petitioner's post-conviction petition. Neither petitioner nor his mother raised the issue of petitioner's competence or mental fitness. When asked, petitioner's mother indicated that she was not an attorney, but stated that her son did not understand anything and that he needed someone to speak for him. The court explained that, as a non-lawyer, she could not "speak for" or "appear" on her son's behalf. Ultimately, the court struck the post-conviction petition, explaining that petitioner's mother could not sign and file a legal document on behalf of anybody other than herself. The court also denied the writ of mandamus that petitioner's mother had also filed on his behalf. This appeal followed.

¶9 ANALYSIS

¶10 On appeal, petitioner contends that due to the trial court's failure to rule on his petition for post-conviction relief within 90 days from date on which the filing was docketed as required by the Act, the cause must be remanded for second-stage post-conviction proceedings. He further argues that the petition was properly filed by his mother because he was incompetent and his mother was authorized to file legal documents on his behalf because she possessed power of attorney over him. With respect to the underlying merits of the petition, petitioner contends that it set forth an arguable claim that he was denied effective assistance of counsel.

¶11 In response, the State maintains that the 90-day ruling period set forth in the Act was never triggered because the petition was filed by petitioner's mother, a non-lawyer, and thus had no legal effect. Although petitioner's mother possessed power of attorney over her son, the State argues that it did not permit her to engage in the practice of law and institute legal action on her son's behalf. Rather, the document merely would have permitted petitioner's mother to act on his behalf as the client in an attorney-client relationship. Notwithstanding the improper filing, the State maintains that the claims advanced in the petition were meritless and the court committed no error in striking the petition.

¶12 The Act provides a means by which a person may challenge his criminal conviction and assert that the conviction resulted from the substantial denial of his constitutional rights. 725 ILCS 5/122-1 *et seq*. (West 2006); *People v. Petrenko*, 237 Ill. 2d 490, 495-96 (2010). Accordingly, " '[t]he function of a post-conviction proceeding is not to relitigate the Petitioner's guilt or innocence but to determine whether he was denied constitutional rights.' " *People v. Thompkins*, 161 Ill. 2d 148, 151 (1994), quoting *People v. Shaw*, 49 Ill. 2d 309, 311 (1971). The

Act contemplates a three-stage process for cases that do not involve the death penalty. *People v. Jones*, 213 Ill. 2d 498, 503 (2004). Proceedings under the Act are commenced by the filing of a petition in the trial court that contains the allegations pertaining to the substantial denial of the petitioner's constitutional rights. *Id*. At the first stage, the trial court must, within 90 days after the petition is filed and docketed, review the petition and determine whether the allegations, if taken as true, demonstrate a constitutional violation or whether they are "frivolous" or "patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2008); *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). This 90-day requirement is mandatory, not discretionary, and a trial court's failure to abide by this time requirement renders a court's summary dismissal order void and the petition must be docketed for second-stage post-conviction proceedings. *People v. Swamynathan*, 236 Ill. 2d 103, 113 (2010); *People v. Brooks*, 221 Ill. 2d 381, 389 (2006); *People v. Scullark*, 325 Ill. App. 3d 876, 888 (2001); *People v. Vasquez*, 307 Ill. App. 3d 670, 673 (1999). At the first-stage of post-conviction review, a trial court's ruling is subject to *de novo* review. *Swamynathan*, 236 Ill. 2d at 113.

¶13 If the trial court does not dismiss the petition as frivolous or patently without merit within the 90-day time period, the petition advances to the second stage, where it is docketed for additional consideration. 725 ILCS 122-2.1(b) (West 2008). At the second stage, the trial court will appoint an attorney for the petitioner if he cannot afford one and the State is entitled to file responsive pleadings. *People v. Steward*, 406 Ill. App. 3d 82, 88 (2010). If the petition is not dismissed at the second-stage, the cause will advance to the third, and final stage of post-conviction review where the trial court will preside over an evidentiary hearing on the petition.

725 ILCS 5/122-6 (West 2006); *Steward*, 406 Ill. App. 3d at 89.

¶14 Here, the petition was filed on November 4, 2009,[2] and the cause was continued on several occasions until the court ultimately struck the petition on February 18, 2010. Accordingly, it is clear that the trial court failed to rule on the petition within 90 days after it was filed and docketed for further proceedings. Ordinarily, if a trial court fails to rule on a post-conviction petition within 90 days, the cause must automatically advance to second-stage post-conviction proceedings. *Swamynathan*, 236 Ill. 2d at 113; *Brooks*, 221 Ill. 2d at 389; *Scullark*, 325 Ill. App. 3d at 888; *Vasquez*, 307 Ill. App. 3d at 673. However, that presupposes that the petition itself was properly filed. If, as the trial court found, and the State suggests, the petition was never properly filed then the petition was void and had no legal effect. To answer this question, we must determine whether the petition for post-conviction relief, filed by petitioner's mother, a non-lawyer, on his behalf, was valid.

¶15 In Illinois, our supreme court wields the power to define and regulate the practice of law and requires individuals to satisfy "minimum levels of education, training and character" before receiving the requisite license to practice law. *King v. First Capital Financial Services Corp.*, 215

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[2] In a footnote, the State suggests that the petition was actually filed on November 18, 2009, because that was the date that the petition was scheduled for hearing. However, our supreme court has explained that the 90-day time period set forth in the Act is not dependent upon when a hearing is scheduled; rather, it is dependent upon when the petition is "docketed" and "entered in an official record." *Brooks*, 221 Ill. 2d at 391. Here, the petition was filed and entered in the court record on November 4, 2009.

Ill. 2d 1, 12 (2005); see also *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429, 438-39 (2008). The court's regulatory power over the practice of law in this state has been codified in the Illinois Attorney Act. 705 ILCS 205/1 (West 2008) ("No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State"). The court's purpose for closely regulating the practice of law "is to protect the public from potential injury resulting from laypersons performing acts that require the training, knowledge, and responsibility of a licensed attorney." *King*, 215 Ill. 2d at 12.

¶16 Although a law license is generally required to file legal pleadings and otherwise engage in the practice of law, pursuant to the *pro se* exception, a layperson who does not possess legal training or a law license may appear in court on his or her own behalf. 705 ILCS 205/11 (West 2008). In addition, it is well recognized that every criminal defendant possesses a constitutionally guaranteed right to self-representation. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8; *People v. Simpson*, 204 Ill. 2d 536, 572 (2000). The right to choose to represent oneself, however, does not provide an individual with the "privilege or authority to represent other persons unless he is admitted to the practice of law." *Janiczek v. Dover Management Co.*, 134 Ill. App. 3d 543, 545 (1985); see also *King*, 215 Ill. 2d at 14 (explaining that the *pro se* exception "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*") (Emphasis added.) Indeed, only persons who meet the requirements set by the supreme court and possess law licenses may represent another individual. *Pratt-Holdampf v. Trinity Medical Center*, 338 Ill. App. 3d

1079, 1083 (2003). Generally, if an unlicensed person attempts to represent another party in a legal proceeding, the action should be dismissed, and if the action proceeded to a judgment, then the judgment is void and treated as a nullity. *Applebaum*, 231 Ill. 2d at 435; *Pratt-Holampft*, 338 Ill. App. 3d at 1083; *Janiczek*, 134 Ill. App. 3d at 545. More specifically, if a nonlawyer parent attempts to bring an action on behalf of his or her child without obtaining the assistance of licensed counsel, the proceedings are void and have no effect. *Blue v. People*, 223 Ill. App. 3d 594, 596-97 (1992) (explaining that allowing a nonlawyer parent to bring an action on behalf of his or her child "does not promote the interest in free choice that underlies the right of a party to self-representation"). The nullity or voidness rule " 'is grounded in the fact that there are risks to individual clients and to the integrity of the legal system inherent in representation by an unlicensed person: The purpose of the nullity rule is *** to protect litigants against the mistakes of the ignorant and the schemes of the unscrupulous and to protect the court itself in the administration of its proceedings from those lacking requisite skills.' " *Applebaum*, 231 Ill. 2d at 435, *quoting Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 389-90 (2005) (Internal quotation marks omitted.)

¶17 Here, it is undisputed that petitioner's mother did not possess a law license when she filed a petition for post-conviction relief under the Act and appeared in court on behalf of her son. The filing of this petition constituted the practice of law. See, *e.g.*, *Blue*, 223 Ill. App. 3d at 596. Moreover, because petitioner's mother filed it on behalf of her son, not on her own behalf, her actions constituted the unauthorized practice of law. *Id.* Even though petitioner's mother labeled the pleading "*pro se*," this did not bring this case within the self-representation exception. *Id.*

(finding that although the father of a minor child filed a "*pro se*" complaint for *habeas corpus* on his son's behalf, the label "d[id] not bring the case within the right of a party to represent himself"). Indeed, the record reflects that petitioner neither prepared, nor signed the petition and thus, it was not a true *pro se* filing. Because petitioner's mother is not an attorney, she was not entitled to commence an action on behalf of her son and, accordingly, the filing was a nullity and had no legal effect. *Id*. at 597. Because the petition had no legal effect, it did not trigger the 90-day ruling period set forth in the Act.

¶18 Petitioner, however, seeks to avoid the consequences of the nullity rule by arguing that he is incompetent and that his mother was authorized to file the petition on his behalf because she possessed a power of attorney over him. We find these arguments unavailing.

¶19 The Illinois Power of Attorney Act (755 ILCS 45/1-1 *et seq*. (West 2008)) does not permit a nonlawyer to practice law; it merely permits an individual to "appoint an agent to make property, financial, personal, and health care decisions" for him or her. When a power of attorney is executed, the document creates an principal-agent fiduciary relationship. 755 ILCS 45/2-1 (West 2008); *Zachary v. Mills*, 277 Ill. App. 3d 601, 607 (1994). Pursuant to that relationship, the agent is the principal's attorney-in-fact, not an attorney-in-law. 755 ILCS 452-3(b) (West 2008). Although there has been no Illinois case directly addressing this issue, other jurisdictions have plainly held that the authority bestowed upon an agent through a power of attorney does not include empowering the attorney-in-fact to appear and represent the principal as an attorney-at-law because to interpret the power of attorney in this manner would circumvent the prohibition against the unauthorized practice of law. *See, e.g., In re Reibel*, 625 N.W. 2d 480, 482 (Minn.

2001); *In re Snyder*, 820 A. 2d 390, 391-94 (Del. 2001); *Fravel v. Stark County Board of Revision*, 88 Ohio St. 3d 574, 575 (2000). Accordingly, by virtue of the power of attorney executed in this case, petitioner's mother was entitled to make decisions for petitioner, including obtaining the assistance of an attorney, but was not authorized to file the petition for post-conviction relief and act as an attorney-at-law. Even if petitioner's mother was his "next friend" as petitioner suggests, this designation would also preclude her from engaging in the unauthorized practice of law and from filing *pro se* legal documents on his behalf. See *Blue*, 223 Ill. App. 3d at 596 (recognizing that a "next friend" is not a party to a suit and that a father who was the next friend of his minor son could not file a *pro se habeas corpus* petition on his son's behalf because it constituted the unauthorized practice of law). Thus, we disagree with petitioner that the power of attorney rendered the post-conviction petition properly filed.

¶20 With respect to petitioner's allegation of incompetence, we observe that although both parties refer to petitioner as "incompetent," the parties overlook the fact that there has never been a finding, nor a request for a finding, that petitioner is unfit to participate in post-conviction proceedings. In Illinois, a criminal defendant is presumed to be fit to stand trial, decide whether or not to enter into a plea agreement and to be sentenced. 725 ILCS 5/104-10 (West 1998); *Simpson*, 204 Ill. 2d at 554; *People v. Owens*, 139 Ill. 2d 351, 363 (1990). A defendant is also presumed to be fit for post-conviction proceedings. *People v. Shum*, 207 Ill. 2d 47, 62 (2003); *Owens*, 139 Ill. 2d at 363. Moreover, given the disparate nature of trial and post-conviction proceedings, the fitness standard for post-conviction proceedings is less demanding than what is required to participate at trial. *Shum*, 207 Ill. 3d at 62; *Owens*, 139 Ill. 2d at 363. A "petitioner

who is competent to communicate his allegations of constitutional deprivations to counsel is competent to participate in post-conviction proceedings." *Owens*, 139 Ill. 2d at 365. The mere fact that a petitioner suffers from a psychiatric condition and receives psychiatric treatment of some kind does not raise a *bona fide* doubt as to his competence to participate in post-conviction proceedings. *Shum*, 207 Ill. 2d at 59; *Owens*, 139 Ill. 2d at 362. If, however, there are circumstances that lead the trial court to conclude that a *bona fide* doubt exists as to a defendant's fitness, the court may order the defendant to undergo a psychological evaluation and consider the matter of the defendant's fitness at an evidentiary hearing. *Simpson*, 204 Ill. 2d at 550; *Owens*, 139 Ill. 2d at 365.

¶21 Here, there was no allegation or evidence that petitioner was unfit when he elected to enter a guilty plea. The record, however, reveals that after the plea was accepted and petitioner commenced his sentence, he was subsequently diagnosed with schizophrenia. While the diagnosis rendered petitioner ineligible to participate in prison bootcamp, it did not render him *per se* incompetent to participate in post-conviction proceedings or file a petition for post-conviction relief on his own behalf. See *Owens*, 139 Ill. 2d at 362; *Shum*, 207 Ill. 2d at 59. The parties appear to overlook that neither petitioner nor his mother have ever alleged before the trial court or this court that his schizophrenia renders him incapable of communicating allegations of constitutional deprivation, which is the standard for *legal* fitness. See *Shum*, 207 Ill. 2d at 59 (explaining that the legal fitness standard "only concerns defendant's ability to understand the proceedings and assist counsel, not mental fitness in other areas of life"). We note that at the time petitioner's mother appeared before Judge Howlett and filed the *pro se* petition, she explained that

she was doing so because petitioner was "incompetent." Thereafter, when Judge Biebel inquired about the petition, petitioner's mother indicated that her son did not likely understand what was going on and "need[ed] somebody to speak for him;" however, the record reflects that petitioner conversed readily with the court and explained that he did not file the document because he did not know "nothing" about legal proceedings. At no time was there was never a request for a finding about petitioner's legal fitness; there was simply a claim by petitioner's mother that he was "incompetent" merely because he suffered from schizophrenia, which does not mean that petitioner ever was or currently is legally unfit. *Owens*, 139 Ill. 2d at 362; *Shum*, 207 Ill. 2d at 59. Moreover, even if petitioner were legally unfit, petitioner cites to no authority that a party's lack of fitness permits a non-lawyer to engage in the unauthorized practice of law.

¶22 Ultimately, upon review of the record and the arguments advanced by the parties, we uphold the trial court's order striking the petition for post-conviction relief filed by petitioner's mother on his behalf. Because we find that the petition for post-conviction relief was a nullity, we need not address petitioner's argument regarding the substantive merit of the claims advanced therein. We note that nothing in this disposition precludes petitioner from filing pleadings on his own behalf.

¶23 CONCLUSION

¶24 For the reasons explained herein, we affirm the judgment of the circuit court.

¶25 Affirmed.