

No. 1-10-1675

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 86 CR 13683
	)	
MANNIE MADDOX,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court prematurely dismissed defendant's section 2-1401 petition and we vacate the order.

¶ 2 Defendant Mannie Maddox appeals from the trial court's dismissal of his petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). On appeal, defendant contends that: (1) the trial court prematurely dismissed his petition; and (2) the trial court lacked the authority to order the collection of a \$90

filing fee from defendant's prison trust fund account. We vacate the trial court's order and remand the cause for further proceedings.

¶ 3 After a bench trial, defendant was convicted of first degree murder and attempted first degree murder. The trial court sentenced defendant to an extended term of 70 years for the murder and an extended term of 60 years for the attempted murder, to run concurrently. On direct appeal, we affirmed the convictions of defendant and his codefendant, David Allen, who is not party to this appeal. *People v. Allen & Maddox*, 228 Ill. App. 3d 149 (1992).

¶ 4 In 1991, defendant filed a *pro se* petition under section 2-1401 of the Code. The trial court treated the petition as a petition for relief under the Post-Conviction Hearing Act (Act) (Ill. Rev. Stat. 1991, ch. 38, par. 122-1 *et seq.*) and dismissed it as frivolous. On appeal, we vacated the dismissal and remanded the cause. *People v. Maddox*, No. 1-91-3013 (1993) (unpublished order under Supreme Court Rule 23).

¶ 5 Upon remand, defendant filed a supplemental postconviction petition. The trial court granted the State's motion to dismiss and we affirmed the dismissal on appeal. *People v. Maddox*, No. 1-99-0838 (2001) (unpublished order under Supreme Court Rule 23).

¶ 6 In 2001, defendant filed a postconviction motion asserting an *Apprendi* claim. The trial court treated the motion as a postconviction petition under the Act. The State's motion to dismiss was granted. On appeal, we affirmed the dismissal but reduced defendant's sentence for attempted first degree murder from 60 years to 30 years. *People v. Maddox*, No. 1-03-3536 (2005) (unpublished order under Supreme Court Rule 23).

¶ 7 In 2006, defendant filed a *pro se* successive petition under the Act, which the trial court dismissed and we affirmed its judgment on appeal. *People v. Maddox*, No. 1-06-3156 (2008) (unpublished order under Supreme Court Rule 23).

¶ 8 On April 12, 2010, defendant filed the instant *pro se* section 2-1401 petition. On April 20, 2010, the trial court asked whether the State would respond to defendant's petition. The State told the court it intended to respond.

¶ 9 On April 27, when the trial court asked whether the State was going to file an answer, the State responded, "[i]t seems it's a proper subject matter for 1401, but I think it's at the point I'm not allowed to comment on it."

¶ 10 On May 4, 2010, the trial court dismissed defendant's petition. The State was present when the court ruled but filed no response and did not object to the dismissal.

¶ 11 On appeal, defendant first contends that the trial court's *sua sponte* dismissal of his section 2-1401 petition was premature and requests that we vacate the trial court's order and remand his cause for further proceedings, citing to *People v. Laugharn*, 233 Ill. 2d 318 (2009). We review the dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 12 Section 2-1401 provides a defendant with an opportunity to obtain relief from a final judgment more than 30 days after its entry. 735 ILCS 5/2-1401(a) (West 2010); *Laugharn*, 233 Ill. 2d at 322. Section 2-1401 proceedings are governed by the rules of civil practice, even if the underlying proceeding is criminal. *People v. Clemons*, 2011 IL App (1st) 102329, ¶ 9 (citing *Vincent*, 226 Ill. 2d at 8). Therefore, once a petition is filed, the defendant must notify the State of the filing and inform the State that it has 30 days in which to file an answer to the petition. Ill. S. Ct. R. 105(a) (eff. Jan. 1, 1989); *Clemons*, 2011 IL App (1st) 102329, ¶ 9. If the State does not file a response, the trial court may *sua sponte* dismiss the petition if the defendant "cannot possibly win relief." *Vincent*, 226 Ill. 2d at 10, 13.

¶ 13 In *Laugharn*, the supreme court held that a trial court's *sua sponte* dismissal before the expiration of the 30-day period during which the State may file a response "short-circuited the

proceedings" and deprived the State of its time to respond. *Laugharn*, 233 Ill. 2d at 323. The supreme court found that a petition in this instance was not "ripe for adjudication," then vacated the order and remanded the cause to the trial court for further proceedings. *Laugharn*, 233 Ill. 2d at 323-24 (quoting *Vincent*, 226 Ill. 2d at 10).

¶ 14 Subsequently, this court has held that even if the State is present the day of dismissal and offers no objection, "mere silence on the part of the State within the 30-day period \*\*\* does not render the petition ripe for adjudication." *Clemons*, 2011 IL App (1st) 102329, ¶ 17; see also *People v. Gray*, 2011 IL App (1st) 091689, ¶ 22 (vacating the premature dismissal of the defendant's section 2-1401 petition where the State was present but remained silent).

¶ 15 Here, the State concedes that the petition was dismissed within the 30-day period during which it was allowed to respond. Furthermore, the record shows that the State was present the day the trial court dismissed defendant's petition, but remained silent. Nonetheless, the State argues that it voluntarily waived its right to respond to defendant's petition, specifically referring to April 27, 2010, when it told the court, "[i]t seems it's a proper subject matter for 1401, but I think it's at the point I'm not allowed to comment on it." However, the State's argument is disingenuous, as the record demonstrates that this "waiver" was neither voluntary nor knowing. See *People v. Phipps*, 238 Ill. 2d 54, 62 (waiver is the voluntary relinquishment of a known right). The State's comment on April 27 shows that it believed it could not respond to defendant's petition. In other words, the State did not know it could respond to the petition at that time and thus could not voluntarily or knowingly waive the right. Therefore, we follow the reasoning of *Laugharn*, *Clemons*, and *Gray*, and find that the trial court's *sua sponte* dismissal of defendant's petition was premature.

¶ 16 In light of our disposition, we also vacate the trial court order that assessed defendant \$90 in filing fees, to be collected from his prison trust fund account.

1-10-1675

¶ 17 Accordingly, we vacate the orders of the trial court and remand for further proceedings.

¶ 18 Vacated and remanded.