

No. 1-10-2999

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. 02 CR 3413
)	
ANTHONY WILLIAMS,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Murphy and Salone concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where order appealed from was neither final and appealable nor a cognizable interlocutory order.
- ¶ 2 Defendant Anthony Williams appeals from an order of the circuit court of Cook County denying his *pro se* "motion for leave of the court to file a late post conviction petition." On appeal, defendant claims that his motion was a petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)), and that the trial court erred in dismissing his first-stage postconviction petition as untimely.
- ¶ 3 The record shows that defendant entered a negotiated plea of guilty to first degree murder on December 30, 2008, and was sentenced to the agreed-upon sentence of 50 years'

1-10-2999

imprisonment. Defendant made no attempt to vacate his plea or otherwise perfect an appeal from the judgment entered thereon.

¶ 4 Defendant subsequently filed a motion for copies of the common law record and trial transcripts, which was denied. On August 12, 2010, defendant filed the instant *pro se* "motion for leave of the court to file a late post conviction petition." In that motion, defendant alleged that he "will show that he is not culpably negligent for this late filing," and that the claims he wishes to raise are not forfeited because the statutory time bar should be relaxed when fundamental fairness so requires. Defendant then listed the "substantial denials of constitutional rights to be argued and main supporting precedent to be relied upon if 'leave' is granted to file a late post conviction" petition: that defense counsel coerced his guilty plea and rendered ineffective assistance in that she failed to contact witnesses, sufficiently consult with defendant, investigate his mental defects, inform him of the "accomplice corroboration rule," and that counsel's ineffective assistance and the trial court's failure to properly admonish him rendered his guilty plea involuntary. The circuit court, "[a]ssuming" that it even had "the authority to do such a thing," denied defendant's "motion for leave to file a late post conviction petition."

¶ 5 In this appeal from that ruling, defendant maintains that his petition was in fact a post-conviction petition, and that the circuit court erred in dismissing it as untimely, citing *People v. Bocclair*, 202 Ill. 2d 89, 99 (2002). He also contends the petition was timely filed within three years of the judgment entered on his guilty plea (725 ILCS 5/122-1(c) (West 2010)). He thus requests this court to remand his cause for second-stage proceedings under the Act. The State responds that defendant's *pro se* pleading was not a postconviction petition, but, rather, an "anticipatory" motion for leave to file a late postconviction petition at some point in the future. As such, the trial court's order denying defendant leave to file it was not final and appealable.

We thus consider whether defendant was entitled to the relief requested and whether the circuit court's denial of that relief is an appealable order.

¶ 6 As noted, defendant filed a "motion for leave of the court to file a late post conviction petition." Although the character of a petition is to be determined by its content, rather than its title (*People v. Smith*, 371 Ill. App. 3d 817, 821 (2007)), the content of defendant's motion here is consistent with its title in that defendant specifically requested leave to file a late postconviction petition in the body of his motion. Then, in a cursory and brief fashion, he listed the denials of constitutional rights to be argued and "main supporting precedent to be relied upon if 'leave' is granted to file a late post conviction" petition.

¶ 7 The Act provides, in pertinent part, that a defendant who does not file a direct appeal from a judgment of conviction may file a postconviction petition no later than three years from the date of conviction unless he alleges facts showing that the delay was not due to his culpable negligence. 725 ILCS 5/122-1(c) (West 2010). There is no provision for, or requirement that, a defendant seek leave to file an initial postconviction petition even if it is beyond the statutory time period. Rather, leave is required only where defendant is seeking to file a successive post-conviction petition. 725 ILCS 5/122-1(f) (West 2010); *People v. Tidwell*, 236 Ill. 2d 150, 155 (2010). Where defendant is filing an initial, late postconviction petition, the statute requires that he allege facts in the petition showing that the delay was not due to his culpable negligence. 725 ILCS 5/122-1(c) (West 2010). Thus, there is no basis in the Act for filing a motion for leave to file a late initial postconviction petition, and the circuit court acted within its discretion in rejecting defendant's request to do so. *People v. Salgado*, 353 Ill. App. 3d 101, 106 (2004).

¶ 8 We next address whether this ruling was a final and appealable order. In his jurisdictional statement, defendant maintains that jurisdiction lies in this court pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, §6) and Supreme Court Rule

651(a) (eff. Dec. 1, 1984). The 1970 Illinois Constitution provides that the appellate court has jurisdiction to hear appeals from both final judgments and other orders for which the supreme court rules permit interlocutory appeals. Ill. Const. 1970, art. VI, §6. Rule 651(a) provides for an appeal from a final judgment in any postconviction proceeding. A judgment is final for purposes of appeal if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only remaining thing is to proceed with the execution of the judgment. *Salgado*, 353 Ill. App. 3d at 106. No appeal lies from an interlocutory order in the absence of a statute or rule specifically authorizing such review. *Salgado*, 353 Ill. App. 3d at 106.

¶ 9 In this case, there was no basis for defendant's motion for leave to file a late post-conviction petition and no basis for his appeal. *Salgado*, 353 Ill. App. 3d at 106. As explained, there was no provision in the Act for such a request or authority to grant it, a fact seemingly recognized by the circuit court in ruling on defendant's motion. Although the court rejected defendant's request, its order did not terminate any pending litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with execution of the judgment. *Salgado*, 353 Ill. App. 3d at 107 (and cases cited therein). Thus, the order was not an appealable order, nor does it fall within the supreme court rules providing for interlocutory appeals. Ill. S. Ct. R. 307 (eff. Feb. 26, 2010); R. 604 (eff. July 1, 2006). Accordingly, we have no jurisdiction and dismiss defendant's appeal. *Salgado*, 353 Ill. App. 3d at 106-07.

¶ 10 Appeal dismissed.