

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. 98 CR 30721
)	
SAM COOK,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court did not erroneously recharacterize defendant's *pro se* petition as a section 2-1401 petition without notice and an opportunity to amend, as defendant contends, where the petition did not refer to or cite any statute under which it was filed, but expressly sought to vacate a void judgment and, thus, fell squarely under section 2-1401 without recharacterization.

¶ 2 Following a 2002 jury trial, defendant, Sam Cook, was convicted of first degree murder and sentenced to 42 years' imprisonment. We affirmed on direct appeal. *People v. Cook*, No. 1-02-1313 (2003) (unpublished order under Supreme Court Rule 23). We also affirmed the summary dismissal of his 2004 post-conviction petition and the denial of leave to file his 2009 successive post-conviction petition. *People v. Cook*, No. 1-05-2085 (2006) (unpublished order under Supreme Court Rule 23); *People v. Cook*, No. 1-09-1517 (2010) (unpublished order under Supreme Court Rule 23). Defendant now appeals from the July 2010 *sua sponte* dismissal of his June 2010 *pro se* petition to

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vacate a void judgment. Defendant contends the circuit court improperly recharacterized his *pro se* petition as one filed under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 *et seq.* (West 2010)), without notification to him that it was doing so, thereby, depriving him of the opportunity to amend the petition.

¶ 3 Defendant filed the instant *pro se* petition, entitled "*Pro Se* Motion to Vacate and Void the Judgment," in June 2010. Defendant alleged that Public Act 80-1099 (Pub. Act 80-1099 (eff. Feb. 1, 1978)) was unconstitutionally enacted and, thus, void, and this voidness "took the prosecutor[]s powers away to prosecute the petitioner in this case." The petition explained, in great detail, why defendant believed Public Act 80-1099 was improperly adopted, but gave little explanation as to how it affected defendant, except for the aforementioned allegation that he could not be prosecuted, a bare statement that he was "sentenced under the unconstitutional Public Act 80-1099," and a reference to "the Class X sentencing reform." The petition did not identify or cite any statute under which it was filed and, defendant argued therein, that a void judgment may be challenged at any time in any proceeding.

¶ 4 On July 16, 2010, the circuit court dismissed defendant's petition in which he "seeks § 2-1401 relief from the judgment of conviction." The circuit court found it had the authority to dismiss *sua sponte* the instant petition because over 30 days had passed since its filing without a response by the State. The circuit court also found the petition was filed well in excess of the two-year limitations period for a section 2-1401 petition and, while a petition alleging a void judgment is an exception to that limitation, defendant was not alleging that the circuit court had lacked jurisdiction over the parties or, to issue the judgment of conviction. Lastly, the circuit court found defendant's claim did not fall under section 2-1401 because it was of a constitutional nature.

¶ 5 Defendant timely filed a motion to reconsider, arguing he "did not file a 2-1401(c) petition" and, thus, the court improperly recharacterized his petition. The motion to reconsider acknowledged that his petition was styled as a "motion to void and vacate judgment." The court denied the motion

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to reconsider on September 17, 2010, noting: (1) defendant's petition did not invoke either the Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) or, section 2-1401; and (2) a petition seeking relief from a void judgment falls under section 2-1401, albeit not its timeliness and due-diligence requirements. This appeal followed.

¶ 6 Section 2-1401 provides a mechanism by which final judgments may be challenged more than 30 days after their entry. *People v. Laugharn*, 233 Ill. 2d 318, 322 (2009). A section 2-1401 petition must show the existence of a meritorious defense and diligence in the original suit and in bringing the petition. *Id.* "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.'" *Id.* (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)); 735 ILCS 5/2-1401(f) (West 2010). ("Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.") A motion to vacate an order or judgment as void, regardless of whether it is titled a section 2-1401 petition, is considered a section 2-1401 petition. *In re Custody of Ayala*, 344 Ill. App. 3d 574, 582 (2003) (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104-05 (2002)). The *sua sponte* dismissal or denial of a petition for relief from judgment is reviewed *de novo* (*People v. Laugharn*, 233 Ill. 2d at 322-23), and this court shall review the disposition rather than the reasoning of the circuit court.

¶ 7 Defendant, citing *People v. Shellstrom*, 216 Ill. 2d 45 (2005) and *People v. Pearson*, 216 Ill. 2d 58 (2005), contends on appeal that the circuit court improperly recharacterized his *pro se* petition as one filed under section 2-1401 without notifying him that it was doing so, thus, depriving him of the opportunity to amend the petition. Those cases hold that when a court recharacterizes a *pro se* pleading "labeled as a different action cognizable under Illinois law," as a petition under the Post-Conviction Act, it must admonish the defendant of its intention to do so and, *inter alia*, give him an opportunity to amend or withdraw the petition. *Shellstrom*, 216 Ill. 2d at 57; *Pearson*, 216 Ill. 2d

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at 68. The purpose of this requirement is to give a defendant fair warning that his pleading is now subject to the requirements of the Post-Conviction Act. *Shellstrom*, 216 Ill. 2d at 56-57; *Pearson*, 216 Ill. 2d at 68. These circumstances are not present in this case.

¶ 8 Here, while defendant's petition did not cite any particular statute under which it was filed, it expressly sought to vacate an allegedly void judgment. The *vacatur* of void judgments falls squarely under the purview of section 2-1401(f). Thus, the circuit court did not improperly recharacterize the instant *pro se* petition without notice and an opportunity to amend because it did not recharacterize the petition in the first place.

¶ 9 Accordingly, the judgment of the circuit court is affirmed.

¶ 10 Affirmed.