

No. 1-11-0219

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. 93 CR 1352
)	
LAMONTE LAKE,)	Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Epstein and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant filed a frivolous "petition for rehearing," we affirmed the circuit court's order assessing fees against him; where the circuit court erred in assessing a \$90 fee, rather than a \$60 fee, we modified the Costs and Fees order; affirmed as modified.

¶ 2 Defendant Lamonte Lake appeals from the dismissal of his *pro se* "Petition for Rehearing." On appeal, defendant contends that the circuit court erred in finding his petition for rehearing frivolous and assessing fees against him. Alternatively, defendant contends that the \$90 filing fee assessed against him should be reduced to \$60. We affirm as modified.

¶ 3 Following a 1996 jury trial, defendant was found guilty of first degree murder and sentenced to 45 years' imprisonment. That judgment was affirmed on direct appeal. *People v. Lake*, 298 Ill. App. 3d 50 (1998). Subsequently, defendant unsuccessfully challenged his conviction and sentence in post-conviction petitions, a petition for writ of *mandamus*, and section 2-1401 petitions. See *e.g.*, *People v. Lake*, Nos. 1-00-2049 (2002), 1-07-3100 (2009), 1-09-1960 (2010) (unpublished orders under Supreme Court Rule 23).

¶ 4 On May 26, 2010, defendant filed a successive *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging that he was denied due process when the circuit court failed to send him written notice that he had been denied leave to file a successive petition he attempted to file in 2005. On July 29, 2010, the circuit court found that defendant failed to meet the cause and prejudice test and denied him leave to file his successive petition. In doing so, the court noted that defendant previously filed a *mandamus* petition raising the same issue, which the circuit court denied and this court affirmed on appeal. See *Lake*, No. 1-07-3100, order at 3 (stating that the notification procedure is a ministerial task relegated to the clerk). The circuit court also found the petition frivolous and patently without merit and ordered that defendant be assessed \$105 in court costs and fees pursuant to section 22-105 of the Code of Civil Procedure (Code) (735 ILCS 5/22-105 (West 2010)).

¶ 5 On August 27, 2010, defendant filed a "Petition for Rehearing," pursuant to Illinois Supreme Court Rule 367 (eff. Dec. 29, 2009), again contending that his constitutional rights were violated because he was not notified of the denial of his 2005 post-conviction petition. On December 2, 2010, the circuit court denied defendant's petition for rehearing, stating that defendant "continues to inundate this court with the same frivolous filing." The circuit court again noted that defendant previously raised this issue in a *mandamus* petition, which the circuit

court denied and this court affirmed on appeal. The circuit court also found defendant's petition for rehearing frivolous and patently without merit and assessed \$105 in court costs and fees against him pursuant to section 22-105 of the Code.

¶ 6 On appeal from the December 2, 2010 order, defendant contends that the circuit court erred in finding his petition for rehearing frivolous and assessing fees against him on the basis that he previously made the same argument in a *mandamus* action.

¶ 7 We initially note that defendant invoked Supreme Court Rule 367 when he filed his petition for rehearing from the July 2010 circuit court order denying him leave to file his May 2010 successive post-conviction petition. Rule 367, however, allows a party to file a petition for rehearing 21 days after the filing of a *reviewing* court's judgment. Ill. S. Ct. R. 367 (eff. Dec. 29, 2009). In the instant cause, there was no reviewing court judgment from which defendant could file a petition for rehearing. Therefore, because the legal foundation defendant rested upon was in error, his petition for rehearing was a frivolous filing. See 735 ILCS 5/22-105(b) (West 2010) (stating that a filing is frivolous when it lacks an arguable basis in law or in fact, or the allegations do not have evidentiary support).

¶ 8 Section 22-105 of the Code allows a court to assess fees when a defendant files a frivolous lawsuit. Section 22-105 specifically states that:

"If a prisoner *** files a pleading, motion, or other filing which purports to be a legal document in a case seeking post-conviction relief under Article 122 of the Code of Criminal Procedure of 1963, pursuant to Section 116-3 of the Code of Criminal Procedure of 1963, in a habeas corpus action under Article X of this Code, in a claim under the Court of Claims Act, or a second or subsequent petition for relief from judgment under Section 2-1401 of this

Code or in another action against the State, the Illinois Department of Corrections, or the Prisoner Review Board, or against any of their officers or employees and the Court makes a specific finding that the pleading, motion, or other filing which purports to be a legal document filed by the prisoner is frivolous, the prisoner is responsible for the full payment of filing fees and actual court costs." 735 ILCS 5/22-105(a) (West 2010).

Here, because defendant's petition for rehearing was an "other filing which purports to be a legal document" (735 ILCS 5/22-105(a) (West 2010)), and was frivolous, the circuit court properly assessed court costs and fees against him.

¶ 9 In reaching this conclusion, we reject defendant's contention that the circuit court erred in finding his petition for rehearing frivolous based on the doctrine of *res judicata*. Defendant specifically maintains that the circuit court failed to recognize the differences in the arguments contained in his 2007 *mandamus* petition and the petition for rehearing at bar.

¶ 10 In his 2007 *mandamus* petition, defendant alleged that the circuit court failed to notify him of the July 22, 2005 dismissal of his successive petition, and sought to compel the court to supply him with any materials pertaining to that dismissal. In his petition for rehearing at bar, defendant alleged that he "is addressing the violation of [his] constitutional rights to due process by the circuit court of Cook County when the court failed to notify [him] of his right to appeal th[e] adverse judgment made against him." We find no appreciable difference between the claims in his petition for rehearing and in his *mandamus* petition; and, accordingly, find that the circuit court did not err in finding that his present claim was barred by *res judicata*. See *People v. Flores*, 153 Ill. 2d 264, 277-78 (1992) (holding that a petitioner cannot obtain relief under the Act by rephrasing issues which were previously addressed, in constitutional terms); see also

People v. Barrow, 195 Ill. 2d 506, 522 (2001) (a mere change in phraseology does not warrant reconsideration of the issue).

¶ 11 We further note that, in affirming the circuit court's denial of defendant's motion for leave to file his *mandamus* petition, we stated that there was no written order from the dismissal of his 2005 successive post-conviction petition on file, and that defendant was aware of the adverse judgment on his 2005 petition when he unsuccessfully motioned the court for the same documents in March 2007. *Lake*, No. 1-07-3100, order at 4. We also indicated that even without proper notice, defendant's remedy was to request leave to file a late notice of appeal, which he failed to do. *Lake*, No. 1-07-3100, order at 4. Defendant was thus clearly aware of the circumstances surrounding the dismissal of his 2005 petition before he filed the petition for rehearing in this case.

¶ 12 Defendant next contends, and the State correctly concedes, that the court erred in assessing a \$90 fee against him for filing a frivolous petition, rather than a \$60 fee, because he did not file his petition for rehearing later than 30 days after the court denied him leave to file his 2010 successive post-conviction petition.

¶ 13 Section 27.2a(g)(1) of the Clerks of Courts Act (705 ILCS 105/27.2a(g)(1) (West 2010)), provides that the circuit court may order defendant to pay a minimum of \$50 and up to a maximum of \$60 for filing a petition to vacate or modify a final judgment or order of the court before 30 days after the final judgment date. Section 27.2a(g)(2) of the Clerks of Courts Act (705 ILCS 105/27.2a(g)(2) (West 2010)), provides that a circuit court may order defendant to pay a minimum of \$75 and up to a maximum of \$90 for filing a petition to vacate or modify a final judgment or order of the court later than 30 days after the entry of judgment.

¶ 14 In this case, defendant filed the petition for rehearing on August 27, 2010, within 30 days of the circuit court's denial of leave to file his 2010 successive post-conviction petition on July

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29, 2010. Therefore, section 27.2a(g)(1) of the Clerks of Courts Act applies because the petition for rehearing was filed before 30 days after the denial of leave to file his post-conviction petition. We thus reduce defendant's \$90 fee to \$60.

¶ 15 For the foregoing reasons, we modify the \$105 fine pursuant to section 27.2a of the Clerks of Courts Act (705 ILCS 105/27.2a (West 2010)) to \$75¹, order the Costs and Fees order modified to that effect (Ill. S. Ct. R. 615(b) (eff. Aug. 27, 1999)), and affirm the judgment of the circuit court in all other respects.

¶ 16 Affirmed as modified.

¹This fine includes a \$15 mailing fee pursuant to section 27.2a(h) of the Clerks of Courts Act.