

No. 1-11-0726

**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. 87 CR 3858
	)	
ANTHONY JONES,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Epstein and Justice Howse concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where *pro se* defendant serving 80-year sentence did not secure a ruling on his amended petition for relief under section 2-1401, and defendant's argument had been previously addressed by another appellate district, amended petition lacked basis for relief; the circuit court's dismissal of the petition was affirmed.
- ¶ 2 Defendant Anthony Jones appeals the circuit court's dismissal of his multiple petitions for relief from judgment pursuant to section 2-1401 (735 ILCS 5/2-1401 (West 2010)) in which he raised several challenges to his 80-year sentence. We affirm.

¶ 3 Following a jury trial, defendant was convicted in 1987 of the murder of his 93-year-old great-grandmother and the aggravated battery of her 61-year-old caregiver. Defendant was sentenced to an extended-term sentence of 80 years in prison for the murder and a concurrent 5-year term for the aggravated battery conviction. On direct appeal, this court affirmed. *People v. Jones*, 1-87-1678 (1989) (unpublished order under Supreme Court Rule 23). The Illinois Supreme Court denied leave to appeal. *People v. Jones*, 128 Ill. 2d 668 (No. 69138) (1990).

¶ 4 Defendant filed several subsequent requests for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 1998)). Those petitions are referenced in this court's recent order in *Jones v. Davy et al.*, No. 1-10-3319 (2011) (unpublished summary order under Supreme Court Rule 23). In that order, this court affirmed the dismissal of defendant's *pro se* motion for declaratory relief under section 1983.

¶ 5 The instant appeal involves three *pro se* filings by defendant. On November 3, 2010, defendant filed a petition for relief from judgment under section 2-1401(f) (735 ILCS 5/2-1401(f) (West 2010)) in which he asserted his 80-year sentence was void. Two days later, defendant filed an "addendum" to his first petition, raising additional theories of a void sentence.

¶ 6 On November 10, 2010, defendant filed a motion to strike his "addendum" and file an amended petition seeking relief under section 2-1401. In the amended petition, defendant asserted his sentence violated the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11).

¶ 7 On January 28, 2011, the circuit court issued a written order dismissing defendant's claims. The court noted that defendant had filed petitions on November 3 and November 5 and that defendant's court file was "presently in the appellate court system" awaiting a ruling on the denial of one of defendant's post-conviction petitions. The court also noted a 2005 circuit court order denying a separate petition brought under section 2-1401, which the court noted was

defendant's third filing under section 2-1401, and the court stated the instant filing thereby represented defendant's "fourth such petition" at the least. The court stated defendant filed his claim beyond the two-year period to file a section 2-1401 petition and that the validity of defendant's sentence had been considered numerous times. On February 22, 2011, defendant filed a notice of appeal from that order.

¶ 8 On appeal, defendant argues the circuit court did not consider the arguments he raised in his amended petition filed on November 10, 2010. Defendant points to the court's failure to reference the amended petition in its written order, in that the court mentioned only the November 3 and November 5 filings. He contends this case should be remanded because this court cannot rule on the merits of the amended petition without a final judgment or order of the circuit court. The State responds that defendant was required to obtain a ruling on his amended petition prior to filing a notice of appeal.

¶ 9 Actions brought pursuant to section 2-1401 are civil proceedings and are to be litigated in accordance with the usual rules of civil procedure, regardless of whether the petitioner is seeking relief from a civil or criminal judgment. *People v. Vincent*, 226 Ill. 2d 1, 11 (2007). Although defendant emphasizes his *pro se* status, a defendant who acts as his own attorney must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to *pro se* litigants. See *People v. Allen*, 401 Ill. App. 3d 840, 854 (2010).

¶ 10 It is the responsibility of the party filing a motion to request that the trial judge rule on it, and when no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise. *People v. Van Hee*, 305 Ill. App. 3d 333, 335 (1999). A litigant's failure to obtain a ruling on a motion does not translate into a denial of the motion by the court. *Mortgage Electronic Systems v. Gipson*, 379 Ill. App. 3d 622, 629 (2008). Moreover, a subsequently filed notice of appeal following the failure by a litigant to obtain a ruling on a

motion serves as an abandonment of the previously filed motion. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007). Although defendant asserts he was not present in court when the judge announced his ruling, he filed a notice of appeal from the court's order and was therefore apparently aware of the court's decision.

¶ 11 Even if this court was to presume that the circuit court's order of February 22, 2011, encompassed defendant's amended section 2-1401 petition, defendant would not prevail on appeal on the merits of the argument contained therein. In the amended petition, defendant asserted his 80-year sentence should be vacated under the proportionate-penalties clause because the murder for which he was convicted had "identical elements" to the armed violence charge for which, according to defendant, he was originally indicted. The State points out that defendant raised this same contention in an appeal filed last year in a different district of this court. See *Jones v. Randle*, No. 4-10-0846 (4th Dist. 2011) (unpublished order under Supreme Court Rule 23). In that order, the Fourth District Appellate Court rejected defendant's current argument, stating that the proportionate-penalties clause was "not implicated" in defendant's situation because a charge of armed violence could not be predicated on the offense of first-degree murder. *Jones*, No. 4-10-0846, at 6. "Points previously raised at trial and other collateral proceedings cannot form the basis of a section 2-1401 petition for relief." *People v. Haynes*, 192 Ill. 2d 437, 461 (2000). Therefore, defendant's contention in his amended petition is unavailing.

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

¶ 13 Affirmed.