

No. 1-11-2282

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

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 93 CR 10092 |
| |) | |
| RAPHAEL REGALADO, |) | Honorable |
| |) | Noreen Love, |
| Defendant-Appellant. |) | Judge Presiding. |

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court's *sua sponte* dismissal of defendant's section 2-1401 petition affirmed over claim that his petition was not ripe for adjudication because only 25 days had elapsed between his filing of an addendum and the dismissal of the petition.
- ¶ 2 Defendant Raphael Regalado appeals from an order of the circuit court of Cook County dismissing his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), upon remand. He contends that the *sua*

sponte dismissal of his section 2-1401 petition was erroneous because only 25 days had elapsed from the date he filed an addendum to his petition.

¶ 3 The record shows, in relevant part, that defendant is currently serving the term of 60 years' imprisonment imposed on his 1995 jury conviction of first degree murder. This court affirmed that judgment on direct appeal (*People v. Regalado*, No. 1-96-0500 (1997) (unpublished order under Supreme Court Rule 23)), as well as the second-stage dismissal of his subsequent post-conviction petition (*People v. Regalado*, No. 1-00-2659 (2002) (unpublished order under Supreme Court Rule 23)).

¶ 4 On April 21, 2010, defendant filed a *pro se* section 2-1401 petition alleging that his constitutional rights were violated by the entry of a void judgment because the trial court failed to consider the pertinent mitigating factors at sentencing and punished him for exercising his right to a jury trial. The circuit court dismissed defendant's petition on May 14, 2010; however, this court granted defendant's motion for summary remand and remanded the cause to the circuit court for further proceedings pursuant to *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009). *People v. Regalado*, No. 1-10-1572 (dispositional order, June 1, 2011). Our records show that the mandate issued and was filed in the circuit court on June 1, 2011, and that on June 6, 2011, it was received at Dixon Correctional Center where defendant was housed.

¶ 5 On June 18, 2011, defendant mailed the court an "addendum" to his section 2-1401 petition alleging that the judgment was void because his sentence of 60 years' imprisonment and 3 years of mandatory supervised release exceeded the maximum authorized term for first degree murder. The memorandum of orders reflects that on June 28, 2011, the court continued the case to August 5, 2011, and that the addendum was entered onto the docket by the clerk on July 11, 2011. On August 5, 2011, the court denied defendant's section 2-1401 petition, finding that he

was not entitled to relief as a matter of law. Defendant now challenges that dismissal, and our review is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 6 Defendant contends that the trial court's *sua sponte* dismissal of his section 2-1401 petition was improper under the supreme court's decision in *Laugharn*. He specifically claims that his petition was "not ripe for adjudication" because only 25 days had elapsed between his filing of an addendum and the dismissal of the petition.

¶ 7 The State responds that the trial court's *sua sponte* dismissal of defendant's petition was proper because defendant never obtained leave of court to file his addendum. The State also responds that under section 2-616 of the Code (735 ILCS 5/2-616 (West 2010)), any amendment to defendant's petition relates back to the date the original pleading was filed and does not trigger another 30-day response period.

¶ 8 Initially, we note that defendant does not challenge the substantive merit of the dismissal, or dispute that, on remand, his section 2-1401 petition was denied after the 30-day period for responsive pleadings had elapsed. He solely claims that his petition was dismissed before it was ripe for adjudication based on the mailing and docketing of the "addendum" which triggered a new 30-day period within which the court could not *sua sponte* dismiss his petition. We confine our analysis to that issue. Ill. S. Ct. R. 341(h)(7) (eff. Jul. 1, 2008).

¶ 9 The supreme court has consistently held that section 2-1401 proceedings are subject to the usual rules of civil practice. *Vincent*, 226 Ill. 2d at 8. That said, section 2-616 of the Code provides that amendments to pleadings "may be allowed" on just and reasonable terms. 735 ILCS 5/2-616 (West 2010). Because there is no absolute right to amend a pleading, defendant must first seek and obtain the court's permission to file a proposed amendment. *Kurczaba v. Pollock*, 318 Ill. App. 3d 686, 702 (2000). Permission to amend a pleading is generally sought and obtained by the filing of a motion to amend the pleading. See *e.g. Koczor v. Melnyk*, 407 Ill.

App. 3d 994, 1003 (2011); 3 Richard A. Michael, Illinois Practice Series § 26:1 (2d ed. 2011) ("Counsel should always tender the proposed amended pleading together with the motion.").

¶ 10 Here, defendant did not request leave to amend his section 2-1401 petition or properly file a motion to amend, but rather, mailed an addendum to the court which the clerk placed on the docket. Although the addendum thence became part of the public record, it was neither a valid filing nor part of the proceedings until the court granted leave to file, which the record fails to establish. *Kurczaba*, 318 Ill. App. 3d at 702.

¶ 11 Notwithstanding, defendant claims that the mailing and docketing of his addendum triggered a 30-day period for the State to answer or otherwise plead during which time the circuit court could not *sua sponte* dismiss his section 2-1401 petition. He also claims that "the State has waived its right to argue that [he] needed leave of court to file his addendum" because it did not object to its filing.

¶ 12 Even assuming, *arguendo*, that defendant's mailing of an addendum was the functional equivalent of the filing of a proper motion for leave to amend and obtaining permission to make such amendment, we find no basis for concluding that this action gave rise to a 30-day period within which the circuit court could not *sua sponte* dismiss his section 2-1401 petition. As authority for his claim that the filing of an "addendum" triggers a 30-day period within which the circuit court cannot *sua sponte* dismiss a petition, defendant solely relies on the supreme court's decision in *Laugharn*. In that case, however, the supreme court held that the circuit court erred in *sua sponte* dismissing a *pro se* section 2-1401 petition before the 30-day period for the State to answer or otherwise plead had concluded. *Laugharn*, 233 Ill. 2d at 323.

¶ 13 Here, defendant provides no authority that an addendum is the equivalent of a petition for purpose of *Laugharn*, nor does he even specifically argue that it is such. This is not without reason. First, we note that an "addendum" is "[s]omething to be added, esp. to a document; a

supplement." Black's Law Dictionary 41 (8th ed. 2004). Thus, as labeled, defendant's "addendum" was not a section 2-1401 petition, but rather, "a supplement" to his petition, which is completely different from the filing at issue in *Laugharn*. Second, as the State correctly points out, an amendment to defendant's section 2-1401 petition would relate back to the date of the filing of the original pleading without triggering a new 30-day period for responsive pleading. 735 ILCS 5/2-616(b) (West 2010). The filing of an "addendum" cannot, therefore, be properly analogized to *Laugharn*; and since defendant has provided no basis or authority for equating the filing of an "addendum" with a petition, we find his reliance on *Laugharn* misplaced.

¶ 14 For the reasons stated, we conclude that defendant's mailing of an "addendum" did not trigger a 30-day period within which the circuit court could not *sua sponte* dismiss defendant's *pro se* section 2-1401 petition as a matter of law. We therefore affirm the denial of defendant's *pro se* section 2-1401 petition by the circuit court of Cook County.

¶ 15 Affirmed.