

2013 IL App (1st) 111790-U

SIXTH DIVISION  
August 23, 2013

Nos. 1-11-1790 and 1-11-1922  
(Consolidated)

**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.	)	Nos. 08 CR 17019
	)	08 CR 21627
	)	
ANTONIO SMITH,	)	Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Gordon concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where the State filed a written petition seeking an order of protection, the resulting order is not void and need not be vacated.
- ¶ 2 Defendant Antonio Smith pleaded guilty to forgery and telephone harassment and was sentenced to consecutive terms of seven and two years in prison, respectively. In addition, an order of protection was entered against him, prohibiting him from contacting his ex-wife and his son and continuing for two years following the expiration of his mandatory supervised release

1-11-1790 and 1-11-1922 cons.

(MSR) period. In this consolidated appeal, defendant contends that the order of protection is void and must be vacated where the State failed to file a written petition seeking the order and, therefore, failed to comply with the statutory requirements of the Illinois Domestic Violence Act of 1986 (750 ILCS 60/202(a)(3), 203(a) (West 2010)).

¶ 3 For the reasons that follow, we affirm.

¶ 4 On March 10, 2011, defendant entered his guilty plea. In the course of discussing defendant's plea and sentences, the trial court twice explained to defendant that as part of the agreement, an order of protection would be entered at sentencing, and that the order would be effective from the date of sentencing to two years after the completion of MSR. Defendant indicated that he understood.

¶ 5 On May 25, 2011, the parties appeared for sentencing. After defense counsel confirmed that the order of protection would become effective on that date, the trial court announced the sentence. The trial court noted that there was an order of protection and asked, "Do we have all that?" The following exchange ensued:

"[ASSISTANT STATE'S ATTORNEY]: We do, Judge. We have a petition for an order of protection as well as the order itself. I do believe with regard to these that I do need to have a date certain for the expiration of the - -

THE COURT: Mandatory supervised release?

[ASSISTANT STATE'S ATTORNEY]: Correct. So I will calculate that as you continue with the rest of the admonishments. But I do have a petition and everything except that particular date.

[DEFENSE COUNSEL]: I don't have a copy of it.

[ASSISTANT STATE'S ATTORNEY]: I'm giving it to you.

1-11-1790 and 1-11-1922 cons.

THE COURT: Also, pursuant to the agreement was an order of protection. I will be going over all those elements of the order of protection with you, [defendant].

[Defendant], you need to pay attention. We're going to be going over all the order of protection that was part of the agreement."

¶ 6 Following this exchange, the Assistant State's Attorney was sworn to the facts in the order of protection. When the trial court asked whether the facts listed were true and correct, and whether the attorney had spoken to the victim, the attorney answered, "My partners and I have been in contact with the victim as well as other personnel from our office, and everything in the petition was stated also in the factual basis for the defendant's plea and they are true to the best of our knowledge." The trial court thereafter reviewed the conditions of the order of protection and confirmed with defendant that he understood. The court had the sheriff give a copy of the order to defendant, and he acknowledged its receipt.

¶ 7 On appeal, defendant contends that the State failed to file a written petition seeking an order of protection, and that therefore, the order of protection entered against him is void and must be vacated. Defendant acknowledges that a written petition appears in the record on appeal, but asserts that because it is not file-stamped and the half sheet does not include a notation that it was filed, it cannot be considered to have been "filed."

¶ 8 Section 202(a)(3) of the Illinois Domestic Violence Act (the Act) provides that an action for an order of protection is commenced in conjunction with a criminal prosecution by "filing a petition for an order of protection." 750 ILCS 60/202(a)(3) (West 2010). Section 203(a) of the Act specifies that such a petition "shall be in writing." 750 ILCS 60/203(a) (West 2010). Because the issues on appeal relate to the interpretation of a statute, which is a question of law, our review is *de novo*. *People v. Chapman*, 2012 IL 111896, ¶ 23.

1-11-1790 and 1-11-1922 cons.

¶ 9 Here, the record confirms that the State produced a written petition for order of protection: a copy of the petition appears in the record on appeal, and the transcript of the sentencing hearing reveals that the Assistant State's Attorney tendered a copy to defense counsel. Accordingly, defendant's reliance on *People v. Cuevas*, 371 Ill. App. 3d 192 (2007), is unpersuasive. In *Cuevas*, the State made an oral request for an order of protection. *Cuevas*, 371 Ill. App. 3d at 194. On appeal, this court reversed the order because under the Act's plain language, a written petition is required. *Cuevas*, 371 Ill. App. 3d at 197. Because the instant case does not involve an oral request, *Cuevas* does not apply.

¶ 10 This case turns, then, on defendant's argument that the petition was not filed. As defendant notes, to constitute filing, a document must pass into the exclusive custody and control of the clerk to be made part of the court records. *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1027 (2009). Actual receipt by the circuit clerk is typically evidenced by the file stamp. *Knapp*, 392 Ill. App. 3d at 1027. However, because the person who is filing a document has no control over the officer who receives it, delivery alone may constitute sufficient filing. *Valio v. Board of Fire and Police Commissioners of the Village of Itasca*, 311 Ill. App. 3d 321, 327 (2000). Stamping a document "Filed" is a ministerial task that is unnecessary to perfect a filing. *Valio*, 311 Ill. App. 3d at 327.

¶ 11 The record on appeal includes a copy of the petition for order of protection. This strongly suggests that the petition passed into the exclusive custody and control of the clerk of the court, who made it part of the circuit court records. See *Valio*, 311 Ill. App. 3d at 328 ("circuit court clerks do not have the ability to determine jurisdiction by refusing to file stamp a document that complies with statutory and supreme court rules"). While the copy of the petition in the record is not file stamped, it does appear immediately following the order of protection, which is file

1-11-1790 and 1-11-1922 cons.

stamped May 25, 2011, the date of sentencing. In these circumstances, we conclude that the petition was filed along with the order on May 25, 2011. Defendant's argument fails.

¶ 12 Finally, we note defendant's argument that neither the State nor the court served him with notice that an order of protection was being sought, as required by section 211 of the Act, and that the State failed to serve him with a separate summons in open court, as required by section 210. 750 ILCS 60/210, 211 (West 2010). Defendant did not make these objections at the guilty plea hearing, when the trial court first informed him that an order of protection would be entered, or at sentencing, when the order took effect. Thus, defendant has waived review of the issues of notice and summons. See *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001) (where a party acquiesces in a proceeding in a given manner, he is not in a position to claim he was prejudiced thereby). Moreover, defendant has not cited any authority supporting his argument that the order of protection should be vacated because he was not served with notice and a summons. Given waiver and the lack of authority, we reject defendant's argument.

¶ 13 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.