

No. 1-11-2119

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. 02 CR 22269
)	
STANLEY YURGAITIS,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Quinn and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where order appealed from was not final and appealable.
- ¶ 2 Defendant Stanley Yurgaitis appeals from an order of the circuit court of Cook County denying his fourth *pro se* motion for an extension of time to file a petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). He maintains that the trial court erred in denying his motion where he alleged sufficient facts, with supporting law, to warrant an extension, and requests this court to reverse the trial court's ruling and grant him an extension of time to file a post-conviction petition.

¶ 3 This court previously affirmed the judgment entered on defendant's jury convictions for predatory criminal sexual assault of a child and aggravated criminal sexual abuse, and respective, concurrent sentences of natural life and seven years' imprisonment. *People v. Yurgaitis*, No. 1-07-1253 (2009) (unpublished order under Supreme Court Rule 23). In February 2009, defendant filed a 48-page *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)), and the State filed a motion to dismiss. Defendant withdrew his petition on October 9, 2009, explaining that he had discovered that there was no merit to his petition.

¶ 4 On March 26, 2010, defendant filed a *pro se* motion for a 90-day extension of time to file a post-conviction petition, and for a copy of the State's discovery. He alleged that he was unable to make the necessary investigation and research to prepare and file a post-conviction petition on or before June 30, 2010, because he was unable to do legal research due to institutional lockdowns, and lack of legal counsel/aid. The circuit court denied the motion noting that all discovery in the appellate records are with defendant's appellate attorney.

¶ 5 On June 24, 2010, defendant filed a second *pro se* motion for a 90-day extension of time and a copy of the State's discovery, in which he reiterated the allegations in his prior motion. He also alleged that he was unable to "make the necessary investigation and research in order to prepare and file a post-conviction petition" on or before June 30, 2010, because he was unable to research discovery documentation to prepare his case. The trial court denied the motion noting that appellate counsel had all the relevant documents.

¶ 6 On October 20, 2010, defendant filed a third *pro se* motion for an extension of time to file a post-conviction petition repeating the allegations in his prior motions. On December 3, 2010, the court denied the motion, specifically noting that the time for filing a post-conviction petition had not expired, and thus, an extension was "not needed."

¶ 7 On December 10, 2010, defendant filed his fourth *pro se* motion for an extension of time to file a post-conviction petition. He alleged that he needed until December 30, 2010, to file his post-conviction petition, and repeated the allegations in his prior motions. The trial court denied the motion finding "[i]nsufficient reason" to grant the request.

¶ 8 On appeal, defendant contends that the circuit court erred in denying his motion because he alleged sufficient facts with supporting law to warrant the extension of time. Due to the frequent lockdowns at the prison where he is being held, defendant claims that he was unable to access the necessary prison resources to file his post-conviction petition in a timely manner.

¶ 9 Although not raised by the parties, we have an independent duty to consider our jurisdiction to entertain defendant's challenge to the circuit court's order. *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009). In his jurisdictional statement, defendant maintains that jurisdiction lies in this court pursuant to Article VI, Section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, §6) and Supreme Court Rule 651(a) (eff. Dec. 1, 1984). The 1970 Illinois Constitution provides that the appellate court has jurisdiction to hear appeals from both final judgments and other orders for which the supreme court rules permit interlocutory appeals. Ill. Const. 1970, art. VI, §6. Rule 651(a) provides for an appeal from a final judgment in any post-conviction proceeding. Here, neither basis is evident in the record.

¶ 10 The Act provides a procedural method by which a convicted criminal may assert that in the proceeding which resulted in his conviction there was a substantial violation of his constitutional rights. *People v. Brooks*, 233 Ill. 2d 148, 153 (2009). A proceeding is commenced by the filing of a petition with the clerk of the court in which the conviction took place. 725 ILCS 5/122-1(b) (West 2010). As pertinent to this case, no proceeding shall be commenced more than 6 months after the conclusion of proceedings in the direct appeal process unless defendant alleges facts showing that the delay was not due to his culpable negligence. 725 ILCS

5/122-1(c) (West 2010). This assumes the filing of a petition, within which reasons for the tardiness are set forth, and evaluated at the second stage of proceedings. *People v. Bocclair*, 202 Ill. 2d 89, 102 (2002).

¶ 11 In this case, defendant did not file a petition to commence post-conviction proceedings, but rather, continued to pursue motions for an extension of time, for which there is no provision in the Act. Thus, there was no basis for the extension of time sought by defendant, and the circuit court acted within its discretion in rejecting defendant's request. *People v. Salgado*, 353 Ill. App. 3d 101, 106 (2004).

¶ 12 Even if there was authority for filing a motion for extension of time, we must determine whether the court's denial of the motion was a final appealable order. A judgment is final for purposes of appeal if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only remaining thing is to proceed with the execution of the judgment. *Salgado*, 353 Ill. App. 3d at 106. No appeal lies from an interlocutory order in the absence of a statute or rule specifically authorizing such review. *Salgado*, 353 Ill. App. 3d at 106.

¶ 13 In this case, there was no basis for defendant's motion for an extension of time to file an initial post-conviction petition, and thus no basis for his appeal. *Salgado*, 353 Ill. App. 3d at 106. Defendant did not file a petition, and the circuit court's order rejecting his random requests for an extension of time did not terminate any pending litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with execution of the judgment. *Salgado*, 353 Ill. App. 3d at 107, and cases cited therein. Thus, the court's ruling was neither a final appealable order, nor a cognizable interlocutory order under the supreme court rules. Ill. S. Ct. Rs. 307 and 604 (eff. Feb. 26, 2010, July 1, 2006). Accordingly, the denial of his request for an extension of time was not a final appealable order, and we have no jurisdiction to entertain it. *Salgado*, 353 Ill. App. 3d at 106-07.

¶ 14 In reaching this conclusion, we note that defendant has cited to several cases in which an extension of time to file a post-conviction was requested and denied, and the denials were considered on appeal. In a number of those cases, however, the request for an extension of time was made part of or filed jointly with a post-conviction petition. See *e.g.*, *People v. McClain*, 292 Ill. App. 3d 185, 186 (1997) (defendant filed a post-conviction petition and a motion for an extension of time), reversed on other grounds by *People v. Woods*, 193 Ill. 2d 483 (2000); *People v. Mitchell*, 296 Ill. App. 3d 930, 932 (1998) (defendant filed a post-conviction petition in which he maintained that his untimely filing was not due to his culpable negligence); *People v. Rissley*, 206 Ill. 2d 403, 410 (2003) (defendant filed post-conviction petition, and in response to the State's motion to dismiss, he maintained that he was not culpably negligent in the untimely filing). This factor is also evident in cases cited by the State: *People v. Wheeler*, 392 Ill. App. 3d 303, 304-05 (2009) (defendant filed a post-conviction petition and a motion for an extension of time); *People v. Walker*, 331 Ill. App. 3d 335, 340 (2002) (defendant alleged within his post-conviction petition that the untimely filing was not due to his culpable negligence).

¶ 15 Here, as stated, defendant did not file a post-conviction petition to commence proceedings under the Act, and there is no provision in the Act for solely filing a motion for an extension of time to do so. Rather, defendant must set forth factual allegations showing that the delay in filing was not due to his culpable negligence (725 ILCS 5/122-1(c) (West 2010)), and that issue is not addressed until the second stage of proceedings (*Boclair*, 202 Ill. 2d at 102; *Wheeler*, 392 Ill. App. 3d at 308).

¶ 16 In light of the foregoing, we dismiss this appeal for lack of jurisdiction.

¶ 17 Appeal dismissed.