

2014 IL App (2d) 120237-U
No. 2-12-0237
Order filed October 16, 2013
Modified upon denial of rehearing January 17, 2014

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Respondent-Appellee,)	
)	
v.)	No. 96-CF-1351
)	
STEPHEN E. LEWIS,)	Honorable
)	George Bridges,
Petitioner-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed petitioner’s petition for a certificate of innocence because the petition was time-barred under the two-year statute of limitations established by the Court of Claims Act (735 ILCS 5/2-702(i) (West 2008)).

¶ 2 In 1996, petitioner, Stephen E. Lewis, was convicted of child pornography (720 ILCS 5/11-20.1(a)(1)(vii) (West 1994)) and sentenced to five years’ imprisonment. After reviewing the photo in question in this case, this court determined that it was not “lewd” and, therefore, did not constitute child pornography. This court reversed defendant’s conviction on June 16, 1999.

See *People v. Lewis*, 305 Ill. App. 3d 665 (1999). On November 9, 1999, after this court's mandate issued, Lewis was released from custody.

¶ 3 On May 8, 2000, Lewis filed an action in the Court of Claims of Illinois pursuant to section 8(c) of the Court of Claims Act (Act), which provides for claims against the State “for time unjustly served in prisons of this State where the persons imprisoned shall receive a pardon from the governor stating that such pardon is issued on the ground of innocence of the crime for which they were imprisoned ***.” 705 ILCS 505/8(c) (West 2000). Lewis sought damages in the amount of \$30,000. On September 15, the Court of Claims dismissed Lewis's claim with prejudice because he had not yet obtained a pardon on the ground of actual innocence. On February 15, 2001, the Court of Claims vacated the September 15, 2000, order and ordered the case dismissed “without prejudice to being re-filed in the event that the Claimant receives a pardon based on innocence.” Lewis continued to file annual status reports with the Court of Claims for various years between 2001 and 2011.

¶ 4 On September 22, 2008, the Illinois General Assembly enacted the statute providing redress for innocent persons who had been wrongly convicted of crimes in Illinois and subsequently imprisoned. Such persons were allowed, under certain circumstances, to request a certificate of innocence:

“(c) In order to present the claim for certificate of innocence of an unjust conviction and imprisonment, the petitioner must attach to his or her petition documentation demonstrating that:

- (1) he or she has been convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and
- (2) his or her judgment of conviction was reversed or vacated, and the indictment

or information dismissed ***; and

(3) his or her claim is not time barred by the provisions of subsection (i) of this Section.” 735 ILCS 5/2-702(c)(West 2010).

Section 2-702(i) states:

“Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred before the effective date of this amendatory Act of the 95th General Assembly shall file his or her petition within 2 years after the effective date of this amendatory Act of the 95th General Assembly. Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred on or after the effective date of this amendatory Act of the 95th General Assembly shall file his or her petition within 2 years after the dismissal.” 735 ILCS 5/2-702(i) (West 2008).

The effective date of the statute was September 22, 2008.

¶ 5 Lewis filed his petition for a certificate of innocence in the circuit court of Lake County on October 31, 2011. On December 21, 2011, the trial court dismissed Lewis’s petition for a certificate of innocence on timeliness grounds. On February 8, 2012, the trial court denied Lewis’s motion for reconsideration of the dismissal. Lewis timely appealed.

¶ 6 II. ANALYSIS

¶ 7 On appeal, Lewis proposes several issues, asserting that : (1) the trial court advocated for the State when it dismissed his petition, which constituted an unauthorized practice of law; (2) the legislative intent of certificate of innocence statute was thwarted by the denial of a certificate; (3) the certificate of innocence statute, as applied to him, is an *ex post facto* law and should be repealed; (4) he received ineffective assistance of counsel; (5) “equitable tolling” should have tolled the statute of limitations; and (6) “The Court Obviously Did Not Know the Difference

Between a Dismissal with Prejudice and a Dismissal Without Prejudice.” However, as the State points out, the only relevant issue in this case is whether the trial court properly dismissed Lewis’s petition for a certificate of innocence as untimely; in other words, the question raised is whether Lewis filed his request within the Statute of Limitations contained in the Act.

¶ 8 Lewis sought a certificate of innocence under this Section based on his acquittal that occurred before September 22, 2008, the effective date of the amendatory act. Pursuant to section 2-702(i) of the Act, Lewis was required to file his petition within 2 years after the effective date of the amendatory act. Thus, he was required to file his petition by September 22, 2010. Lewis filed on October 31, 2011. Having failed to timely file, Lewis could not establish the timely filing element of his claim under the Act, and the trial court properly dismissed his petition and denied his motion for reconsideration.

¶ 9 Lewis avers that the trial court acted as an advocate for the State and engaged in the unauthorized practice of law when it made its ruling because neither the State nor the attorney general intervened or appeared. Lewis fails to recognize that the trial court’s duty is to apply the law; in this case, the trial court observed the statute of limitations explicitly set by the legislature. Making a ruling is not “the practice of law.” Lewis also fails to realize that the legislative intent of the legislature was to put a time limit on claims that could properly be brought. The legislature could not be more explicit, and specifically addressed the two different situations possible: a person whose acquittal had occurred before the September 22, 2008, and a person whose acquittal occurred at a later date. As the State points out, the legislature could have chosen not to place any limit on a petitioner’s request for relief. Our lawmakers saw fit to limit the time for filing a petition to two years. The trial court’s duty, indeed, our duty, is to apply that law.

¶ 10 Lewis also claims that the statute governing petitions for a certificate of innocence is an *ex post facto* law as applied to him. See 735 ILCS 5/2-702 (West 2008). Both the United States Constitution and the Illinois Constitution proscribe *ex post facto* laws from being passed. See U.S. Const., art. I, § 9; Ill. Const.1970, art. I, § 16. “An *ex post facto* law is one that (1) makes criminal and punishable an act innocent when done; (2) aggravates a crime, or makes it greater than it was when committed; (3) increases the punishment for a crime and applies the increase to crimes committed before the enactment of the law; or (4) alters the rules of evidence to require less or different evidence than required when the crime was committed.” *People v. Leonard*, 391 Ill. App. 3d 926, 931 (2009). “The prohibition against *ex post facto* laws is founded on the basis of a person’s right to have fair warning of conduct giving rise to criminal penalties and punishment.” *Id.* The statute does not make any act criminal, increase any punishment or alter the rules of evidence. Lewis’s claim that the enactment of the statute “resulted in a requirement to obtain something (a certificate) that [he] was not required to prior to the enactment of the statute” is specious.

¶ 11 Citing *Strickland v. Washington*, 466 U.S. 668 (1984), Lewis claims that he was denied the effective assistance of counsel. He avers that he was represented by attorney Anderson J. Ward who failed to keep him informed of requirement of the newly enacted statute. The statute allows recovery to anyone who is unjustly imprisoned in the State of Illinois providing he is innocent of the crime for which he was incarcerated. The amount of recovery varies depending upon the amount of time served. This is simply not a criminal proceeding. “While the right to the effective assistance of counsel is firmly grounded in our criminal jurisprudence (see *Strickland v. Washington* (1984), 466 U.S. 668), no such right exists on the civil side. We therefore find defendants’ assertions to be utterly devoid of merit.” *Kalabogias v. Georgou*, 254 Ill. App. 3d 740, 750 (1993). We, likewise, find this argument fallacious.

¶ 12 Lewis next claims that the “Doctrine of Equitable Tolling” should apply and he should be allowed equitable relief. “Generally, the doctrine of equitable tolling permits a court to excuse a plaintiff’s failure to comply with a statute of limitations where because of disability, irremediable lack of information, or other circumstances beyond his control, the plaintiff cannot reasonably be expected to file suit on time.” *Williams v. Board of Review*, 241 Ill. 2d 352, 360 (2011). There is no evidence that anyone actively misled Lewis about the consequences of failing to timely file his petition or that he was prevented from asserting his rights because of disability, lack of information, or other circumstances. Rather, it is his carelessness, not any deception that led to this result. We agree with the State that ignorance of the law is not sufficient to toll the running of the two-year statute of limitations.

¶ 13 Finally, Lewis argues that the trial court “obviously did not know the difference between a dismissal with prejudice and a dismissal without prejudice.” As stated above, on February 15, 2001, the Court of Claims vacated its September 15, 2000, order that dismissed Lewis’s claim with prejudice, and ordered the case dismissed “without prejudice to being re-filed in the event that the Claimant receives a pardon based on innocence.” The order is clear and it is Lewis who does not understand the effect of the February 2001 order. The order meant Lewis’s claim was dismissed and no further status dates were set. The dismissal was without prejudice so Lewis was free to refile his claim after complying with the requirements of the Act. Despite Lewis’s assertions to the contrary, no matter was still pending in the Court of Claims. Therefore, the trial court’s ruling was correct.

¶ 14

III. CONCLUSION

¶ 15 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 16 Affirmed.