

2013 IL App (2d) 120261-U
No. 2-12-0261
Order filed September 4, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 06-CF-3801
)	
DEEVER D. BUFFKIN,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in not considering the *pro se* filing as a postconviction petition. Because the trial court did not consider defendant's request for relief pursuant to the Post-Conviction Hearing Act within 90 days of the petition's filing, we remand the petition for stage-two proceedings.

¶ 2 Defendant, Deever D. Buffkin, appeals the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)).

Defendant argues that the trial court erred by failing to address the pleading as a postconviction

petition, and he requests that this court remand the petition for stage-two proceedings. For the following reasons, we reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 On January 25, 2007, defendant was charged by indictment with one count each of aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 2006)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2006)), and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6 (West 2006)). On March 7, 2007, defendant was charged by indictment with one count of attempt first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2006)). On October 2, 2007, defendant appeared with counsel and entered a negotiated guilty plea to one count of aggravated discharge of a firearm. In exchange for the plea, the defendant received a sentence of 15 years' imprisonment and the remaining counts were dismissed.

¶ 5 On January 24, 2012, defendant filed a *pro se* pleading, seeking to vacate his guilty plea, alleging that he did not knowingly and voluntarily enter into it. He titled his petition: "Emergency Petition for a Writ of Habeas-Corpus, Alternatively, Petition for Writ of Mandam[us] to Order Strict Compliance with Terms of Guilty Plea Agreement." Of relevance, the pleading stated as follows:

"Now Comes The Petitioner, [D.B.], Pro Se, and, Respectfully Requests that this Honorable Court Pursuant to Article I § 12 of the Illinois Constitution to Order Stri[ke] down his guilty plea Sentence of 15-Years Under an Act of 85% Percent Act, Alternatively, Mandamus Relief Pursuant to 735 ILCS 5/14-101 et[.] [s]e[q.] to enter and Issues an Order towards Respondent[us] for Strict Compliance with terms of guilty plea Agreement, In Further Support, States as Follows;

I. Jurisdiction/Venue

Jurisdiction is Vested in this Honorable Court pursuant to Article XIV, VI, Section 6. Of the Illinois Constitution to the Supreme Court Ruling[]

Rule (b); Rule 306 (A)(1); Rule 35-fed, R, Crim, P, 35(A); Rule 603; Rule 606, Petitioner Filing Habeas-Corpus Relief; 735 ILCS 5/10-124 (2)[et.] [s]e[q.] Judicial Notice is Requested the Court Consider Section 14-108, 109, [sic] *if the Petitioner has sought the Wrong Remedy, that the court not dismiss nor deny Relief where another Judicial Remedy is Available, 725 ILCS 5/122-1 (C). Under the Rule of Law. Post-Conviction Act.*”

(Emphasis added.)

¶ 6 On February 7, 2012, the trial judge stated that he had read defendant’s petition for writ of *habeas corpus* several times. He concluded that the petition was “almost incoherent in terms of what he is talking about in this motion” and that “it’s a theory without any merit whatsoever. There is absolutely no basis to consider or grant his petition for writ of *habeas corpus*.” The judge entered a written order denying “defendant’s writ of *habeas corpus*.” This appeal followed.

¶ 7

II. ANALYSIS

¶ 8 Defendant concedes the dismissal of his *habeas corpus* and *mandamus* claims. He contends, however, that the trial court erred by failing to address his pleading as a postconviction petition. Defendant argues that the Act instructs the court to treat his pleading as a postconviction petition, so long as the petition makes reference to the Act. 725 ILCS 122-1(d) (West 2006). Defendant notes that his petition expressly invoked the Act by name and citation.

¶ 9 Whether the trial court erred by failing to address defendant's petition as a postconviction petition requires us to interpret the statute, a question of law to be reviewed *de novo*. *People v. McDonald*, 373 Ill. App. 3d 876, 878 (2007). The primary goal in interpreting a statute is to follow the intent of the legislature. *People v. Phelps*, 211 Ill. 2d 1, 15 (2004). The language of the statute, given its plain and ordinary meaning, is the most reliable indicator of legislative intent. *Id.* "We will not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent." *People v. Blair*, 215 Ill. 2d 427, 443 (2005).

¶ 10 Section 122-1(d) of the Act provides:

"A person seeking relief by filing a petition under [the Act] *must specify in the petition or its heading* that it is filed under [the Act]. A trial court that has received a petition complaining of a conviction or sentence that fails to specify in the petition or its heading that it is filed under [the Act] need not evaluate the petition to determine whether it could otherwise have stated some grounds for relief under this Article." (Emphasis added.) 725 ILCS 5/122-1(d) (West 2006).

¶ 11 Defendant argues that he expressly met the requirements of section 122-1(d), because he referred to the Act when he asked within the body of his pleading that it not be dismissed or denied if he had sought the wrong remedy and relief were available under the Act. To support his argument, defendant relies on *McDonald*, 373 Ill. App. 3d at 880, where the court held that the defendant satisfied section 122-1(d) of the Act when he put "Post-Conviction Petition" at the top of several pages of his petition and cited sections of the Act in a one-page appendix. Defendant contends that, like *McDonald*, he adequately informed the trial court that he desired

his pleading to be considered as a postconviction petition, despite its *habeas corpus* heading, because the petition expressly refers to the “Post-Conviction Act” and cites section 122-1(d). We agree. Section 122-1(d) simply requires a person seeking relief under the Act to specify in the petition’s body *or* in the heading that it is being filed under this section. Defendant filed a petition, which specified in the body that, if he had “sought the [w]rong [r]emedy, that the court not dismiss nor deny [r]elief where another [j]udicial [r]emedy is [a]vailable, 725 ILCS 5/122-1 ([c]) [u]nder the [r]ule of [l]aw [p]ost-Conviction Act.” Defendant has plainly met the requirements of section 122-1(d) by naming and citing the Act.

¶ 12 The State asserts that, even if defendant’s citation to the Act can satisfy section 122-1(d), a petition cannot simultaneously stand as both a pleading asking for relief under a different vehicle and, in the alternative, a pleading asking for relief under the Act. In support, the State cites to case law permitting a court to *recharacterize* a pleading as a postconviction petition. See, e.g., *People v. Stoffel*, 239 Ill. 2d 314 (2010); *People v. Shellstrom*, 216 Ill. 2d 45 (2005); *People v. Santana*, 401 Ill. App. 3d 663 (2010). However, these cases are not analogous to the case at bar because each addresses the recharacterization of a pleading that makes no mention of the Act by name or statutory citation. While these cases present examples where a pleading may or may not be recharacterized from one type of pleading for relief to a postconviction petition, the State misconstrues this to conclude that a petition can never seek both postconviction relief and any other relief simultaneously in the same pleading. The case law cited by the State does not support this proposition. Those cases neither address nor imply such a prohibition, nor does the statute. 725 ILCS 122-1(d) (West 2006). We can find no support for the conclusion that a pleading that invokes the Act fails to meet the requirements set forth in section 122-1(d) solely

because it also seeks alternate forms of relief, and we decline to read into the Act such a prohibition. See *Blair*, 215 Ill. 2d at 443.

¶ 13 Next, the State argues that the trial court was not required to recharacterize the *pro se* pleading as a postconviction petition. The State notes that a trial court's decision to not recharacterize a defendant's *pro se* pleading as a postconviction petition is not reviewable for error. *Stoffel*, 239 Ill. 2d at 324. The State purports that it is clear from defendant's petition that he wanted it to be treated as a petition for *habeas* relief, thus, according to the second sentence of section 122-1(d), the trial court *could* recharacterize the petition, but was not required to.

¶ 14 The State's recharacterization argument is misplaced. As we have held, defendant plainly met requirements of section 122-1(d) to have his pleading considered as a postconviction petition. The second sentence of section 122-1(d), granting the trial court discretion to recharacterize the petition, is only invoked if the petition "fails to specify" that it is filed under the Act. *Id.* Furthermore, a key purpose of the recharacterization process, which is to give a defendant the opportunity to reject the postconviction petition label, is unnecessary here as defendant's words made clear his intention to invoke the Act. This petition did not give the trial court the option to recharacterize; rather, it asked the trial court to grant or deny relief on Illinois constitutional grounds, *mandamus*, or, lastly, as will be explained, to determine, within 90 days, whether defendant's request for relief under the Act met the stage-one determination "gist" standard. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

¶ 15 We hold that defendant's petition met the requirements of section 122-1(d) and that the trial court erred in not considering the *pro se* filing as a postconviction petition. Accordingly, we

reverse and remand. However, we now consider the stage at which the trial court should assess the petition upon remand.

¶ 16 The Act provides a three-stage process for the adjudication of postconviction petitions. *People v. Boclair*, 202 Ill. 2d 89, 99 (2002). In the first stage, the trial court determines whether the postconviction petition is “frivolous or patently without merit,” also known as the “gist” standard. 725 ILCS 5/122-2.1(a)(2) (West 2006); *Boclair*, 202 Ill. 2d at 99. This review must be completed “within 90 days after the filing and docketing of each petition.” 725 ILCS 5/122-2.1(a) (West 2006). If the petition is not dismissed in 90 days pursuant to section 122-2.1, the petition advances to stage two. *McDonald*, 373 Ill. App. 3d at 881. The trial court will appoint legal counsel, who will then have an opportunity to amend the petition. See 725 ILCS 5/122-4 (West 2006); *Boclair*, 202 Ill. 2d at 99. If the petition is not dismissed at stage two, it proceeds to stage three, where the trial court conducts an evidentiary hearing. See 725 ILCS 5/122-6 (West 2006); *People v. Makiel*, 358 Ill. App. 3d 102, 104 (2005).

¶ 17 Defendant’s petition was filed on January 24, 2012, and the trial court did not decide whether the petition was “frivolous or patently without merit” within 90 days, as required by section 122-2.1(a). We recognize that defendant’s pleading was inartfully drafted and difficult to understand: therefore, we appreciate the challenges the trial court faced in deciphering defendant’s requests. Although the trial court did summarily deny defendant’s *habeas* relief, its failure to address defendant’s request for relief pursuant to the Act within 90 days of the petition’s filing requires the petition to be remanded for stage-two proceedings.

¶ 18 This court notes that our disposition in no way indicates our view of the merits of defendant’s postconviction petition. We reverse and remand solely because the trial court failed

to address whether the postconviction petition was “frivolous or patently without merit” within the statutory 90-day period.

¶ 19

III. CONCLUSION

¶ 20 For the aforementioned reasons, the judgment of the circuit court of Du Page County is reversed and the cause is remanded.

¶ 21 Reversed and remanded.