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2013 IL App (3d) 120210-U

Order filed November 4, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellee,	)	Rock Island County, Illinois,
	)	
v.	)	Appeal No. 3-12-0210
	)	Circuit No. 09-CF-812
	)	
JOHNNY D. ANGEL IV,	)	Honorable
	)	Walter D. Braud,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices McDade and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) It is within the trial court's discretion to allow withdrawal of a postconviction petition at the first stage. (2) The trial court erred when it failed to rule on the defendant's motion to withdraw his postconviction petition.

¶ 2 The defendant, Johnny D. Angel IV, pled guilty to unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)), and was sentenced to 8½ years' imprisonment. He filed a *pro se* postconviction petition, and during pendency of the proceedings on the petition, he filed a *pro se* motion to withdraw his petition. The trial court summarily

dismissed the defendant's petition without ruling on his motion. Defendant appeals, arguing: (1) he had an absolute right to withdraw his petition without prejudice; and (2) the trial court abused its discretion when it failed to rule on his motion to withdraw. We vacate and remand with directions.

¶ 3

### FACTS

¶ 4 On November 3, 2010, the defendant pled guilty to unlawful use or possession of a weapon by a felon. 720 ILCS 5/24-1.1(a) (West 2008). On July 27, 2011, the trial court sentenced defendant to 8½ years' imprisonment.

¶ 5 On August 23, 2011, the defendant filed a motion to withdraw his guilty plea. The trial court denied defendant's motion on September 21, 2011. On that same date, defendant filed a notice of appeal.

¶ 6 On November 14, 2011, while his direct appeal was pending, the defendant filed a *pro se* postconviction petition. On December 1, 2011, he filed an amended *pro se* postconviction petition, alleging that the admonishments at his guilty plea hearing were insufficient, and that a conflict of interest that caused his public defender to withdraw from the case following his guilty plea had actually arisen before he entered his guilty plea.

¶ 7 On February 10, 2012, the defendant filed a *pro se* motion to withdraw his postconviction petition. The defendant claimed that since filing his petition, he had been advised that the allegations made in his petition were available in the record for appellate counsel to raise on direct appeal. The defendant asserted that while his direct appeal was pending, his petition was premature and requested that his petition be withdrawn without prejudice.

¶ 8 On February 27, 2012, the trial court summarily dismissed the defendant's amended

postconviction petition as frivolous and patently without merit. No action was taken on the defendant's motion to withdraw. The defendant appeals from the dismissal of his postconviction petition.

¶ 9

## ANALYSIS

¶ 10 The defendant argues he had an absolute right to withdraw his petition without prejudice at the first stage of postconviction proceedings. Alternatively, the defendant argues that the trial court abused its discretion when it failed to rule on the defendant's motion to withdraw his petition.

¶ 11

### A. Absolute Right to Withdraw

¶ 12 The Post-Conviction Hearing Act (the Act) provides for a three-stage review process for the adjudication of postconviction petitions. 725 ILCS 5/122-1 *et seq.* (West 2010); *People v. Hodges*, 234 Ill. 2d 1 (2009). At the first stage, the trial court must independently determine whether the petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010).

¶ 13 In the instant case, the trial court summarily dismissed the defendant's petition at the first stage without ruling on his motion to withdraw that petition. The defendant argues he had an absolute right to withdraw his petition. The defendant claims that section 2-1009(a) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1009(a) (West 2010)), which grants a plaintiff the right to voluntarily dismiss an action without prejudice, should control such motions made at first-stage proceedings because it does not conflict with section 122-5 of the Act (725 ILCS 5/122-5 (West 2010)), which addresses general proceedings on the petition. See *People v. English*, 381 Ill. App. 3d 906 (2008) (applying provisions of the Code to postconviction

proceedings if the Act is silent on a procedural matter).

¶ 14 This argument presents a question of statutory construction, which we review *de novo*. *People v. Hunter*, 2013 IL 114100. The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *Id.* The most reliable indicator of such intent is the plain language of the statute. *Id.* Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. *Id.*

¶ 15 Section 122-5 of the Act provides:

"Proceedings on petition. Within 30 days after the making of an order pursuant to subsection (b) of Section 122-2.1, or within such further time as the court may set, the State shall answer or move to dismiss. In the event that a motion to dismiss is filed and denied, the State must file an answer within 20 days after such denial. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party. *The court may in its discretion grant leave, at any stage of the proceeding prior to entry of judgment, to withdraw the petition.* The court may in its discretion make such order as to amendment of the petition or any other pleading, or as to pleading over, or filing further pleadings, or extending the time of filing any pleading other than the original petition, as shall be appropriate, just and reasonable as is generally provided in civil cases." (Emphasis added.) 725 ILCS 5/122-5 (West 2010).

¶ 16 Despite the express language of this section, the defendant maintains the discretion afforded to the trial court to allow withdrawal of a petition does not apply to first-stage proceedings. The defendant notes that according to the Act, if a petition is not dismissed at the first stage, "the court shall order the petition to be docketed for further consideration in

accordance with Sections 122-4 through 122-6." 725 ILCS 5/122-2.1(b) (West 2010). Pursuant to this section, the defendant claims that sections 122-4 through 122-6 relate only to second- and third-stage proceedings. Therefore, the defendant contends the phrase "at any stage of the proceeding" in section 122-5 is similarly limited to second- and third-stage proceedings. By restricting the effect of section 122-5 to only second- and third-stage proceedings, the defendant claims that civil rules of procedure do not conflict with the Act, and therefore they should apply. See *English*, 381 Ill. App. 3d 906.

¶ 17 We find the defendant's limited interpretation of section 122-5 without merit. According to the plain language of the statute, section 122-5 grants the trial court discretion to allow withdrawal of a petition at any stage of the proceeding. 725 ILCS 5/122-5 (West 2010). Although section 122-5 relates to aspects of second-stage proceedings, the only stated limitation on the court's discretion to allow withdrawal is that it occur before the entry of judgment. *Id.* Since the legislature did not limit the clause "at any stage of the proceeding," to apply only to second- or third-stage proceedings, we will not read such limitations into the statute. See 725 ILCS 5/122-5 (West 2010); *People v. Chambers*, 2011 IL App (3d) 090949, ¶ 11 ("A court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions that are not consistent with the express legislative intent."). Therefore, we find that section 122-5 controls the withdrawal of petitions at the first stage. *People v. Harris*, 224 Ill. 2d 115 (2007) (stating that section 122-5 applies at the first stage).

¶ 18 **B. Abuse of Discretion**

¶ 19 Alternatively, the defendant argues that if we find the trial court had discretion to allow his motion to withdraw, the court abused that discretion when it failed to rule on his motion

because denial of the motion would have been an abuse of discretion.

¶ 20 The State claims that the trial court's denial of the defendant's motion was implicit in the court's dismissal of his petition. The State relies on numerous cases where findings were inferred from a trial court's ruling on a motion, but cites to only one case in which a motion was implicitly ruled on by the court's action. See, e.g., *People v. Richmond*, 278 Ill. App. 3d 1042 (1996). In *Richmond*, the defendant filed a motion to reconsider sentence and a notice of appeal. By addressing the merits of the motion to reconsider, the trial court was found to have implicitly considered the filing of the motion as a motion to dismiss the appeal and implicitly granted it under Illinois Supreme Court Rule 309 (eff. Feb. 1, 1981).

¶ 21 Given the state of the record here, we are reluctant to draw the type of inference that was drawn in *Richmond*. We find that the better course here would have been for the trial court to explicitly rule on the defendant's motion to withdraw before proceeding on his postconviction petition. In light our determination that it was within the trial court's discretion to allow the defendant's motion to withdraw, we remand so that the court may properly exercise this discretion. Accordingly, we vacate the dismissal of defendant's postconviction petition and remand the matter to the trial court so that it may consider and rule upon the defendant's motion to withdraw. We express no opinion as to the merit of the defendant's motion, because that determination belongs to the sound discretion of the trial court. See 725 ILCS 5/122-5 (West 2010).

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Rock Island County is vacated, and the cause is remanded with directions.

¶ 24 Vacated and remanded with directions.