

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).

2013 IL App (4th) 100509-U

NO. 4-10-0509

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 14, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
WILLIE McCLAIN,)	No. 92CF1142
Defendant-Appellant.)	
)	Honorable
)	Jeffrey B. Ford,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited on appeal any claim that the trial court erred in finding him in contempt of court.

¶ 2 Defendant, Willie McClain, appeals from an order finding him in direct civil contempt of court and imposing a \$941 sanction for noncompliance with an order directing defendant not file any further pleadings without leave of court. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 1993, a jury convicted defendant of two counts of first degree murder and the trial court later sentenced him to two concurrent terms of natural life in prison. This court affirmed defendant's convictions and sentence on direct appeal. *People v. McClain*, 269 Ill. App. 3d 500, 506, 645 N.E.2d 585, 590 (1995). Defendant filed a petition for leave to appeal to the Supreme Court of Illinois, which was denied. *People v. McClain*, 161 Ill. 2d 535, 649

N.E.2d 422 (1995) (table).

¶ 5 In March 1996, defendant *pro se* filed a petition for relief under the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 to 122-8 (West 1994)). The trial court dismissed the petition, and this court affirmed (*People v. McClain*, 292 Ill. App. 3d 185, 684 N.E.2d 1062 (1997) (overruled in part by *People v. Woods*, 193 Ill. 2d 483, 739 N.E.2d 493 (2000))).

¶ 6 In October 2000, defendant filed a second postconviction petition. The trial court dismissed the petition, and this court affirmed (*People v. McClain*, No. 4-00-1040 (April 4, 2002) (unpublished summary order under Supreme Court Rs. 23(c)(2), (c)(6))).

¶ 7 In April 2003, defendant filed a third postconviction petition. The trial court dismissed the petition, and this court affirmed (*People v. McClain*, No. 4-03-0741 (June 22, 2004) (unpublished order under Supreme Court Rule 23)).

¶ 8 In August 2003, defendant filed a section 2-1401 petition (735 ILCS 5/2-1401 (West 2002)). The trial court *sua sponte* dismissed defendant's section 2-1401 petition. Defendant did not appeal.

¶ 9 In July 2008, defendant filed a second section 2-1401 petition (735 ILCS 5/2-1401 (West 2006)), seeking to set aside his February 1993 convictions on the following grounds: (1) his sentences violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000); and (2) the indictment made no reference to the theory of accountability.

¶ 10 Later in July 2008, the trial court entered a written order *sua sponte* dismissing defendant's petition. Specifically, the court noted defendant (1) did not demonstrate due diligence and (2) raised these issues on direct appeal and in previous postconviction petitions.

The court noted defendant (1) "continues to file frivolous motions" and (2) "has never paid any of the cost involved in this matter." The court considered "these continued filings as an abuse of judicial process" and barred defendant from filing any further pleadings without leave of court, and until defendant paid \$941 in filing fees. Defendant appealed. This court held "[t]he trial court clearly had authority to order defendant to pay the filing fees for his frivolous petitions, albeit not as a condition to filing any further pleadings." *People v. McClain*, No. 4-08-0610, slip order at 3 (June 30, 2009) (unpublished order under Supreme Court Rule 23)). Thus, we vacated that part of the court's order that barred defendant from filing any further pleadings until defendant paid \$941 in filing fees and affirmed the court's order barring defendant from filing any further pleadings without leave of court. *McClain*, No. 4-08-0610, slip order at 5, 7. Our mandate issued on January 27, 2010.

¶ 11 In May 2010, defendant filed a third section 2-1401 petition (735 ILCS 5/2-1401 (West 2008)), without leave of court, in violation of the trial court's order barring defendant from filing any further pleadings without leave of court. On June 1, 2010, the trial court found defendant in direct civil contempt of court for knowingly violating the order barring him from filing any further pleadings without leave of court. The court provided defendant "may purge his contempt by paying a sanction of \$941.00." The court further stated:

"Defendant may not file any further pleadings in this matter until his contempt is purged. Further once purged this Court's order that Defendant must seek leave of court to file any further pleadings in this cause remains in full force and effect."

¶ 12 On June 28, 2010, defendant filed a motion to reconsider, arguing this court (1)

vacated the order requiring defendant to pay \$941 in filing fees and (2) did not specifically state what category of pleadings required defendant to seek leave of court before filing. Further, defendant argued his "claims [should] not [be] barred if the interests of justice require the issues be reviewed to ensure fundamental fairness at trial."

¶ 13 In his conclusion, defendant requested the trial court (1) "accept the State's concession that the trial court lacked authority to preclude further filings until [defendant] pays his past filing fees" and (2) "strike the portion of the order preventing him from filing future pleadings without prior leave of the Court as such was unauthorized."

¶ 14 On July 1, 2010, the trial court denied defendant's motion to reconsider, stating: "[Defendant] mischaracterizes that Order as the Court ordering him to pay his past filing fees. The Court did not do that. The Court sanctioned [defendant] for Direct Civil Contempt for violating the Court's prior order which as [defendant] notes was affirmed by the Appellate Court on January 7, 2010 that he not file any pleadings in this cause without leave of court."

¶ 15 On July 1, 2010, the Champaign County circuit clerk file-stamped defendant's notice of appeal. This court entered an order allowing the filing of a late notice of appeal on September 9, 2010, and the office of the State Appellate Defender (OSAD) filed a late notice of appeal on defendant's behalf on September 14, 2010.

¶ 16 On September 15, 2011, OSAD filed a motion to withdraw as counsel, stating OSAD is not authorized by statute to represent a defendant in a civil contempt proceeding. This court allowed the motion on September 16, 2011, and defendant filed his *pro se* brief on October

26, 2011.

¶ 17

II. ANALYSIS

¶ 18 Defendant's late notice of appeal states he is appealing the direct civil contempt order entered on June 1, 2010, and denial of his motion to reconsider entered on July 1, 2010. Defendant does not argue in his brief before this court that the trial court erred in finding defendant in direct civil contempt or denying his motion to reconsider. Instead, defendant requests permission to file a "motion for reconsideration of withdraw[a]" and "motion for *** relief *** of sentence of judgment and conviction." Defendant includes in his brief a "motion for reconsideration," "motion for appointment of counsel," and "motion for relief from judgment/sentence." Defendant states in his "motion for reconsideration" that he "has recognized his failure and mistake concerning standard procedures [and] seek[s] permission to file and alternate petitioner's Civil Procedure Petition into a criminal proceeding of a successful Post-Conviction (Relief) Petition."

¶ 19

As stated above, this court allowed OSAD's motion to withdraw as counsel because OSAD is not authorized by statute to represent a defendant in a civil contempt proceeding. It appears defendant is suggesting we allow him to substitute on appeal a postconviction petition filed under the Postconviction Act for the section 2-1401 petition defendant filed in the trial court under the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). Defendant posits that this court could then reconsider OSAD's motion to withdraw as counsel, reappointing counsel to represent defendant as the proceedings would be criminal and not civil in nature. We remind defendant that the trial court did not rule on his section 2-1401 petition and that petition is not before this court for review. Further, section 122-1(b) of the Postconviction Act provides

that a postconviction proceeding "shall be commenced by filing *with the clerk of the court in which the conviction took place* a petition (together with a copy thereof) verified by affidavit." (Emphasis added.) 725 ILCS 5/122-1(b) (West 2010). We find no authority that would allow a defendant to substitute on appeal a successive postconviction petition for a section 2-1401 petition filed in the trial court. Thus, we deny defendant's motion for leave to file a "motion for reconsideration of withdraw[a]" and "motion for *** relief *** of sentence of judgment and conviction."

¶ 20 As stated above, defendant does not argue in his brief before this court that the trial court erred in finding defendant in direct civil contempt or denying his motion to reconsider. Defendant argues only his "actual innocence claims." Rule 341(h)(7) requires the argument section of an appellant's brief "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. *** Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). A litigant's *pro se* status does not excuse him from complying with appellate procedures as specified by our supreme court rules. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825, 932 N.E.2d 184, 187 (2010). Thus, defendant has forfeited on appeal any contention that the trial court's contempt of court finding dated June 1, 2010, was error.

¶ 21 For the reasons stated, we affirm the trial court's judgment.

¶ 22 Affirmed.