

mandatory supervised release period. Defendant had previously moved pursuant to 725 ILCS 5/114-5(a) (West 2000) to substitute Judge Dan Flannell as a matter of right. The motion was allowed on September 26, 2000, and the case was assigned to Judge Freese.

¶ 5 Following the plea, defendant did not file a motion to withdraw the guilty plea, or a notice of appeal. In January 2004, defendant filed a petition for postconviction relief, alleging private counsel coerced and threatened defendant, making his plea involuntary. Defendant also alleged counsel failed to consult defendant about any potential defense, was ineffective and incompetent, and urged him to take the plea. In February 2004, the trial court dismissed the petition as patently without merit. On March 8, 2006, this court affirmed the dismissal of defendant's postconviction petition. *People v. Trimble*, No. 4-04-0123, (Mar. 8, 2006) (unpublished order under Supreme Court Rule 23).

¶ 6 On August 24, 2009, defendant filed a motion for leave to file a successive postconviction petition. In part, defendant's motion alleged his lawyer had communicated with the victim in the case, thus creating a conflict of interest and generally complained about his lawyer's effectiveness. Judge Freese denied the motion and defendant appealed. This court affirmed the dismissal. See *People v. Trimble*, No. 4-10-0266 (Dec. 6, 2010) (unpublished order under Supreme Court Rule 23). We held some of the issues defendant was attempting to raise could have been raised in his initial postconviction petition and were thus forfeited, and the other issues had already been ruled on in the first postconviction proceeding and appeal.

¶ 7 On August 11, 2011, defendant filed a "*pro se* petition." He did not attach a title to the petition, stating "[defendant] does request this court to name such as deemed fit based on the content to follow."

¶ 8 The issues defendant attempts to raise are not totally clear. For example, defendant states as follows in various parts of his petition: (1) "In any event of such titled attached [*sic*] it is then requested that fundamental fairness prevail in the allowing of amending such filing if some is lacking in any area based on the title attached by this court"; (2) "Defendant must be given full opportunity per-Post [*sic*] Conviction Hearing Act to defend his claims where such is now violated despite one claim being reliant upon the other"; (3) "It is important to note that in the case at hand the defendant has made the claim of fairness by his attorney which infected his plea. In such an event the fairness in both areas play [*sic*] upon each other, and such did not allow for counsel to act for defendant in his many request[s] to withdraw his plea"; (4) "[C]ounsel's [*sic*] actions can best be viewed in unfair acts (and outright violation(s)) [*sic*] in her own correspondence to a party other than her client."

¶ 9 The trial court dismissed the *pro se* petition summarily.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 We review the summary dismissal of a postconviction pleading under a *de novo* standard of review.

¶ 13 Defendant argues it was error for Judge Flannell to dismiss the petition because defendant had moved for substitution in September 2000 in the underlying proceeding.

Defendant bases his position on a form notice the circuit clerk sent to him that states as follows:

"CIRCUIT COURT—MOULTRIE COUNTY, SULLIVAN, ILLINOIS
Hon. Dan L. Flannell, presiding:

TAKE NOTICE THAT THE FOLLOWING ENTRY WAS MADE ON
THIS DATE

August 15, 2011:

Notice of filing on file by pro se Defendant. Pro se petition on file by Defendant. Petition is summarily dismissed by the Court. Clerk to forward a copy of this docket entry to Defendant in care of the Department of Corrections."

(Judge Flannell is the resident circuit judge of Moultrie County.) The State points out the docket sheet reflects the initials "CEF" for the August 15, 2011, docket entry dismissing the petition.

These are the initials of Judge Freese. Defendant argues the notice from the clerk controls.

¶ 14 Neither party pointed this court, however, to the report of proceedings for August 15, 2011, which clearly shows on the cover page Judge Chris E. Freese as the presiding judge.

The report of proceedings, taken by court reporter C. C. Orman, reflects the following:

"THE COURT: 00-CF-49, People versus Trimble.

Notice of filing on file, pro se, by Defendant. Pro se petition on file by Defendant. Petition is summarily dismissed by the Court. Clerk directed to forward a copy of today's docket entry to Defendant in care of the Department of Corrections at the address for the Defendant.

Which were all of the proceedings had and entered of record at said hearing."

¶ 15 The record shows Judge Freese, not Judge Flannell, made the ruling. The order thus is not null and void.

¶ 16 Turning now to the merits, defendant contends the dismissal of his petition was

premature. Counsel for defendant contends "to the extent that the petition appears to be a petition filed pursuant to section 2-1401, the trial court erred when it *sua sponte* dismissed [defendant's] petition four days after the petition was filed" (citing 735 ILCS 5/2-1401 (West 2010); *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009)).

¶ 17 Defendant deliberately failed to label his petition, instead asking the trial court to label it for him. Contrary to defendant's suggestion, it is not the function of the court to title defendant's petition for him. If a court recharacterizes a pleading "that a *pro se* litigant has labeled as a different action cognizable under Illinois law" as a postconviction or successive postconviction petition, a defendant is entitled to certain admonitions. See *People v. Shellstrom*, 216 Ill. 2d 45, 57, 833 N.E.2d 863, 870 (2005); *People v. Pearson*, 216 Ill. 2d 58, 68, 833 N.E.2d 827, 832 (2005). Here, however, no recharacterization occurred. Defendant purposely failed to label his petition to reflect whatever type of pleading he thought he was filing. Moreover, as the State points out, Illinois courts have "long held that section 2-1401 proceedings are not an appropriate forum for ineffective-assistance claims because such claims do not challenge the factual basis for the judgement." *People v. Pinkonsly*, 207 Ill. 2d 555, 567, 802 N.E.2d 236, 244 (2003). The court had every right to consider the *pro se* petition an impermissible successive postconviction petition pursuant to 725 ILCS 5/122-1(f) (West 2010). Consequently, the court did not err by summarily dismissing it.

¶ 18 III. CONCLUSION

¶ 19 The judgment of the trial court summarily dismissing defendant's petition is affirmed. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v.*

Smith, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 20 Affirmed.