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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 Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 93-CF-2202
)	
LESLIE H. PEACE,)	Honorable
)	Theodore S. Potkonjak,
Defendant-Appellant.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* On the State's concession, we vacated the trial court's denial of defendant's motion for leave to file a successive postconviction petition, as the proposed petition was actually defendant's first; however, because the proposed petition, having been submitted with a motion for leave to file, was not itself filed, we remanded not for second-stage proceedings but instead for the filing and docketing of the petition and first-stage proceedings.

¶ 2 Defendant, Leslie H. Peace, appeals from the denial of his motion for leave to file a successive petition under of the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). We vacate and remand.

¶ 3 I. BACKGROUND

¶ 4 On April 6, 1994, defendant pleaded guilty to first-degree murder (720 ILCS 5/9-1(a)(1) (West 1992)). The trial court sentenced defendant to 100 years in prison. Defendant filed a motion to withdraw his guilty plea or, in the alternative, for reconsideration of his sentence. The trial court denied the motion, and we affirmed the judgment. *People v. Peace*, No. 2-94-0901 (1996) (unpublished order under Supreme Court Rule 23).

¶ 5 On April 24, 2001, defendant filed a *pro se* “Common Law Motion to Vacate Petitioner’s Void Judgment in Light of *Apprendi v. New Jersey*.” Thereafter, appointed counsel filed an “Amended Petition for Post-Conviction Relief,” which reiterated defendant’s contentions in his *pro se* motion. The State moved to dismiss the amended petition and, on that same day, defense counsel filed an “Amended Common Law Motion to Vacate Petitioner’s Void Judgment.” The court granted the State’s motion to dismiss. Defendant appealed, and we affirmed the judgment. *People v. Peace*, No. 2-01-1441 (2003) (unpublished order under Supreme Court Rule 23).

¶ 6 On March 6, 2012, defendant filed a “[Motion] for Leave to File Successive Post-Conviction Petition Pursuant to 725 ILCS 5/122-1(f)” (motion for leave to file). Attached thereto was a proposed “Petition For Successive Postconviction [Relief]” (proposed petition).

¶ 7 On July 27, 2012, the trial court denied defendant leave to file the proposed petition, finding that “[d]efendant has not shown an objective factor that impeded his ability to raise a specific claim during his initial post-conviction proceeding” and that “the defendant has not shown prejudice by demonstrating [that] claims not raised during his initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.”

¶ 8 Defendant timely appealed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues that the proposed petition was not actually a successive postconviction petition; rather, it was an initial petition under the Act. Therefore, according to defendant, because the trial court ruled on it more than 90 days after it was filed, the court's order must be vacated and the matter remanded for stage-two proceedings under the Act. In the alternative, defendant argues that the trial court erred in denying his motion for leave to file, because he established the requisite cause and prejudice.

¶ 11 In response, the State concedes that the proposed petition was defendant's first postconviction petition. The State also concedes that the trial court's order denying defendant leave to file must be vacated and the matter remanded. However, the State disagrees that the petition should be advanced to stage-two proceedings under the Act. Instead, the State maintains that the matter should be remanded for first-stage proceedings under the Act.

¶ 12 We accept the State's concession that the proposed petition attached to defendant's motion for leave to file was defendant's initial petition under the Act, and we agree with the State that the matter should be remanded for first-stage proceedings.

¶ 13 Section 122-1(b) of the Act provides that a proceeding under the Act "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." 725 ILCS 5/122-1(b) (West 2012). The Act establishes a three-stage process for adjudicating a postconviction petition. At the first stage, the trial court must independently review the petition within 90 days of its filing and docketing to determine whether it is either frivolous or patently without merit. *People v. Tate*, 2012 IL 112214, ¶ 9; see 725 ILCS 5/122-2.1(a)(2) (West 2012). This 90-day requirement is mandatory. *People v. Swamynathan*, 236 Ill. 2d 103, 113 (2010). A trial court's noncompliance with the

time requirement renders a summary dismissal order void, and the petition must be docketed for second-stage proceedings. *Id.*

¶ 14 Defendant maintains that, under section 122-1(b) of the Act, the proposed petition “reached stage one” when he filed it on March 6, 2012, and that thus the trial court’s failure to independently review it within 90 days of its filing requires that it be advanced to the second stage. We disagree. Contrary to defendant’s claim, he did not file the proposed petition on March 6, 2012; rather, he filed a motion for leave to file said petition. The petition itself was merely an adjunct to the motion for leave to file. A pleading that a party submits as part of a motion for leave to file “ ‘is not yet a part of a judicial proceeding and has no legal effect until the motion is granted.’ ” *People v. White*, 2013 IL App (2d) 120205, ¶ 7 (quoting *Kurczaba v. Pollock*, 318 Ill. App. 3d 686, 703 (2000)). Because the trial court denied leave to file the proposed petition, the petition was never properly filed under the Act and thus never reached stage one.

¶ 15 In light of the foregoing, we vacate the trial court’s order denying defendant’s motion for leave to file his proposed petition, and we remand for the filing and docketing of defendant’s proposed petition as an initial postconviction petition under the Act.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we vacate and remand.

¶ 18 Vacated and remanded.