

No. 1-10-0575

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 94 CR 4431(03)
)	
SCOTT CHAMBERS,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

Held: We hold that upon remand, the circuit court must vacate the following language from its order denying defendant leave to file a successive postconviction petition: "the Clerk of the Circuit Court will be instructed not to accept any further filings from [defendant] until his sanction has been satisfied in full." The portion of the circuit court's order finding defendant's successive petition frivolous and the assessment of \$105 in fees against defendant are affirmed as defendant did not challenge these findings on appeal. We vacate defendant's sentence and remand the matter to the circuit court for resentencing to allow the circuit court to craft an appropriate sentence in light of *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012).

¶ 1 This cause comes before us on remand from our supreme court to determine whether a different result is warranted in our August 13, 2013, decision in *People v. Chambers*, 2013 IL App (1st) 100575, in light of its March 20, 2014, decision in *People v. Davis*, 2014 IL 115595. In *Chambers*, defendant, Scott Chambers, raised two issues, one in his opening brief and one in a supplemental brief. Regarding defendant's first issue, as stated in his opening brief, the circuit court added the following language to its order denying defendant's successive postconviction petition: "[d]efendant is hereby fined \$105.00 and the Clerk of the Circuit Court will be instructed not to accept any future filings from [defendant] until his sanction has been satisfied in full." Defendant did not contest the circuit court's finding that the petition was frivolous, nor did he contest the imposition of the \$105 "fine"; rather he asked this court to remand the matter to the circuit court and order it to strike the portion of the order instructing the clerk of the circuit court to not accept future filings from him until the fees are paid. We agreed with defendant and directed the circuit court, on remand, to vacate the following language from its order: "the Clerk of the Circuit Court will be instructed not to accept any further filings from [defendant] until his sanction has been satisfied in full." We affirmed the remainder of the circuit court's order, *i.e.*, the \$105 "fine" and the circuit court's finding that defendant's petition was frivolous, because defendant did not challenge those findings. *Id.* ¶¶ 23-31. We note that although *Davis* does not affect this holding, we will include it in this order for the sake of clarity.

¶ 2 In a supplemental brief, defendant, who was 17 years of age at the time of the offense, asked this court to review whether his mandatory life sentence without the possibility of parole should be vacated due to the Supreme Court's then recent decision in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012). We declined to review defendant's challenge to his sentence based on *Miller* because defendant failed to include the issue in his postconviction petition. *Id.*

¶ 42. We stressed that defendant could still challenge his sentence in a successive petition, but that supplemental briefing before this court was not the proper vehicle to do so. *Id.* ¶¶ 40, 42. In March of 2014, our supreme court issued its decision in *Davis*. *People v. Davis*, 2014 IL 115595. In light of *Davis*, and in accordance with our supreme court's remandment order, we now vacate defendant's sentence and remand the matter for resentencing because the circuit court was not able to take into account defendant's youth in crafting an appropriate sentence. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2469; *Davis*, 2014 IL 115595, ¶¶ 38-40.

¶ 3

BACKGROUND

¶ 4 All pertinent factual background information concerning defendant's trial and initial appeal is well stated in this court's 1998 order and does not need to be restated here. *People v. Chambers*, No. 1-96-0501 (1998) (unpublished order under Supreme Court Rule 23). Below, we will discuss relevant facts from defendant's sentencing hearing and his current successive postconviction petition.

¶ 5 Defendant was convicted by a jury of two counts of first degree murder, two counts of armed robbery, one count of aggravated criminal sexual assault, and one count of aggravated vehicular hijacking. The conduct on which defendant's convictions are based occurred on January 13, 1994, when defendant was 17 years of age. He was sentenced concurrently to two terms of natural-life imprisonment for murder, three 25-year terms for armed robbery and aggravated criminal sexual assault, and one 15-year term for his conviction for aggravated criminal sexual assault. Relevant to this appeal, defendant's sentence of natural life imprisonment was pursuant to the mandatory sentencing provisions found in section 5-8-1(a)(1)(c)(ii), (v) of the Unified Code of Corrections. 730 ILCS 5/5-8-1(a)(1)(c)(ii),(v) (West 1994).

¶ 6 During the sentencing hearing, the State informed the circuit court of the law regarding defendant's sentence, stating:

"He's 17, Judge, so under the law in Illinois we're here to sentence him and you're bound to follow the law and I know this court will do so. He's not eligible for the death penalty nor is he eligible to be sentenced to anything less than natural life imprisonment. The people who we elect as free, democratic people to serve in the General Assembly decided many years ago for this type of crime, for this special category of crime mitigation and aggravation is irrelevant. We have decided as a people that when someone commits this type of very narrow category of crime that is so horrible we are entitled to wash our hands of [defendant] and to banish him from our community and to send him for the rest of his natural life to live in the penitentiary. And that's the sentence we're asking you to impose on him, Judge."

The State added further "[t]his is a fair sentence" and it "is a sentence required under law." Defendant's counsel, during his argument, noted, "I know that the Court cannot do anything beyond what the law requires where there is a double homicide." Before sentencing defendant to a natural life sentence without parole, the circuit court judge noted, "I don't take any pleasure out of sentencing a young man to the sentence of this gravity but it is the law and I'm bound by the law."

¶ 7 Defendant appealed his initial conviction and sentence alleging that his conviction for aggravated criminal sexual assault must be reversed because the State failed to present any evidence independent of his own statement to establish the *corpus delicti* of that crime and that

his counsel was ineffective for admitting to his guilt during opening statements. This court affirmed his conviction and sentence. *People v. Chambers*, No. 1-96-0501 (1998) (unpublished order under Supreme Court Rule 23).

¶ 8 In August of 1999, defendant filed a *pro se* petition for postconviction relief arguing that his right to a speedy trial was violated and that his counsel was ineffective. The circuit court summarily dismissed the petition pursuant to section 122-2.1 of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-2.1 (West 2004)). Defendant did not appeal the dismissal of his postconviction petition.

¶ 9 On August 25, 2000, defendant filed a successive petition, his second petition, alleging a claim based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The circuit court dismissed the petition. On appeal, the appellate defender assigned to represent defendant moved to withdraw from the case on the grounds that the petition had no merit. This court granted the motion to withdraw and affirmed the decision of the circuit court on July 3, 2004. *People v. Chambers*, No. 1-02-3031 (2003) (unpublished order under Supreme Court Rule 23).

¶ 10 On July 21, 2009, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)). The circuit court, on October 2, 2009, pursuant to *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005), notified defendant it intended to recharacterize the petition as a successive postconviction petition, defendant's third.

¶ 11 Defendant elected to amend his petition, filing his third petition on November 13, 2009. In his third petition, defendant alleged he received ineffective assistance of counsel from his appellate counsel on direct appeal, and from fellow inmates who drafted his previous two petitions. According to defendant, both his appellate counsel and his fellow inmates failed to

allege that his trial counsel was ineffective and failed to challenge his sentence where section 5-8-1(a)(1)(b) of the Unified Code of Corrections had been held unconstitutional.¹ According to defendant, this was pertinent because section 5-8-1(a)(1)(c)(ii), which he was sentenced under, "is subject to and/or completely dependent on, and was in effect at the time [he] committed the crimes he has been convicted of." Defendant claimed "extraordinary circumstances" prevented him from submitting his claims earlier.

¶ 12 On January 22, 2010, the circuit court denied defendant leave to file his successive petition, finding that defendant failed to demonstrate that the rule prohibiting successive petitions should be relaxed. The circuit court further found that "the factual assertions relied upon by [defendant] in the instant petition were available to him at the time of his initial petition was filed" and that defendant "failed to identify any objective factor which impeded his efforts to raise the claim in the earlier proceedings." The circuit court found that defendant failed to show cause by merely arguing that ineffective assistance of counsel caused him to improperly present his previous petitions. Additionally, the circuit court found that defendant did not show prejudice because even if he had presented his claim earlier, there was "scant possibility" that he would have prevailed. The circuit court added that defendant made "no showing that the absence of the claim now presented so infected the trial that his resulting conviction or sentence violated due process."

¶ 13 At the end of its order denying defendant leave to file a successive petition, the circuit court added the following language: "[defendant] is hereby fined \$105.00 and the Clerk of the

¹ We note that defendant was sentenced under section 5-8-1(a)(1)(c)(ii) and (v) of the Unified Code of Corrections; not section 5-8-1(a)(1)(b).

Circuit Court will be instructed not to accept any further filings from [defendant] until his sanction has been satisfied in full." Defendant timely appealed on February 17, 2010.

¶ 14 On February 9, 2012, defendant filed his opening brief before this court, arguing only that the circuit court exceeded its authority when it barred the clerk of the circuit court from accepting any future filings until his fine was paid.

¶ 15 On June 25, 2012, the United States Supreme Court issued its decision in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), which held that mandatory life sentences without parole for defendants under the age of 18 at the time of their crimes is a cruel and unusual punishment, and, thus, violates the eighth amendment. *Id.* at ___, 132 S. Ct. at 2460.

¶ 16 On August 17, 2012, defendant filed his supplemental brief, relying on *Miller*, to argue that his life sentence was void, and asked that the matter be remanded to the circuit court for resentencing.

¶ 17 On August 13, 2013, we issued our initial decision in this matter. *People v. Chambers*, 2013 IL App (1st) 100575. Addressing defendant's first issue, as raised in his opening brief, we agreed with defendant and directed the circuit court, on remand, to vacate the following language from its order: "the Clerk of the Circuit Court will be instructed not to accept any further filings from [defendant] until his sanction has been satisfied in full." *Id.* ¶¶ 23-31. We affirmed the remainder of the circuit court's order, *i.e.*, the \$105 "fine" and the circuit court's finding that defendant's petition was frivolous, because defendant did not challenge those findings. *Id.* We declined to review defendant's second issue, as raised in his supplemental brief, challenging his mandatory life sentence without the possibility of parole based on *Miller* because defendant failed to include the issue in his postconviction petition. *Id.* ¶ 42. We stressed that defendant

could challenge his sentence in a successive petition, but that supplemental briefing before this court was not the proper vehicle to do so. *Id.* ¶¶ 40, 42.

¶ 18 On March 20, 2014, our supreme court issued its decision in *People v. Davis*, 2014 IL 115595. Relevant here, our supreme court in *Davis* addressed whether section 5-8-1(a)(1)(c) of the Unified Code of Corrections was facially unconstitutional, and, thus, void *ab initio*; and whether *Miller* should be applied retroactively to cases on collateral review. *Id.* ¶¶ 23-43. Our supreme court held that section 5-8-1(a)(1)(c) of the Unified Code of Corrections was not facially unconstitutional because there were situations where it could be validly applied. *Id.* ¶30. The court rejected the defendant's contention that the statutory scheme, which included the juvenile defendant transfer statute, was void *ab initio*. *Id.* ¶¶31-32. Regarding whether *Miller* should be applied retroactively on collateral review, our supreme court held that *Miller* declares a new substantive rule that applies retroactively to cases on collateral review. *Id.* ¶¶ 38-40.

¶ 19 On January 28, 2015, our supreme court denied defendant's petition for leave to appeal in this matter but directed this court to vacate our judgment and to reconsider in light of its holding in *Davis* to determine if a different result is warranted.

¶ 20 ANALYSIS

¶ 21 As previously discussed, *Davis* does not affect our holding addressing the circuit court's order prohibiting defendant from future filings until his sanction is satisfied, but we will include our analysis of the issue in this order for the sake of clarity. Accordingly, we will first address the circuit court's sanction order before reconsidering our decision on whether defendant's sentence should be vacated.

¶ 22 Successive Postconviction Petition

¶ 23 Before this court, defendant argues that the portion of the circuit court's order denying him leave to file a successive postconviction petition that prohibits him from making future filings until his sanction is paid off is void. He does not argue that he should not have been fined nor does he contest that the filing was frivolous. Defendant asserts that the circuit court's order prohibiting future filings until his sanction is paid conflicts with section 22-105(a) of the Code which states, "[n]othing in this Section prohibits an applicant from filing an action or proceeding if the applicant is unable to pay the court costs." 735 ILCS 5/22-105(a) (West 2010). Defendant maintains that the relevant section of the circuit court's order is void and that this court should order the circuit court to strike the offending language and to issue a corrected order. According to defendant, our review is *de novo* because it concerns the statutory authority of the circuit court's order.

¶ 24 The State, in response, argues that the circuit court properly exercised its inherent authority by instructing the clerk of the circuit court to not accept any more filings from defendant until he paid the imposed court costs. The State further argues that Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)) provides the statutory basis for the circuit court's actions. According to the State, we should review defendant's claim for an abuse of discretion because it involves the circuit court's use of its discretion in sanctioning defendant.

¶ 25 Initially, we agree with defendant regarding the proper standard of review in this case. Issues raised addressing the circuit court's statutory authority are subject to *de novo* review. *People v. Alexander*, 369 Ill. App. 3d 955, 957 (2007). Furthermore, *de novo* review is appropriate when interpreting a statute. *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007). Accordingly, we will review this issue *de novo*.

¶ 26 Section 22-105 of the Code, titled "Frivolous lawsuits filed by prisoners," provides, in relevant part:

"If a prisoner confined in an Illinois Department of Corrections facility files a pleading, motion, or other filing which purports to be a legal document in a case seeking post-conviction relief under Article 22 of the Code of Criminal Procedure of 1963 *** and the Court makes a specific finding that the pleading, motion, or other filing which purports to be a legal document filed by the prisoner is frivolous, the prisoner is responsible for the full payment of filing fees and actual court costs.

On filing the action or proceeding the court shall assess and, when funds exist, collect as a partial payment of any court costs required by law a first time payment of 50% of the average monthly balance of the prisoner's trust fund account for the past 6 months.

Thereafter 50% of all deposits into the prisoner's individual account *** administered by the Illinois Department of Corrections shall be withheld until the actual court costs are collected in full. The Department of Corrections shall forward any moneys withheld to the court of jurisdiction. If a prisoner is released before the full costs are collected, the Department of Corrections shall forward the amount of costs collected through the date of release. The court of jurisdiction is responsible for sending the Department of Corrections a copy of the order mandating the amount of court fees to be paid. *Nothing in this Section prohibits an applicant from filing an action or proceeding if the*

applicant is unable to pay the court costs." (Emphasis added.) 735

ILCS 5/22-105 (West 2010).

The purpose of section 22-105 of the Code is "to curb the large number of frivolous collateral pleadings filed by prisoners which adversely affect the efficient administration of justice, and to compensate the courts for the time and expense incurred in processing and disposing of them."

People v. Conick, 232 Ill. 2d 132, 141 (2008).

¶ 27 Our paramount consideration when interpreting a statute is to give effect to the intent of the legislature. *People v. Hari*, 218 Ill. 2d 275, 292 (2006). "The best evidence of legislative intent is the language used in the statute, which must be given its plain and ordinary meaning." *Id.* " 'In determining the plain meaning of a statute's terms, we consider the statute in its entirety, keeping in mind the subject it addresses, and the apparent intent of the legislature in enacting the statute.' " *Conick*, 232 Ill. 2d at 138 (quoting *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 8 (2007)). Furthermore, the statutory language must be given "the fullest, rather than narrowest, possible meaning to which it is susceptible." *Id.*

¶ 28 In this case, we hold that the section of the circuit court's order stating "the Clerk of the Circuit Court will be instructed not to accept any further filings from [defendant] until his sanction has been satisfied in full" conflicts with the plain and ordinary language of section 22-105 of the Code (735 ILCS 5/22-105 (West 2010)), which provides that "[n]othing in this Section prohibits an applicant from filing an action or proceeding if the applicant is unable to pay the court costs." The circuit court in this case effectively prohibited defendant from making future filings based on court costs assessed, despite the clear language stating otherwise in section 22-105 of the Code. 735 ILCS 5/22-105 (West 2010). Therefore, the circuit court

erred when it included this language into its order denying defendant leave to file his successive petition.

¶ 29 We find further support for our holding in our supreme court's decision in *People v. Alcozer*, 241 Ill. 2d 248 (2011). In *Alcozer*, the defendant challenged the constitutionality of the imposition of fees pursuant to section 22-105 of the Code. *Id.* at 259-65 (citing 735 ILCS 5/22-105 (West 2006)). In responding to the defendant's argument that the fees imposed violated his due process rights, our supreme court held:

"From a plain reading of section 22-105, we determine that the statute does not impinge upon a prisoner's fundamental right to access to the courts because fees are assessed only after a legal document is found to be frivolous. At most, the statute only affects a prisoner's right to file frivolous legal documents without being responsible for the costs, *but does not prohibit prisoners from exercising their right to petition for postconviction relief.*" (Emphasis added.) *Id.* at 260.

Our holding in this case is consistent with the *Alcozer* court's holding that section 22-105 "does not prohibit prisoners from exercising their right to petition for postconviction relief." *Id.*; see also *People v. Johnson*, 2012 IL App (1st) 111378, ¶ 11 (pointing out that section 22-105 of the Code "specifically provides that no inmate is prohibited from filing any pleading based on the inability to pay " (citing 735 ILCS 5/22-105(a) (West 2008)); *People v. Gale*, 376 Ill. App. 3d 344, 361 (2007). Allowing the circuit court to prohibit defendant's right to file postconviction relief would be contrary to the plain language of section 22-105 of the Code.

¶ 30 We reject the State's contention that Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)) applies in this case. Illinois Supreme Court Rule 137 provides, in relevant part:

"The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction ***." Ill. S. Ct. R. 137 (eff. July 1, 2013).

We disagree with the State's contention because a comparison of Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)) with section 22-105 of the Code (735 ILCS 5/22-105 (West 2010)) shows that section 22-105 of the Code is the more specific provision addressing frivolous filings made by prisoners, which is at issue in this case. It is a fundamental rule of statutory construction that a specific provision prevails over a general provision. *People v. Latona*, 184 Ill. 2d 260, 269-70 (1998); *People v. Villarreal*, 152 Ill. 2d 368, 379 (1992). Rule 137 is clearly more general in nature, while section 22-105 is titled "Frivolous lawsuits filed by prisoners," and states that it applies to prisoners seeking postconviction relief. 735 ILCS 5/22-105 (West 2010).

¶ 31 Therefore, in this case the circuit court erred by including the language in its order prohibiting defendant from filing further pleadings before his sanction is paid in full. When a court exceeds its statutory authority to act, the resulting order is void. *Alexander*, 369 Ill. App. 3d at 958. Accordingly, on remand, we direct the circuit court to vacate the following language from its order: "the Clerk of the Circuit Court will be instructed not to accept any further filings from [defendant] until his sanction has been satisfied in full."

¶ 32 Sentence

¶ 33 In supplemental briefing before this court, defendant, who was a minor at the time of the offense, asks this court to review whether his mandatory life sentence without the possibility of parole should be vacated pursuant to the Supreme Court's decision in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012). Defendant asserts that supplemental briefing before this court is an appropriate way to challenge his sentence, arguing that a void sentence is subject to challenge at any time. Accordingly, he asks, in addition to his request to vacate the improper language in the circuit court's order denying leave to file a successive petition, that we remand the matter for resentencing.

¶ 34 In response, the State argues that the statute defendant was sentenced under in this case cannot be considered void *ab initio* because it is not unconstitutional in its entirety. Furthermore, the State contends that *Miller* cannot be applied retroactively to collateral proceedings, such as a postconviction petition, because it is a new rule of law.

¶ 35 In *Miller*, the Supreme Court held that mandatory life sentences without parole for defendants under the age of 18 at the time of their crimes is a cruel and unusual punishment and, thus, violates the eighth amendment. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2460. The court did not ban the sentencing of juveniles to life in prison without parole; rather, it held the mandatory

sentencing of juveniles to life without parole violates the eighth amendment and required sentencing courts "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime of prison." *Id.* at ___, 132 S. Ct. at 2469. Our supreme court, in *People v. Davis*, 2014 IL 115595, held that *Miller* declares a new substantive rule that applies retroactively to cases on collateral review. *Id.* ¶¶ 38-40.

¶ 36 In this case, a jury convicted defendant of two counts of first degree murder, two counts of armed robbery, one count of aggravated criminal sexual assault, and one count of aggravated vehicular hijacking based on conduct that occurred on January 13, 1994, when defendant was 17 years of age. He was sentenced concurrently to two terms of natural-life imprisonment for murder, three 25-year terms for armed robbery and aggravated criminal sexual assault, and one 15-year term for his conviction for aggravated criminal sexual assault. Relevant to this appeal, defendant's sentence of natural life imprisonment was pursuant to the mandatory sentencing provisions found in section 5-8-1(a)(1)(c)(ii), (v) of the Unified Code of Corrections. 730 ILCS 5/5-8-1(a)(1)(c)(ii),(v) (West 1994). Accordingly, defendant's sentence is unconstitutional under *Miller* because the circuit court was not able to take into account defendant's youth in crafting an appropriate sentence. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2469. Under *Davis*, the holding of *Miller* applies retroactively to defendant's case on collateral review. *Davis*, 2014 IL 115595, ¶¶ 38-40. Therefore, we vacate defendant's sentence and remand the matter to the circuit court for resentencing to allow the circuit court to craft an appropriate sentence in light of defendant's age in accordance with *Miller*. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2469.

¶ 37 We note that defendant's argument was first raised in supplemental briefing before this court. Defendant's sentence, however, may be challenged here in supplemental briefing because it contravenes the Constitution. *People v. Luciano*, 2013 IL App (2d) 110792, ¶ 48

("While it is true that a statutory provision that is void *ab initio* may be challenged at any time [citation], it is also true that a sentence that contravenes the Constitution may be challenged at any time [citation].").

¶ 38 In conclusion, on remand, we direct the circuit court to vacate the following language from its order: "the Clerk of the Circuit Court will be instructed not to accept any further filings from [defendant] until his sanction has been satisfied in full." We reiterate that defendant has not challenged the circuit court's finding that his petition was frivolous or that the \$105 assessed against him was improper. Accordingly, that portion of the circuit court's order will be affirmed. In regard to defendant's supplemental brief before this court, we vacate defendant's sentence and remand the matter for resentencing in accordance with *Miller* and *Davis* to allow the circuit court to take into account defendant's youth in crafting an appropriate sentence. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2469; *Davis*, 2014 IL 115595, ¶¶ 38-40.

¶ 39

CONCLUSION

¶ 40 For all of the foregoing reasons, we vacate the portion of the circuit court's order instructing the clerk of the circuit court to not accept future filings from defendant until his fees are paid, but affirm the portions of the circuit court's order finding defendant's successive petition frivolous and assessing \$105 in fees as defendant has not challenged these findings on appeal. We vacate defendant's sentence and remand for resentencing not inconsistent with this order.

¶ 41 Affirmed in part and vacated in part; cause remanded with directions.