

No. 1-13-0947

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. 97 CR 11558
)	
DERRICK HARRIS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's petition for postjudgment relief was not ripe for adjudication where the circuit court *sua sponte* dismissed the petition before the State's 30-day response period had expired.
- ¶ 2 Following a bench trial, defendant Derrick Harris was found guilty, *inter alia*, of three counts of aggravated criminal sexual assault and one count of home invasion and sentenced to 30 years' imprisonment on each of those charges, to be served consecutively. He petitioned for postjudgment relief pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS

5/2-1401 (West 2010)). Eight days later, the circuit court, *sua sponte*, dismissed his petition. On appeal, defendant contends that his aggregate 120-year sentence violates section 5-8-4(c)(2) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-8-4(c)(2) (West 2010)). Alternatively, he contends that his petition was not ripe for adjudication under *People v. Laugharn*, 233 Ill. 2d 318 (2009). We vacate and remand for further proceedings.

¶ 3 After simultaneous but severed bench trials, defendant and his codefendants Sammy Lowery and Erskine Deloach, who are not parties to this appeal, were each found guilty of aggravated criminal sexual assault, home invasion, armed robbery, aggravated kidnapping, aggravated battery of a senior citizen, residential burglary, burglary, and possession of a stolen motor vehicle stemming from the abduction and assault of members of a family in February 1997. Dante Handy, another codefendant who is not a party to this appeal, opted for a simultaneous jury trial and was also convicted on all counts. Defendant was sentenced on three counts of aggravated criminal sexual assault and one count of home invasion, to four consecutive terms of 30 years' imprisonment. This court affirmed that judgment on direct appeal. *People v. Harris et al.*, 314 Ill. App. 3d 409 (2000).

¶ 4 In December 2000, defendant filed a *pro se* post-conviction petition challenging the propriety of his sentences and alleging that his consecutive sentences were unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The State filed a motion to dismiss. The circuit court granted the motion, denying defendant's petition without an evidentiary hearing. We affirmed that dismissal after granting appellate counsel leave to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *People v. Harris*, No. 1-05-2303 (2007) (unpublished order under Supreme Court Rule 23).

¶ 5 In October 2005, defendant filed a successive *pro se* post-conviction petition, alleging, in pertinent part, that he was denied effective assistance of counsel “where trial counsel advised [defendant] not to testify.” The circuit court subsequently appointed counsel for defendant and docketed the petition for second stage review. The court then dismissed defendant's petition *sua sponte*, before the State filed a motion to dismiss the petition. On appeal, this court reversed the circuit court's judgment and remanded the case for a second stage hearing in accordance with the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2004)). *People v. Harris*, No. 1-08-0757 (2009) (unpublished order under Supreme Court Rule 23).

¶ 6 In October 2010, the circuit court granted the State's motion to dismiss, finding that defendant's post-conviction petition and his response to the State's motion to dismiss had no merit. Defendant appealed from that order on October 7, 2010 (No. 1-10-3064). A month later, defendant filed a *pro se* motion to reconsider the order granting the State's motion to dismiss, which the circuit court denied on December 1, 2010. Defendant appealed from that order on December 27, 2010 (No. 1-11-0222). This court affirmed the dismissal in an unpublished order. *People v. Harris*, 2012 IL App (1st) 103064-U.

¶ 7 On January 2, 2013, defendant mailed a petition for relief from judgment under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). It alleged that his 120-year aggregate sentence is void under section 5-8-4(c)(2) of the Corrections Code. 730 ILCS 5/5-8-4(c)(2) (West 2010). The State and the clerk's office received the petition on January 9, 2013. For reasons not apparent from the record, the clerk's office did not file stamp the petition until January 28, 2013. The circuit court denied the petition, *sua sponte*, eight days later on February 5, 2013. Defendant appeals.

¶ 8 Before addressing defendant's claim on the merits, we must first determine whether it was ripe for adjudication. Defendant contends that the circuit court prematurely dismissed his petition, contrary to the Code as interpreted by *Laugharn*. *Laugharn*, 233 Ill. 2d at 323; see also 735 ILCS 5/2-1401 (West 2010). He notes that the circuit court *sua sponte* denied his petition within eight days of its filing.

¶ 9 The State responds that defendant's petition had no legal merit, and thus his case was distinguishable from *Laugharn*. The State also provides an incomplete argument asserting that the dismissal occurred after the 30-day response filing period had expired.

¶ 10 We review the dismissal of a section 2-1401 petition *de novo*. *Laugharn*, 233 Ill. 2d at 323. Section 2-1401 establishes a procedure for seeking relief from judgments, in both criminal and civil cases, more than 30 days after their entry. 735 ILCS 5/2-1401 (West 2010); *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). In general, a section 2-1401 petition must be filed within two years of the entry of judgment, yet that requirement does not apply when an order is challenged as void. *People v. Harvey*, 196 Ill. 2d 444, 447 (2001); 735 ILCS 5/2-1401(c) (West 2010). The rules of civil practice govern proceedings under this section, even in criminal proceedings. *Vincent*, 226 Ill. 2d at 8.

¶ 11 Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985) provides that a petitioner must notify all parties of the petition in accordance with Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989). The notice must inform the responding party that an answer to the petition is required to be filed within 30 days or a judgment of default may be entered. Ill. S. Ct. R. 105(a) (eff. Jan. 1, 1989); *Keener v. City of Herrin*, 235 Ill. 2d 338, 348-49 (2009). A responding party must file an answer

within 30 days after service or receipt of the notice. Ill. S. Ct. R. 105(a) (eff. Jan. 1, 1989); see *Laugharn*, 233 Ill. 2d at 323.

¶ 12 In *Laugharn*, the Illinois Supreme Court held that a court may not dismiss a section 2-1401 petition prior to the expiration of the 30-day response period. *Laugharn*, 233 Ill. 2d at 323. The *Laugharn* defendant filed a section 2-1401 petition on August 24, 2004, challenging her 1996 murder conviction. *Id.* at 321. On September 2, 2004, the trial court *sua sponte* dismissed the petition as untimely because it was filed beyond the two-year filing period set forth in section 2-1401. *Id.* The supreme court held that the trial court's actions had "short-circuited the proceedings and deprived the State of the time it was entitled to answer or otherwise plead." *Id.* at 323. Therefore, the *Laugharn* defendant's claim was not "ripe for adjudication." *Id.* The supreme court vacated the dismissal and remanded the case for further proceedings. *Id.* at 324.

¶ 13 An ambiguity exists in *Laugharn*. The supreme court's opinion focuses on the fact that the lower court dismissed the petition when "[o]nly seven days had passed since its filing." *Id.* at 323. In contrast, Rule 105, which *Laugharn* cites, states that the 30-day period begins at the receipt of notice. For reasons that are unclear from the record, the State's receipt of service occurred on January 9, 19 days before the petition was filed on January 28. We need not address the ambiguity further, however, because even under the earlier date, the lower court's denial occurred only 27 days after the State's receipt of the petition.

¶ 14 The trial court dismissed defendant's petition on November 5, 2013, 8 days after the petition was filed and 27 days after the State received notice. As the State's 30-day response window had not expired, defendant's petition was not ripe for adjudication. Therefore, under

Laugharn, the circuit court erred in *sua sponte* dismissing the petition and the dismissal must be vacated. *Id.*

¶ 15 The State argues that even if the dismissal occurred before the expiration of the response period, it was proper because the defendant's claims were insufficient as a matter of law. It argues that *Laugharn* is distinguishable, as the dismissal in that case was based upon timeliness and not its merits. *Laugharn* contains no language or other indication that its reasoning applies only to dismissals based upon timeliness. Moreover, this court has previously applied the rule in *Laugharn* to premature dismissals based on findings of an insufficient claim. See *People v. Clemons*, 2011 IL App (1st) 102329, ¶ 19; *People v. Gray*, 2011 IL App (1st) 091689, ¶ 23. We find the State's argument unpersuasive.

¶ 16 As defendant's claim was not ripe for adjudication, we do not address the merits of his petition. *Laugharn*, 233 Ill. 2d at 324.

¶ 17 For the foregoing reasons, the judgment of the circuit court of Cook County is vacated. We remand the case for further proceedings.

¶ 18 Order vacated; cause remanded.