FOURTH DIVISION
March 31, 2015

No. 1-13-0950

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.	)	Nos. 09 CR 12406
	)	09 CR 6187
	)	
MAURICE PERRY,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment affirmed over defendant's contention that the *sua sponte* dismissal of his section 2-1401 petition within the 30-day period following its filing was erroneous, where the circuit court did not act *sua sponte*, and any error arising from the court's action was invited by defendant.

¶ 2 Defendant, Maurice Perry, appeals from the denial of his petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). He contends that this court must vacate that judgment pursuant to *People v. Laugharn*, 233 Ill. 2d 318 (2009), because the court entered it before the 30-day period for the State to respond had concluded.

¶ 3 The record shows that, after a January 2010 bench trial, defendant was convicted of unlawful possession of a weapon by a felon, then sentenced to seven years' imprisonment in case number 09 CR 6187. In February 2010, defendant was tried by the bench in case number 09 CR 12406, and convicted of two counts of intimidating a witness and two counts of communicating with a witness. He was then sentenced to four years in prison, to be served consecutively to the previously-imposed seven-year sentence. That judgment was affirmed on direct appeal, after this court corrected the mittimus to conform to the court's oral pronouncement. *People v. Perry*, 2012 IL App (1st) 102317 (unpublished order under Supreme Court Rule 23).

¶ 4 In March 2012, defendant filed a *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)) in case number 09 CR 12406. In it, he alleged that he was denied due process because the circuit court failed to inform him that his four-year sentence included a mandatory supervised release (MSR) term. Defendant thereafter amended the petition to contend that the Illinois Department of Corrections (IDOC) unconstitutionally added the MSR term to his sentence. On September 14, 2012, the circuit court dismissed the petition, and defendant did not attempt to perfect an appeal therefrom.

¶ 5 On January 18, 2013, defendant, through counsel, filed the instant second petition for relief from judgment under section 2-1401, claiming that the sentencing orders were void

because the trial court failed to apprise him of the MSR term, and because only the trial court, not the IDOC, can impose MSR. Both case numbers were referenced in the petition, however, defendant only requested relief as to case number 09 CR 6187. Counsel also filed a notice of motion setting the petition to be heard ten days later, on January 28, 2013.

¶ 6 The report of proceedings for the requested date indicates that all parties, including the State, were present, and that the court initially ascertained the issue raised and reviewed the history of the case. The court then heard arguments from defense counsel in support of the petition, and denied it on the merits. In doing so, the court concluded that MSR was statutorily included in the sentence imposed by the trial court, and observed that defendant was sentenced after a bench trial, and not on a plea agreement. The record reflects no input on the petition by the State.

¶ 7 Defendant filed a timely notice of appeal from the denial of his section 2-1401 petition, and here contends that we must vacate that order pursuant to *People v. Laugharn*, 233 Ill. 2d 318 (2009), because the 30-day period for the State to respond had not yet concluded when the court entered it. Defendant makes no argument on the substantive claims raised in his underlying petition, which, we note, were decided against him in *People v. McChriston*, 2014 IL 115310.

¶ 8 The State disagrees with defendant's analysis, alleging that *Laugharn* is not applicable because the court did not act *sua sponte*, and instead acted pursuant to defense counsel's notice of motion requesting a hearing on the petition on January 28, 2013.

¶ 9 In *Laugharn*, defendant filed a *pro se* section 2–1401 petition on August 24, 2004, alleging that certain evidence was withheld from her trial. *Laugharn*, 233 Ill. 2d at 320. On September 2, 2004, the circuit court, *sua sponte*, dismissed the petition as untimely because it

was filed beyond the two-year limitation set forth in the statute. *Laugharn*, 233 Ill. 2d at 321. The appellate court affirmed the dismissal, but, on appeal, the supreme court vacated the judgments of the circuit and appellate courts, finding that the *sua sponte* dismissal of defendant's section 2–1401 petition was improper because it occurred before the conclusion of the 30–day period for the State to answer or otherwise plead. *Laugharn*, 233 Ill. 2d at 323. The supreme court concluded that the dismissal "short-circuited the proceedings and deprived the State of the time it was entitled to answer or otherwise plead," thus requiring vacatur of the dismissal order. *Laugharn*, 233 Ill. 2d at 321, 323.

¶ 10 As in *Laugharn*, defendant's section 2–1401 petition was ruled upon prior to the expiration of the 30-day period for the State to respond. However, unlike *Laugharn*, the circuit court did not act *sua sponte* (see Black's Law Dictionary 1560 (9th ed. 2009) (defining "*sua sponte*" as, "Without prompting or suggestion; on its own motion")), but instead at the behest of defense counsel, who set the petition for hearing within the 30-day time frame.

¶ 11 Under the doctrine of invited error, a party is precluded from requesting the court to proceed in one manner and then later arguing on appeal that such a course of action was erroneous. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004); See also *People v. Carter*, 208 Ill. 2d 309, 319 (2003) ("Action taken at defendant's request precludes defendant from raising such course of conduct as error on appeal"). Under the circumstances reflected in this record, we conclude that any error on the part of the circuit court in granting defendant's request and holding a hearing on his petition within the time period for the State to respond was invited by defendant, and he may not now complain of such error on appeal. *Carter*, 208 Ill. 2d at 319.

¶ 12 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.