

FIFTH DIVISION
DECEMBER 31, 2015

No. 1-14-0953

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. 01 CR 18654
)	
MILTON JONES,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Palmer concurred in the judgment.

O R D E R

¶1 **Held:** Circuit court's *sua sponte* dismissal of defendant's *pro se* section 2-1401 petition for relief from judgment affirmed over his claim that the dismissal was premature.

¶2 Defendant Milton Jones appeals from an order of the circuit court of Cook County dismissing *sua sponte* his *pro se* "Combined Motion for Declaratory Judgment and Petition for Relief from Judgment" filed under sections 2-701 and 2-1401(f) of the Illinois Code of Civil

Procedure (Code) (735 ILCS 5/2-701 (West 2012); 735 ILCS 5/2-1401(f) (West 2012)). On appeal, defendant solely contends that the court erred by recharacterizing a subsequent motion he filed as a section 2-1401 petition, and prematurely dismissing that motion less than 30 days after the recharacterization.

¶3 Following a 2004 jury trial, defendant was convicted of three counts of first degree murder and two counts of aggravated kidnapping. The trial court sentenced defendant to concurrent prison terms of 25 years' imprisonment for each murder conviction, consecutive to terms of 6 years' imprisonment for each kidnapping conviction, for an aggregate sentence of 37 years' imprisonment. This court affirmed that judgment on direct appeal. *People v. Jones*, No. 1-04-1359 (2006) (unpublished order under Supreme Court Rule 23).

¶4 In June 2007, defendant filed his initial *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2006)), which the circuit court summarily dismissed as frivolous and patently without merit. In August 2008, he filed a successive *pro se* postconviction petition, and the circuit court denied leave to file that petition based on defendant's failure to satisfy the cause and prejudice test required for successive petitions. On appeal, this court affirmed that judgment and corrected defendant's mittimus to reflect a single conviction for murder. *People v. Jones*, No. 1-08-2846 (2010) (unpublished summary order under Supreme Court Rule 23).

¶5 In February 2009, defendant sought leave to file a second successive *pro se* postconviction petition, and the circuit court denied him leave to do so. In December 2010, defendant filed a *pro se* petition for relief from judgment under section 2-1401 of the Code,

which the circuit court also denied. Defendant appealed both rulings, and in a consolidated appeal, this court affirmed those judgments and modified defendant's six-year sentences for kidnapping to run concurrently with one another and concurrent with his sentence for murder.

People v. Jones, 2012 IL App (1st) 103570-U, 2012 IL App (1st) 110449-U (cons.).

¶6 In 2011, defendant filed several *pro se* pleadings including, *inter alia*, another petition for relief from judgment under section 2-1401 of the Code, a motion for entry of a default judgment under section 2-1301 of the Code (735 ILCS 5/2-1301 (West 2010)), a motion for rehearing and a motion for substitution of judge, all of which were denied by the circuit court. Defendant initially appealed these rulings, but this court subsequently granted his motion to dismiss that appeal. *People v. Jones*, No. 1-12-0211 (2012) (dispositional order).

¶7 On August 13, 2013, defendant filed the instant *pro se* "Combined Motion for Declaratory Judgment and Petition for Relief from Judgment" under sections 2-701 and 2-1401(f) of the Code contending that a conflict exists between sections 3-6-3(a)(2)(i) and 5-8-1(d) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(2)(i) (West 2000); 730 ILCS 5/5-8-1(d) (West 2000)). Defendant argued that the truth-in-sentencing statute, section 3-6-3(a)(2)(i), which requires that a prisoner imprisoned for first degree murder serve his "entire sentence" confined in the Department of Corrections, conflicts with the mandatory supervised release (MSR) statute, section 5-8-1(d), because the MSR term is to be served after the term of imprisonment, but is considered part of the "entire sentence." Relying on *People v. Whitfield*, 217 Ill. 2d 177 (2005), defendant argued that the 3-year term of MSR improperly increased his sentence to 28 years

rather than the 25 years imposed by the court, and therefore, either his term of imprisonment had to be reduced by 3 years to 22 years, or the MSR term had to be stricken.

¶8 Defendant subsequently submitted a *pro se* "Combined Motion for a Declaratory Judgment and Corrected Sentence Pursuant to Sections 3-6-3(a)(2)(i) and 5-8-1(d) of the Unified Code of Corrections" which was stamped "Received" by the clerk of the circuit court on December 10, 2013, and stamped "Filed" by the clerk's office on December 23, 2013. In this motion, defendant noted his convictions and original sentence, and the two subsequent corrections to his mittimus. He then stated that the circuit court had received and processed his "Combined Motion for Declaratory Judgment and Petition for Relief from Judgment" on August 13, 2013, but "[u]nfortunately, the motion was never ruled on." Defendant requested the court "to issue a Declaratory Judgment and Corrected Sentence Pursuant to Sections 3-6-3(a)(2)(i) and 5-8-1(d) of the Unified Code of Corrections." These statements comprise the substance of this pleading *in toto*. Defendant also attached a copy of his motion filed in August to this pleading.

¶9 On January 9, 2014, the circuit court ruled on defendant's motion stating:

"He has filed what is basically known as a 2-1401 motion. The basic gist of his motion is that he says that there is a statutory conflict between the truth in sentencing statutes and the statutes regarding mandatory supervised release. He cites a case, which is *People versus Whitfield*, 217 Ill. 2d 177, *Whitfield* does not support the defendant's contentions. It's factually distinguishable because here – well, in a number of ways it's distinguishable. It does not show that there is a conflict between the statutes. In *Whitfield* also the defendant there claimed that he was not properly advised by the Court regarding

mandatory supervised release. Throughout this pleading Mr. Jones never claims that the Court failed to admonish him regarding mandatory supervised release. His interpretation of the statutes is nonsensical. I'm relying on *People versus Vincent*, 226 Ill. 2d, Page 1, which states when a 2-1401 petition is insufficient, as a matter of law to entitle petitioner to relief, the Trial Court may dispose of it without either waiting for the State's responsive pleading or provide a notice of the impending ruling. Therefore, the defendant's – which he is entitled combined motion for declaratory judgment and corrected sentence is hereby denied."

¶10 On appeal, defendant raises no substantive issues regarding the allegations in his petition. Rather, he solely contends that on January 9, 2014, the circuit court recharacterized the pleading he filed in December 2013 as a section 2-1401 petition for relief from judgment, and then prematurely dismissed it that same day without waiting 30 days for it to ripen for adjudication, in violation of *People v. Laugharn*, 233 Ill. 2d 318 (2009). Defendant argues that once the court recharacterized his pleading, it was required to comply with the procedural requirements for section 2-1401 petitions. Defendant asks this court to reverse the circuit court's dismissal and remand his petition for further proceedings.

¶11 The State responds that on January 9, 2014, the circuit court properly dismissed the section 2-1401 petition that defendant filed on August 13, 2013, well after the 30-day period had passed. The State points out that, in announcing its ruling, the circuit court expressly discussed the statutory conflict raised by defendant and his reliance on *Whitfield*, which was contained in the motion filed on August 13, 2013. The State argues that in his December motion, defendant

merely requested a declaratory judgment because the court had not yet ruled on the petition filed in August. It also points out that defendant specifically cited to section 2-1401 in his August motion, and asserts that the court never recharacterized his December pleading.

¶12 Initially, we observe that by solely challenging the *sua sponte* dismissal of his petition as premature, defendant has forfeited any challenge to the actual merits of his petition. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006).

¶13 We review the circuit court's dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). Section 2-1401 provides for relief from final judgments more than 30 days after they are entered. 735 ILCS 5/2-1401(a) (West 2012). The circuit court may dismiss a section 2-1401 petition *sua sponte*; however, it is precluded from doing so prior to the expiration of the 30-day period for the respondent to answer or appear. *Laugharn*, 233 Ill. 2d at 323. When the circuit court dismisses a petition *sua sponte* within 30 days of the date it was filed, the dismissal is premature and must be vacated. *Laugharn*, 233 Ill. 2d at 323.

¶14 On the other hand, where the State does not answer a section 2-1401 petition within the 30-day period, it is deemed to admit all well-pleaded facts, and the petition is ripe for adjudication. *Vincent*, 226 Ill. 2d at 9-10. The circuit court may then deny the petition if it determines that the allegations raised therein do not provide a legal basis for relief under section 2-1401. *Vincent*, 226 Ill. 2d at 12.

¶15 Here, the record undisputedly shows that on August 13, 2013, defendant filed a *pro se* "Combined Motion for Declaratory Judgment and Petition for Relief from Judgment" under sections 2-701 and 2-1401(f) of the Code. In this motion, defendant argued that the truth-in-

sentencing statute, section 3-6-3(a)(2)(i) of the Unified Code of Corrections, conflicts with the MSR statute, section 5-8-1(d) of the Unified Code of Corrections, and relying on *Whitfield*, claimed that either his sentence had to be reduced by three years, or his MSR term had to be stricken. The record further shows that in his "Combined Motion for a Declaratory Judgment and Corrected Sentence Pursuant to Sections 3-6-3(a)(2)(i) and 5-8-1(d) of the Unified Code of Corrections" filed on December 23, 2013, defendant raised no substantive issues, and instead, stated that the circuit court had received and processed his petition for relief from judgment on August 13, 2013, but never ruled on that petition. He attached a copy of the August motion to his December motion, and asked the court to issue a declaratory judgment and correct his sentence pursuant to the Unified Code of Corrections. The record therefore shows that, in his December motion, defendant did not raise a separate substantive issue for the court's consideration, but rather, brought to the court's attention that his August motion had not yet been ruled upon and asked the court to rule on that motion.

¶16 The record further shows that while ruling on defendant's motion, the circuit court expressly noted that the filing was a section 2-1401 motion alleging a conflict between the truth-in-sentencing statute and the MSR statute. The court specifically pointed out that defendant relied on *Whitfield*, but found that reliance misplaced and concluded that his interpretation of the Unified Code of Corrections statutes was nonsensical. These contentions appear in defendant's August motion, a copy of which was attached to his December motion. Accordingly, the record reveals that on January 9, 2014, the circuit court ruled on the motion filed on August 13, 2013, as requested by defendant in his December motion. The court's ruling was entered more than four

months after defendant's petition was filed, well beyond the 30-day waiting period, and thus, the petition was ripe for adjudication and the dismissal was in compliance with *Laugharn*.

¶17 In reaching this conclusion, we reject defendant's alternative argument that this case must be remanded for a separate ruling on his December motion. As discussed above, the December motion raised no substantive issues for the court's review, but merely prompted the court to rule on the August motion. Consequently, no issues are pending which warrant remand.

¶18 For the reasons stated, we affirm the *sua sponte* dismissal of defendant's petition for relief from judgment by the circuit court of Cook County.

¶19 Affirmed.