2015 IL App (2d) 120428-U
No. 2-12-0428
Order filed March 31, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOSEPH J. GRECO, III, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 99-CF-2807 Honorable T. Clint Hull, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The dismissal of the defendant's amended *pro se* postconviction petition at the second stage of proceedings was proper.

¶ 2 On August 24, 2000, the defendant, Joseph Greco, III, pled guilty to two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1 (West 1998)) and was sentenced to consecutive terms of 15 years' imprisonment. The defendant did not file a motion to withdraw his appeal or pursue a direct appeal. The defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2006)). After the petition advanced to the second stage, the defendant filed an amended *pro se*

postconviction petition. The State moved to dismiss the petition. On April 11, 2012, the trial court granted the State's motion. The defendant appeals from that order. We affirm.

¶ 3 BACKGROUND

¶ 4 On November 17, 1999, the defendant was charged by indictment with six counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)). The offenses were alleged to have occurred between August 1 and September 28, 1999. On August 24, 2000, the defendant and the State reached a plea agreement. In exchange for the defendant pleading guilty to two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1 (West 1998)), the State would dismiss the other counts and propose a disposition of two consecutive 15-year sentences. The trial court admonished the defendant that upon release from prison, he would be required to serve an additional three-year period of mandatory supervised release (MSR). The defendant stated that he understood the penalty of MSR and the concept of consecutive sentences. The trial court then accepted the defendant's guilty plea and sentenced him to two consecutive terms of 15 years' imprisonment. The defendant did not move to withdraw his guilty plea or pursue a direct appeal.

¶ 5 On August 21, 2003, the defendant filed a *pro se* postconviction petition pursuant to the Act. On October 30, 2003, the trial court summarily dismissed the petition as frivolous and patently without merit and ordered the circuit court clerk to serve a copy of the dismissal upon the defendant within 10 days as required by statute. However, the clerk failed to comply with the trial court's order and, under existing case law at the time, the trial court was required to advance the petition to the second stage. On December 8, 2006, the trial court declared the order dismissing the petition to be void, ordered the petition to be docketed, and appointed a public defender to represent the defendant.

¶ 6 On July 24, 2007, the public defender moved to withdraw as counsel, as he believed that there was no merit to the claims advanced by the defendant. On September 26, 2007, the trial court granted counsel's motion to withdraw and the defendant's request to proceed *pro se*. On December 19, 2007, the trial court granted the defendant's motion for leave to file an amended *pro se* postconviction petition.

¶ 7 On November 17, 2008, the defendant filed his amended *pro se* postconviction petition, alleging that his constitutional rights were violated by the imposition of consecutive sentences; that the truth-in-sentencing act (730 ILCS 5/3-6-3 (West 1998)) was unconstitutional; and that the application of his term of MSR, after his sentence and not concurrent with his sentence, was unconstitutional. The State's response was due March 6, 2009. On April 29, 2009, the trial court granted the State's motion for a 20-day continuance. On August 20, 2009, the trial court ordered the State to file a response within 10 days.

¶ 8 On October 9, 2009, the defendant filed a motion for default judgment with prejudice instanter, on the ground that the State had failed to file a response. On February 26, 2010, the defendant filed a motion to compel judgment, asking the trial court to either set the matter for hearing or rule on his two motions. On May 12, 2010, the defendant filed a motion for a supervisory order in our supreme court, asking the court to: (1) order the trial court to rule on his motions and address his postconviction petition; and (2) compel the State to respond to his postconviction petition. On October 18, 2010, the State moved to dismiss the defendant's postconviction petition. On November 23, 2010, our supreme court denied the defendant's motion for a supervisory order.

¶ 9 On February 15, 2011, the defendant filed a motion seeking: (1) to strike the State's motion to dismiss; (2) for a default judgment; and (3) sanctions against the State. In that motion,

the defendant argued that the State's motion to dismiss should be stricken due to its untimeliness, its lack of specificity, and because it was a motion to dismiss, rather than an answer. On June 27, 2011, the State filed a response, seeking dismissal of the defendant's October 2009 and February 2011 motions on the basis that they lacked merit. The State also requested that the court set the matter for hearing on the State's motion to dismiss. On January 10, 2012, the trial court denied the defendant's motions, finding that the State's failure to file a timely response was not a basis to strike that response, grant him a default judgment, or enter sanctions against the State.

¶ 10 On April 11, 2012, following a hearing, the trial court granted the State's motion to dismiss. The defendant filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 The defendant raises three arguments on appeal. The defendant argues that the trial court erred in granting the State's motion to dismiss his postconviction petition. The defendant next argues that the dismissal should be reversed because the trial court was prejudiced against him and he was deprived of his due process rights. Finally, the defendant argues that the trial court erred in denying his motion to strike and for default judgment and sanctions.

¶ 13 State's Motion to Dismiss

¶ 14 The defendant's first contention is that the trial court erred in granting the State's motion to dismiss his postconviction petition. The Act (725 ILCS 5/125-1 *et seq.* (West 2012)) establishes a three-stage procedure pursuant to which a criminal defendant may seek redress for violations of his constitutional rights at trial. *People v. Edwards*, 197 Ill. 2d 239, 243-44 (2001). At the first stage of postconviction proceedings, the circuit court must determine whether the petition is "frivolous and patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2012);

People v. Boclair, 202 Ill. 2d 89, 99 (2002). The trial court may summarily dismiss a petition as "frivolous and patently without merit" only where the petition "has no arguable basis either in law or in fact," *i.e.*, "is based on an indisputably meritless legal theory or a fanciful legal allegation." *People v. Hodges*, 234 Ill. 2d 1, 17 (2009).

¶ 15 Where, as here, a petition advances to the second stage of the postconviction process, the State may file a motion to dismiss. 725 ILCS 5/122-5 (West 2012). To survive such motion, a petitioner must make a "substantial showing" that his constitutional rights were violated, supporting his allegations with the trial record or appropriate affidavits. *People v. Simpson*, 204 Ill. 2d 536, 546-47 (2001). At the second stage of proceedings, all well-pleaded facts that are not positively rebutted by the trial record are taken as true. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). An evidentiary hearing is only required when the allegations of the petition, supported by the trial record and accompanying affidavits, make a substantial showing of a violation of a constitutional right. *People v. Hobley*, 182 Ill. 2d 404, 427-28 (1998). A trial court's dismissal of a postconviction petition at the second stage is reviewed *de novo*. *People v. Lofton*, 2011 IL App (1st) 100118, ¶ 28.

¶ 16 In this case, the trial court did not err in granting the State's motion to dismiss. In his postconviction petition, the defendant raised arguments as to the constitutionality of: (1) the imposition of consecutive sentences (730 ILCS 5/5-8-4 (West 1998)); (2) the truth-in-sentencing legislation (730 ILCS 5/3-6-3 (West 1998)); and (3) the requirement that he serve a period of MSR after his sentence was complete (730 ILCS 5/5-8-1(d) (West 1998)).

¶ 17 As to the claim related to consecutive sentences, in his appellant's brief the defendant points out that he was never told what section of the consecutive sentencing statute he was being sentenced under and, therefore, he could have been sentenced under a subsection that was

discretionary rather than mandatory. However, under section 5-8-4 of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4 (West 1998)), consecutive sentencing was mandatory under any section of that Code if a defendant was convicted of a violation of section 12-14.1 of the Criminal Code of 1961 (720 ILCS 5/12-14.1 (West 1998)). Accordingly, because the defendant had pled guilty to predatory criminal sexual assault of a child (720 ILCS 5/12-14.1 (West 1998)), a violation of section 12-14.1 of the Criminal Code of 1961, consecutive sentencing was mandatory. Further, despite the allegations contained in his amended *pro se* postconviction petition on this issue, the constitutionality of consecutive sentencing has been repeatedly upheld. *People v. Carney*, 196 Ill. 2d 518, 530-31 (2001); *People v. Wagener*, 196 Ill. 2d 269, 286 (2001).

¶ 18 As to the defendant's challenge to the truth-in-sentencing legislation, we note that the statute was found to be unconstitutional as enacted because the legislature violated the single-subject clause of the Illinois Constitution in enacting the law. *People v. Reedy*, 186 Ill. 2d 1, 12 (1999). However, the *Reedy* court also acknowledged that the constitutional infirmity was corrected when the legislature passed curative legislation, Public Act 90-592, effective June 19, 1998. The *Reedy* court thus held that the act was no longer unconstitutional as applied to offenses committed after June 19, 1998. *Id.* at 17-18. Here, the defendant's offenses were committed in 1999 and he pled guilty in 2000. As such, based on *Reedy*, the defendant was not sentenced based on an unconstitutional statute.

¶ 19 The defendant argues that, since the curative legislation, there have been legislative errors that render the act once again unconstitutional. However, the defendant does not present, in his amended petition or his appellant's brief, any clear or coherent argument as to this issue. Additionally, he fails to cite any legal authority in support of his argument. The argument is thus

forfeited. *People v. Chaban*, 2013 IL App (1st) 112588, ¶ 53 (reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented; issues not clearly presented may be deemed forfeited).

¶ 20 As to the constitutionality of the MSR statute ((730 ILCS 5/5-8-1 (West 1998)), the defendant argues that it is a violation of the Illinois and United States constitutions to require that a term of MSR be served after the successful completion of a judicially-imposed sentence. The defendant argues that his term of MSR should be incorporated within his sentence and not be served in addition to his term of imprisonment. However, it is within the General Assembly's authority to enact legislation that includes a mandatory parole term in a sentence by operation of law. *People ex rel. Scott v. Israel*, 66 Ill. 2d 190, 194 (1977). Further, "the legislature has the power to prohibit particular acts as crimes, fix the punishment for the commission of such crimes and determine the manner of executing such punishment." *People v. Williams*, 66 Ill. 2d 179, 186 (1977). Mandating parole periods falls within this power. *Id.* at 187.

¶ 21 The plain language of section 5-8-1(d) of the Code (730 ILCS 5/5-8-1(d) (West 1998)) makes it clear that the MSR term is a mandatory component of a defendant's sentence. *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 23. Except where a term of life imprisonment is imposed, "every sentence shall include as though written therein a term *in addition* to the term of imprisonment." (Emphasis added.) 730 ILCS 5/5-8-1(d) (West 1998). Even a defendant convicted of first degree murder who "shall receive no good conduct credit and shall serve the entire sentence imposed by the court" (730 ILCS 5/3-6-3(a)(2)(i) (West 2012)), must serve a three-year term of MSR after serving his "entire sentence." *Hunter*, 2011 IL App (1st) 093023, ¶ 23. Accordingly, the defendant's argument that his period of MSR should be incorporated within his term of imprisonment, or that the failure to do so is unconstitutional, is without merit.

Id.; see also *People v. McChriston*, 2014 IL 115310, ¶¶ 23, 31 (term of MSR in addition to term of imprisonment does not violate separation of powers or due process principles).

¶ 22 Trial Court Prejudice

¶ 23 The defendant's second contention on appeal is that the trial court was prejudiced against him, and he was deprived of due process. Specifically, the defendant argues that the trial court's prejudice was demonstrated on March 9, 2012, when the trial court granted him only a 33-day continuance rather than a 45-day continuance. Due to the shorter continuance, the defendant was kept at Statesville, where he did not have access to a law library. The defendant argues that the trial court denied his request for a longer continuance in retaliation for his filing of a supervisory order in our supreme court and a complaint with the Attorney Registration and Disciplinary Commission (ARDC) against the state's attorney, both based on the State's failure to file a responsive pleading to his amended *pro se* postconviction petition in a timely manner. Finally, the defendant also argues that the trial court committed perjury when it indicated that it had considered the arguments of the parties because, in fact, the trial court had written its order denying his petition before hearing arguments on his petition.

¶ 24 With respect to the request for extension of time, the record reflects the following. On March 9, 2012, the trial court indicated that it would set a date for hearing on the State's motion to dismiss the defendant's petition for about 30 days out. The defendant explained that if the hearing was set for 30 days, he would be sent to Statesville and he might lose his bed at Big Muddy River. The trial court apologized but explained that it had dates available and the case had been pending too long.

¶ 25 The grant or denial of continuance is a matter resting in the sound discretion of the trial court, and a reviewing court will not interfere with the trial court's decision absent a clear abuse

of discretion. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). Factors a court may consider in determining whether to grant a continuance include the movant's diligence, the defendant's right to a speedy, fair and impartial trial, docket management, judicial economy and the interests of justice. *Id.*

¶ 26 In the present case, the trial court considered proper factors, such as the availability of hearing dates and the need to keep the case progressing. As such, we cannot say the trial court's denial of the request for a 45-day continuance was an abuse of discretion. While the defendant argues that he was kept at Statesville and did not have access to a law library, he fails to explain how this caused any prejudice. Moreover, he did not raise this issue as a basis for a longer continuance before the trial court and thus such an argument is forfeited. *People v. Murray*, 379 Ill. App. 3d 153, 157 (2008) (as a general rule, a party forfeits an issue for appeal when he fails to raise it in the trial court).

¶ 27 The defendant argues that the trial court denied his request for a longer continuance in retaliation because he had filed a motion for a supervisory order in our supreme court, requesting an order that the State be directed to file a responsive pleading to his postconviction petition. The defendant had also filed a complaint with the ARDC against the state's attorney for her alleged failure to file timely responsive pleadings. Because of these actions, the defendant argues that the trial court was prejudiced against him. However, a trial court judge is presumed to be impartial. *People v. Moffat*, 202 Ill. App. 3d 43, 56 (1990). To establish that his right to an impartial trial was denied, the defendant has the burden of rebutting the presumption of impartiality by proving actual prejudice. *Id.* The defendant has failed to meet this burden. The defendant admits in his petition that the alleged prejudice is "not borne out by the words and

transcript." The defendant has provided no other evidence to support his claim and it necessarily fails.

¶ 28 Finally, the defendant argues that the trial court committed perjury in rendering its ruling because it stated that it had considered argument, when in fact it had written the order denying his petition prior to the hearing. The defendant argues that this also shows prejudice and a violation of his due process rights because the trial court had prejudged the case. In support, the defendant cites portions of the transcript from the hearing on his petition, which allegedly demonstrate that the trial court cut the parties off and prevented them from making their arguments.

¶ 29 The right to a fair trial "is rooted in the constitutional guaranty of due process of law and entitles a defendant to a fair and impartial trial before a court which proceeds, not arbitrarily or capriciously, but upon inquiry, and renders a judgment only after trial." *People v. Taylor*, 357 Ill. App. 3d 642, 647 (2005). To establish prejudice, a defendant must overcome a presumption of impartiality. *Moffat*, 202 Ill. App. 3d at 56.

¶ 30 Upon our own review of the record, we find the defendant's contention to be without merit. At the outset of the hearing on the State's motion to dismiss, the trial court stated that it had reviewed the State's motion, the defendant's amended petition and supporting memorandum of law, and the applicable case law. The trial court instructed that parties that it had reviewed all the written pleadings and that the parties need not reiterate what was contained in those documents. However, it did not prevent the parties from making their arguments. In fact, the trial court told the defendant that "it was his day in court" and that "if [he] need[ed] time to find [his] notes, go ahead and do that." After the defendant presented his argument, the trial court stated as follows:

> "Mr. Greco, I want to give you the opportunity that you wish to address your arguments today. All I'm saying is that, as I said to [the Assistant State's Attorney], I have reviewed the file extensively. It's a long file. It has an extensive procedural history. You've cited cases, and I read those cases. So instead of reviewing or going over what I have already read in order to save everybody time, I wanted to do away with that, but any arguments that you wish to make, I would be more than happy to hear those arguments. So I don't want to stop you or prevent you from making any arguments. So if you want to review your notes and then continue, that would be fine."

Thereafter, the defendant continued his argument until he voluntarily stated "that's all I got to say." Despite the defendant's contention, the record demonstrates that the trial court allowed the defendant a full and fair opportunity to present his arguments.

¶ 31 The defendant's argument that the trial court prejudged the case is also without merit. We acknowledge that prejudgment is the antithesis of a fair trial. *People v. White*, 249 Ill. App. 3d 57, 60 (1993). "A fair and impartial trial is a judicial process by which a court hears before it decides; by which it conducts a dispassionate inquiry and renders judgment only after receiving evidence." *Id.*

¶ 32 Despite the defendant's argument, the record fails to demonstrate that the trial court prejudged the case. The trial court stated at the beginning of the hearing on the State's motion that it had reviewed all the written pleadings as well as the applicable case law. Thereafter, the trial court heard arguments of the parties and did not enter its order until after all the arguments were complete. Accordingly, the trial court could have altered its determination on the basis of the oral arguments. The mere fact that the arguments did not persuade the trial court to do so does not demonstrate that the trial court had prejudged the case. Moreover, although the trial

court encouraged the parties not to rehash what was included in their written pleadings, it clearly encouraged them to present their full arguments. There were no statements or other indications that the trial court did not consider arguments raised at the hearing.

¶ 33 The circumstances in this case are not at all like the cases cited by defendant in support of his position. See *People v. Williams*, 205 Ill. 2d 559, 572 (2002) (dismissal of postconviction petition reversed because the trial court was under the mistaken belief that there had been a full hearing on the merits, when, in fact, there was not); *People v. Kitchens*, 189 Ill. 2d 424, 434-35 (1999) (dismissal of postconviction petition reversed where, following a hearing on a discovery dispute, the trial court, without giving prior notice or hearing arguments of the parties, reached the merits and denied all postconviction relief); *People v. Bounds*, 182 Ill. 2d 1, 5 (1998) (dismissal of postconviction petition reversed where the trial court converted status call to a hearing on the merits without notice to the parties); *People v. Thompkins*, 181 Ill. 2d 1, 12-13 (1998) (trial court ordered to reopen evidentiary hearing where it had refused to hear or consider the defendant's offers of proof at the original evidentiary hearing). In the present case, unlike the cases cited by the defendant, the parties had prior notice of the hearing on the State's motion to dismiss and a full opportunity to present argument. Accordingly, the defendant has failed to demonstrate prejudice or a violation of his due process rights.

¶ 34 Motion to Strike/Default Judgment/Sanctions

¶ 35 The defendant's final contention on appeal is that the trial court erred in denying his February 2011 motion to strike the State's motion to dismiss, for default judgment, and for sanctions against the State. The defendant argues that his motion to strike should have been granted on the basis of the State's untimely motion to dismiss and that it had committed itself to filing an answer as opposed to a motion to dismiss. These contentions are without merit.

¶ 36 The defendant argues that the trial court should have granted his motion to strike because the State's motion to dismiss was not filed in a timely manner. Generally, once a postconviction petition is advanced to the second stage and the defendant has filed an amended postconviction petition, the State has 30 days to either answer the petition or move to dismiss. 725 ILCS 5/122-5 (West 1998). The trial court, in its discretion, may extend the time for filing any such pleading. *Id.* Nonetheless, even where the State's filing of a motion to dismiss is untimely, a defendant is not entitled to a remedy unless the defendant can show that he was prejudiced by the State's delay. See *People v. Cortez*, 338 Ill. App. 3d 122, 128 (2003). In this case, the defendant has failed to show any prejudice. The trial court granted the defendant leave to respond to the State's motion to dismiss and set the matter for a hearing. Accordingly, the trial court properly denied the defendant's motion on the basis of the State's tardiness. *Id.*

¶ 37 The defendant argues that *Cortez* is distinguishable because, in that case, the defendant, Jesse Cortez, did not object to the tardiness of the State's filing in the trial court; the issue was raised for the first time in Cortez's appeal. *Id.* at 124. Additionally, the delay in Cortez was only four months while, in the present case, the State did not file a motion to dismiss the amended petition until two years later. Nonetheless, these are distinctions without a difference. The *Cortez* court held that a defendant must show prejudice before he is entitled to relief from a State's untimely filing of a motion to dismiss. *Id.* at 128. Here, the defendant has failed to show any prejudice.

¶ 38 The defendant argues that he was prejudiced because the State's motion to dismiss lacked any specificity, and he was forced to respond to the motion and argue at the hearing "not knowing what [he was] fighting against." In his motion to strike, the defendant argued that the State's motion to dismiss was insufficient because it did not state whether it was brought under

section 2-615 (failure to state a cause of action) or section 2-619 (dismissal based on defects, defenses or other matters that act to defeat the claim) of the Code of Civil Procedure (735 ILCS 5/2-615,619 (West 1998)).

¶ 39 However, it is well settled that a defendant who chooses to represent himself will be held to the same standard as an attorney "even though the result may be that he is less effective as his own attorney." *People v. Tuczynski*, 62 Ill. App. 3d 644, 650 (1978). When a defendant represents himself, he assumes the responsibility for conducting his own defense and is not entitled to favored treatment. *People v. Amos*, 204 Ill. App. 3d 75, 80-81 (1990). In its motion to dismiss, the State asserted that the defendant could have raised his issues as to consecutive sentencing, truth in sentencing, and MSR prior to pleading guilty and that the constitutionality of all these issues had been addressed and upheld by other courts. Accordingly, just as an attorney, the defendant was responsible for preparing a defense to dispute the State's assertion that there was case law contrary to the arguments raised in his petition. This did not prejudice the defendant. *Id.*

¶ 40 Moreover, our supreme court has held that the Act is *sui generis* and thus rules of civil procedure do not apply to proceedings under the Act. *People v. Clements*, 38 Ill. 2d 213, 215-16 (1967). The defendant argues that the *sui generis* concept renders the Act unconstitutionally vague because one does not know whether criminal or civil procedural rules will apply in any given instance. Accordingly, the defendant argues that the laws of civil procedure should apply to the Act. There is a strong presumption that legislative enactments are constitutional, and the person who asserts otherwise has the burden of clearly establishing the constitutional violation. *Bernier v. Burris*, 113 Ill. 2d 219, 227 (1986). To succeed in a facial challenge to a law on grounds of vagueness, it must be demonstrated that the law is impermissibly vague in all of its

applications. *People v. Matkovick*, 101 Ill. 2d 268, 275 (1984). In the present case, the defendant's thoughtful yet underdeveloped and nonsensical arguments have failed to meet his burden to establish that the Act is unconstitutional. See *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 15 (an appellant must present clearly defined issues to the court; this court is not a repository in which appellants may dump the burden of argument and research).

¶ 41 The defendant also contends that his motion to strike should have been granted on the basis that the State had committed itself to filing an answer to his petition, rather than a motion to dismiss. Specifically, on April 29, 2009, the State filed a motion to continue, requesting additional time to file an "answer" to the defendant's petition. The trial court granted the motion and allowed the State 20 days to file an "answer." However, on August 20, 2009, at a status hearing, the State requested additional time to file a "response" and the trial court granted the State 10 days to "respond" to the defendant's petition. The State did not indicate whether its response would be in the form of an answer or a motion to dismiss. The defendant was present at that hearing and did not object to the State's request. Accordingly, the argument is forfeited. *Murray*, 379 Ill. App. 3d at 157. Moreover, the defendant has failed to cite any authority for the proposition that the State's oral pronouncements at the April 29, 2009, hearing precluded it from ultimately filing a motion to dismiss. The argument is forfeited for this reason as well. *People v. Ward*, 215 Ill. 2d 317, 332 (2005) ("point raised in a brief but not supported by citation to relevant authority * * * is therefore forfeited").

¶ 42 Finally, the defendant argues that the trial court erred in not finding the State in direct criminal contempt, or entering sanctions against the State, for taking two years to respond to his amended *pro se* postconviction petition. Criminal contempt of court is defined as conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate

from its authority or dignity, thereby bringing the administration of law into disrepute. *People v. Smeathers*, 297 Ill. App. 3d 711, 717 (1998). "A finding of criminal contempt is punitive in nature and is intended to vindicate the dignity and authority of the court." *People v. Simac*, 161 Ill. 2d 297, 306 (1994). "However, the exercise of such power is 'a delicate one, and care is needed to avoid arbitrary or oppressive conclusions.' " *Id.*, citing *Cooke v. United States*, 267 U.S. 517, 539 (1925). Whether and on what grounds a party is guilty of contempt and the decision whether to punish the contemnor rests within the sound discretion of the trial court. *In re Marriage of Wassom*, 165 Ill. App. 3d 1076, 1079 (1988). Such discretion will not be reversed unless it has been abused or is against the manifest weight of the evidence. *In re Marriage of Logston*, 103 Ill. 2d 266, 287 (1984).

¶ 43 In the present case, in denying the request for sanctions, the trial court considered that the Act did not provide for sanctions under such circumstances and that a court's contempt powers were to be used delicately. We cannot say that the trial court abused its discretion in denying the defendant's request for sanctions. As stated earlier, the defendant has failed to establish any prejudice by the State's delay in responding to his motion to dismiss. The defendant was allowed to respond to the motion and fully present his arguments at a hearing on the State's motion. Further, the State's delay did not unnecessarily prolong the defendant's incarceration. Moreover, the record does not demonstrate that the State acted to embarrass, hinder, or obstruct the administration of justice. The defendant's petition had already been found frivolous and patently without merit. Based on a technicality, it was nonetheless advanced to the second stage, where court-appointed counsel moved to withdraw because there were no meritorious issues to be raised on appeal. The record indicates that in early 2009, the State's Attorney's office was undergoing changes and the assistant state's attorney assigned to the

defendant's case was carrying two case loads. While we do not condone the State's delay, we cannot say the trial court erred in denying the request for sanctions.

¶ 44 CONCLUSION

¶ 45 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 46 Affirmed.