2015 IL App (2d) 130837-U
No. 2-13-0837
Order filed May 19, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WILLIE S. WALKER, JR., Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 04-CF-2576 Honorable Joseph G. McGraw, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Although the trial court could not sanction defendant for his first section 2-1401 petition under section 22-105 of the Code of Civil Procedure, it could sanction him under Rule 137, which, though less specific than section 22-105, went to the court's inherent power and could not be trumped by a statute; (2) the trial court abused its discretion in sanctioning defendant under Rule 137, as the court's reliance on an hourly rate charged by private attorneys in the community had no relation to the expenses that the State's Attorney incurred in responding to defendant's petition; we vacated the sanction and remanded for a recalculation.

¶ 2 Defendant, Willie S. Walker, filed a petition under section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2012)). The trial court dismissed that petition and imposed a $1,200 sanction under Illinois Supreme Court Rule 137 (eff. July 1, 2013).

Defendant appeals the sanction, arguing that (1) section 22-105 of the Code (735 ILCS 5/22-105 (West 2012)) prohibited any sanction under Rule 137; and (2) alternatively, the $1,200 sanction under Rule 137 was an abuse of discretion. We disagree with his first argument but agree with his second. Thus, we vacate the sanction and remand the cause.

¶ 3 Following a jury trial, defendant was convicted of unlawful delivery of a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2004)). At sentencing, the court found that defendant was a habitual offender (see 720 ILCS 5/33B-1 (West 2004)). Thus, the court sentenced defendant to life imprisonment. Defendant appealed, arguing that the court should have ordered the State to disclose or produce the informant who gave the police information about defendant's alleged drug dealing. We agreed, reversed defendant's conviction, and remanded the cause for a new trial. *People v. Walker*, No. 2-06-0701 (2007) (unpublished order under Supreme Court Rule 23).

¶ 4 On remand, defendant pleaded guilty to unlawful delivery of a controlled substance (720 ILCS 570/401(a)(2) (West 2004)). In exchange, the State agreed not to seek a life sentence (see 720 ILCS 5/33B-1(a), (e) (West 2004)), but it recommended an extended term of 60 years' imprisonment (see 730 ILCS 5/5-5-3.2(b)(1), 5-8-2(a)(2) (West 2004)). Before the court accepted defendant's guilty plea, the court advised defendant that he was eligible for an extended-term sentence, which meant that defendant faced a prison sentence of "six to sixty years." The court then told defendant that "[i]n addition to any penitentiary sentence, [he] will do three years of mandatory supervised release [(MSR)] upon the conclusion of [his] penitentiary sentence, what we used to call parole." The court asked defendant, "Do you understand the range of possible penalties?" Defendant replied, "Yes, Your Honor." After hearing a factual

basis for the plea and finding that the plea was knowingly and voluntarily entered, the court imposed a 60-year sentence.

¶ 5 Approximately five months later, defendant filed a lengthy *pro se* postconviction petition, claiming, among other things, that his trial counsel was ineffective for failing to move for a substitution of judges based on the judge's alleged bias against people charged with drug offenses. The court summarily dismissed the petition, finding it frivolous and patently without merit. Defendant appealed, and this court affirmed. *People v. Walker*, 2012 IL App (2d) 110889-U.

¶ 6 One month later, defendant, who was serving his sentence at Menard Correctional Center, filed a section 2-1401 petition. In this petition, defendant claimed that his plea was not voluntary. More specifically, defendant contended that he was denied the benefit of his bargain when the court did not advise him before he pleaded guilty that he would have to serve a three-year term of MSR. Also, defendant claimed that the court never advised him that he was going to receive the maximum sentence of 60 years. Defendant contended that what was essentially a 63-year sentence, *i.e.* the 60-year sentence plus the 3-year MSR term, was void. Defendant argued that he would not have pleaded guilty if he had known that the court was going to impose a 60-year sentence plus 3 years of MSR. Accordingly, defendant asked the court to modify the sentence to 27 years plus 3 years of MSR, as this would "approximate the bargain that was struck between the parties."

¶ 7 The State filed a motion to dismiss and asked the court to impose a sanction against defendant pursuant to Rule 137. The court granted the motion to dismiss. Further, finding the petition "frivolous and unsupported by the record in any respect," the court assessed a sanction of $1,200. In calculating that amount, the court stated that "based on [its] experience in the legal

community $150 an hour would be modest in terms of an hourly assessment for attorney's fees." The court multiplied that figure by eight hours, which was the assistant State's Attorney's "conservative" estimate of the time he had expended on the motion to dismiss. Defendant timely appealed.

¶ 8 On appeal, defendant does not take issue with the trial court's dismissal of his petition or its finding that the petition was frivolous. Rather, he challenges only the sanction. He contends that (1) section 22-105 of the Code prohibited any sanction under Rule 137; and (2) alternatively, the $1,200 sanction under Rule 137 was an abuse of discretion.

¶ 9 Defendant's first contention requires us to examine section 22-105 and Rule 137. In doing so, we are guided by the well-settled rules governing the construction of statutes and our supreme court's rules. *In re Estate of Rennick*, 181 Ill. 2d 395, 404 (1998) (courts construe Illinois supreme court rules in the same way they construe statutes). In construing a statute or rule, our primary goal is to ascertain and give effect to the drafters' intent. *People v. Boyce*, 2015 IL 117108, ¶ 15. We must consider the statute or rule in its entirety and keep in mind the subject it addresses, as well as the drafters' apparent objective in enacting it. *People v. Westmoreland*, 2013 IL App (2d) 120082, ¶ 15. The most reliable indicator of intent is the language of the statute or rule, which, if plain and unambiguous, must be read without exception, limitation, or other condition. *Id.* In construing a statute or rule, we may consider the reason for the law, the problems to be remedied, the purposes to be achieved, and the consequences of construing the statute or rule one way or another. *Boyce*, 2015 IL 117108, ¶ 15. Moreover, we presume that the drafters did not intend to create absurd, inconvenient, or unjust results. *Id.* Construction of a statute or rule presents a question of law, which we review *de novo*. *People v. Hunter*, 2013 IL 114100, ¶ 12.

¶ 10 With these principles in mind, we turn to the language of section 22-105 and Rule 137. Section 22-105, which is entitled "Frivolous lawsuits filed by prisoners" (735 ILCS 5/22-105 (West 2012)), 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 second or subsequent petition for relief from judgment under Section 2-1401 of [the] Code *** 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." 735 ILCS 5/22-105(a) (West 2012).

¶ 11 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, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Ill. S. Ct. R. 137(a) (eff. July 1, 2013).

¶ 12 Defendant asserts, and the State concedes, that section 22-105 did not authorize a sanction here. By its plain terms, section 22-105 applies only to "a second or subsequent" section 2-1401 petition. 735 ILCS 5/22-105(a) (West 2012). Because this was defendant's *first* section 2-1401 petition, section 22-105 did not apply. However, defendant also asserts that, because the trial court could not impose a sanction under section 22-105, it could not impose one under Rule 137 either. We disagree.

¶ 13 Defendant relies on *People v. Chambers*, 2013 IL App (1st) 100575. However, that opinion is no longer precedential. After the briefing here was completed, the supreme court directed the First District to vacate its judgment and reconsider it. *People v. Chambers*, No. 116731 (Ill. Jan. 28, 2015). The First District then did so, but only in a nonprecedential order. *People v. Chambers*, 2015 IL App (1st) 100575-UB; see Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011). Thus, defendant may not rely on either version of *Chambers*.

¶ 14 In any event, defendant asserts that section 22-105 is more specific than Rule 137 on the subject of sanctions for frivolous pleadings filed by prisoners. Defendant thus maintains that section 22-105 trumps Rule 137 on that subject, such that the trial court could sanction him only if section 22-105 applied. Because section 22-105 did not apply, defendant concludes that the trial court could not sanction him.

¶ 15 Undoubtedly, "[i]t is a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or another act, which both relate to the same subject, the specific provision controls and should be applied." *People v. Villarreal*, 152 Ill. 2d 368, 379 (1992). However, at least in the absence of precedential authority, we decline to apply that principle here. We are dealing not with two statutes but with a statute and a supreme court rule. To whatever extent a statute could trump a

supreme court rule, we strongly doubt that a statute could trump Rule 137. "The purpose of [Rule 137] is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions based upon unsupported allegations of fact or law." *In re Marriage of Lyman*, 2015 IL App (1st) 132832, ¶ 89. Rectifying abuses of the judicial process is within a court's inherent authority. See *Dotson v. Bravo*, 321 F.3d 663, 667 (7th Cir. 2003). And by definition, a court's inherent authority exists independent of any statute. See *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 66 (1995). Thus, in essence, defendant invites us to read section 22-105 as a valid intrusion into a court's inherent authority. *Cf. Best v. Taylor Machine Works*, 179 Ill. 2d 367, 449 (1997) ("It is the duty of this court to invalidate legislation that significantly burdens or otherwise curtails the inherent and constitutionally granted authority of the judiciary."). At least in the absence of precedent, we decline to do so.

¶ 16 Thus, we conclude that the trial court could sanction defendant under Rule 137. However, we agree with defendant's alternative argument that the court abused its discretion in doing so.

¶ 17 A trial court's decision to impose a Rule 137 sanction "must be informed, based on valid reasons, and follow logically from the circumstances of the case." *Mohica v. Cvejin*, 2013 IL App (1st) 111695, ¶ 47. The trial court's decision will not be disturbed on review absent an abuse of discretion. *Id.* An abuse of discretion arises where the decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the trial court's view. *In re Estate of LaPlume*, 2014 IL App (2d) 130945, ¶ 49.

¶ 18 Here, we hold that the trial court abused its direction when it imposed the $1,200 sanction. As noted, Rule 137 authorizes "an appropriate sanction, which may include *** the amount of reasonable expenses incurred because of the filing of the pleading, *** including a

reasonable attorney fee." Ill. S. Ct. R. 137(a) (eff. July 1, 2013). In this case, the court attempted to award "a reasonable attorney fee" that reflected the State's "expenses incurred" because of defendant's petition. However, the court selected an attorney fee of $150 per hour, based only on its "experience in the legal community." As defendant points out, this estimate of the hourly rate charged by a private attorney, though "modest," had no relation whatsoever to the expenses that the State's Attorney incurred in moving to dismiss defendant's petition.

¶ 19 Contrary to defendant's implications, we do not suggest that an attorney fee for a State's Attorney must be based on his hourly salary or limited to the nominal fees in section 4-2002 of the Counties Code (55 ILCS 5/4-2002 (West 2012)). However, the attorney fee "must be informed, based on valid reasons, and follow logically from the circumstances of the case." *Mohica*, 2013 IL App (1st) 111695, ¶ 47. Here, no testimony was given or evidence offered. Moreover, the trial court's selection of $150 per hour was unrelated to the specific circumstances of this case.

¶ 20 For these reasons, we vacate the $1,200 sanction and remand the cause for the imposition of an appropriate one. In all other respects, we affirm the judgment of the circuit court of Winnebago County.

¶ 21 Affirmed in part and vacated in part; cause remanded.