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2015 IL App (3d) 130264-U

Order filed March 20, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
	)	Kankakee County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-13-0264
v.	)	Circuit No. 94-CF-346
	)	
GEORGE P. EVANS,	)	Honorable
	)	Ronald J. Gerts,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The court erred by *sua sponte* dismissing defendant's petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)) before allowing the State time to respond.

¶ 2 A jury found defendant, George P. Evans, guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 1994)), unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 1994)), and resisting a peace officer (720 ILCS 5/31-1 (West 1994)). The court sentenced him to 45 years' imprisonment. It did not explicitly order a term of mandatory supervised release

(MSR). Defendant filed a "Motion to Correct Mandatory Supervised Release Term," which cited to "735 ILCS 5/2-1801 of the Illinois Code of Civil Procedure" and claimed that defendant was exempt from serving MSR because the trial court had not explicitly ordered it at sentencing. Less than 30 days later, the trial court *sua sponte* dismissed the motion with prejudice, finding that the statutes cited in the motion did not create a vehicle for defendant to attack his sentence. Defendant appeals. We construe the motion as a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). Accordingly, we conclude that the trial court erred by dismissing the petition *sua sponte* within 30 days of its filing. We vacate the dismissal and remand for further proceedings.

¶ 3 FACTS

¶ 4 The State charged defendant by indictment with first degree murder (720 ILCS 5/9-1(a)(1) (West 1994)), unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 1994)), and resisting a peace officer (720 ILCS 5/31-1 (West 1994)). A jury found him guilty of all three counts. The court sentenced defendant to 45 years' imprisonment. The court's sentencing order did not explicitly impose a term of MSR. On direct appeal, this court affirmed the judgment. *People v. Evans*, 3-97-0088 (1998) (unpublished order under Supreme Court Rule 23).

¶ 5 Defendant filed a petition for relief from judgment under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 1998)), claiming that newly discovered witness testimony established defendant's innocence. The trial court granted the State's motion to dismiss. We affirmed that dismissal on appeal. *People v. Evans*, No. 3-99-0288 (2000) (unpublished order under Supreme Court Rule 23).

¶ 6 On March 7, 2013, defendant filed the motion at issue in the present appeal, titled

"Motion to Correct Mandatory Supervised Release Term." The motion cited to section 2-1801 of the Code (735 ILCS 5/2-1801 (West 2012)), in addition to sections 25 and 26 of the Circuit Courts Act (705 ILCS 35/25, 26 (West 2012)). The motion argued that defendant's sentence was void because the Department of Corrections improperly imposed a term of MSR, and only the judiciary has authority to impose a term of MSR.

¶ 7 In addressing the motion, the court noted that it did not cite to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)) or to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). The court determined that the statutes cited in the motion did not create a cause of action allowing defendant to mount a collateral attack against his criminal judgment. Accordingly, on March 21, 2013, the court *sua sponte* dismissed the petition. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that the trial court ought to have construed his motion as a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)). He further argues that, if construed as a section 2-1401 petition, his motion was improperly dismissed pursuant to the holding of *People v. Laugharn*, 233 Ill. 2d 318 (2009). The State counters that the motion was not a section 2-1401 petition and, even it were so construed, the motion was rightfully dismissed on its merits. We agree with defendant.

¶ 10 Defendant's motion was a petition for relief from judgment under section 2-1401 of the Code. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) (the character of pleading is determined by its content, not its label). Here, the motion stated that it was brought "pursuant to 735 ILCS 5/2-1801," which is one confused digit away from section 2-1401. In addition, the motion attacked defendant's sentence as void, a claim routinely brought

pursuant to section 2-1401, particularly when the petition is filed more than two years after the judgment, as was the present motion. For all practical purposes, collateral attacks of criminal convictions are brought pursuant to either the Act (725 ILCS 5/122-1 *et seq*. (West 2012)) or section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). The statutes cited by defendant in his motion did not establish a cause of action allowing defendant to attack his criminal judgment. Based on the context of defendant's motion and the claim raised therein, it was clear that the motion was intended as a petition for relief from judgment under section 2-1401.

¶ 11 The *Laugharn* court held that a trial court may not *sua sponte* dismiss a section 2-1401 petition prior to the State's 30-day period to respond to the petition. *Laugharn,* 233 Ill. 2d 318; see Ill. S. Ct. R. 101(d) (eff. May 30, 2008) (granting defendants 30 days from service to respond to a complaint). The petitioner in *Laugharn* filed a section 2-1401 petition for relief from judgment. Within 30 days, the trial court *sua sponte* dismissed the petition on timeliness grounds, without hearing a response from the State. Our supreme court vacated that dismissal, holding that the petition was not " 'ripe for adjudication' " (*Laugharn*, 233 Ill. 2d at 323 (quoting *People v. Vincent*, 226 Ill. 2d 1, 10 (2007)). Specifically, the court stated that the trial court had "short-circuited the proceedings and deprived the State of the time it was entitled to answer or otherwise plead." *Laugharn*, 233 Ill. 2d at 323. The *Laugharn* court explained that supreme court precedent did not authorize *sua sponte* dismissals of section 2-1401 petitions prior to expiration of the 30-day period.

¶ 12 In the present case, the court's dismissal of defendant's section 2-1401 petition was improper because the dismissal occurred *sua sponte* within 30 days of service. See *Laugharn*, 233 Ill. 2d at 323-24. We therefore vacate the dismissal and remand for further proceedings in accord with this order.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Kankakee County is vacated, and the cause is remanded for further proceedings.

¶ 15 Vacated and remanded.