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2015 IL App (3d) 130521-U

Order filed February 26, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0521
v.)	Circuit No. 08-CF-731
)	
GREGORY E. DAVIS,)	Honorable
)	Stephen A. Kouri,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The court erred by *sua sponte* dismissing defendant's section 2-1401 petition on timeliness grounds before the State's time to answer the petition had expired.

¶ 2 After a stipulated bench trial, the court found defendant, Gregory E. Davis, guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2008)) and unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(B) (West 2008)) and sentenced him to 15 years' incarceration. On appeal, we affirmed the judgment. *People v. Davis*, No. 3-09-0454 (July 29, 2011) (unpublished order under Supreme

Court Rule 23).

¶ 3 On April 4, 2013, defendant filed a pleading challenging his judgment as void. The filing alleged that defendant's stipulated bench trial was tantamount to a guilty plea; as such, he was entitled to admonishments under Illinois Supreme Court Rule 402 (eff. July 1, 1997), which he did not receive. The trial court construed the filing as a postplea motion and denied it on April 22, 2013. Defendant appeals, arguing that his filing was a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)) and should not have been dismissed *sua sponte* on timeliness grounds. We agree, vacate the judgment of the trial court, and remand for further proceedings.

¶ 4 FACTS

¶ 5 During a controlled drug buy, defendant was arrested, and police recovered 100 or more but less than 400 grams of cocaine in defendant's possession. A grand jury indicted defendant on two counts: unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2008)) and unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(B) (West 2008)). Defendant's motion to suppress the cocaine was denied. The cause proceeded to a stipulated bench trial, after which the court found defendant guilty on both counts. The court entered an agreed sentence of 15 years' incarceration. Defendant appealed, challenging the trial court's ruling on the motion to suppress. This court affirmed defendant's convictions. *Davis*, No. 3-09-0454.

¶ 6 On April 4, 2013, defendant filed a motion titled "Motion to Set Aside Plea Pursuant to 735 ILCS 5/2-104(f)." The body of the motion referenced "the 2-1401 statute" and "section 2-1401," in addition to citing case law that addressed petitions for relief from judgment under section 2-1401 of the Code (735 ILCS 5/2-1401(f) (West 2012)). The motion argued that

defendant's stipulated bench trial was tantamount to a guilty plea and that he was therefore entitled to admonishments under Illinois Supreme Court Rule 402 (eff. July 1, 1997). The motion further argued that because defendant did not receive those admonishments, the resulting judgment was void.

¶ 7 On April 22, 2013, the trial court *sua sponte* denied the motion as untimely, referencing it as a "Motion to Set Aside Plea." Defendant's motion to reconsider was denied without explanation. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant argues that his motion was a petition for relief from judgment under section 2-1401 of the Code (735 ILCS 5/2-1401(f) (West 2012)), despite its inaccurate title. He further argues that, because this was a section 2-1401 petition, the State was entitled to 30 days within which to respond, and the court did not have authority to *sua sponte* deny or dismiss the petition without allowing the State time to respond. In addition, even if the court could *sua sponte* dismiss the petition within 30 days and prior to any State response, dismissing it for timeliness was error because timeliness is an affirmative defense in the context of a section 2-1401 petition that must be pled by the State.

¶ 10 The State argues that defendant's motion was properly considered a postplea motion, as the Rule 402 argument it raised is generally raised in a motion to withdraw a guilty plea. As such, it was properly denied as untimely. The State further argues that, even if we were to construe the motion as a section 2-1401 petition, the dismissal of the petition was proper on the merits because the petition argued an error of law, and section 2-1401 petitions are not available to address errors of law.

¶ 11 We find that defendant's filing was a petition for relief from judgment under section 2-

1401 of the Code (735 ILCS 5/2-1401 (West 2012)). Although the title does not accurately reference section 2-1401 and labels the filing a "Motion to Set Aside Plea," the body of the filing establishes that it was a section 2-1401 petition. The body specifically referenced section 2-1401, cited cases focusing on 2-1401 petitions, and claimed that the judgment was void and should be vacated. Based on those indicators, the filing was a section 2-1401 petition.

¶ 12 Because defendant filed a section 2-1401 petition, we find the case of *People v. Laugharn*, 233 Ill. 2d 318 (2009), controlling. In *Laugharn*, the defendant filed a section 2-1401 petition, which the court *sua sponte* dismissed as untimely seven days later. *Id.* at 320-21. The *Laugharn* court concluded that "[t]he circuit court's *sua sponte* dismissal of defendant's petition before the conclusion of the usual 30-day period to answer or otherwise plead was premature and requires *vacatur* of the dismissal order." (Emphasis in original.) *Id.* at 323. Similarly, in the present case, the court *sua sponte* denied defendant's petition prior to the conclusion of the State's 30-day period to answer. Relying on *Laugharn*, we conclude that the denial was premature and must be vacated. The cause is remanded for further proceedings on the petition.

¶ 13 CONCLUSION

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

¶ 15 Judgment vacated; cause remanded.