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2015 IL App (3d) 140128-U

Order filed December 23, 2015

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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 10th Judicial Circuit, Stark County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0128
	)	Circuit No. 96-CF-14
RONALD L. STOECKER,	)	Honorable
Defendant-Appellant.	)	Scott A. Shore, Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Holdridge and Wright concur in the judgment.

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**ORDER**

¶ 1 *Held:* As defendant has failed to affirmatively establish that he served the State with deficient service, he is unable to use his own error on appeal.

¶ 2 Defendant, Ronald L. Stoecker, appeals from the *sua sponte* dismissal of his section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)), arguing that the petition was not ripe for adjudication as it was not properly served on the State. We affirm.

¶ 3 **FACTS**

¶ 4 Following a jury trial, defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 1996)) and aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 1996)) and was sentenced to concurrent terms of natural life and 30 years' imprisonment. His convictions and sentences were affirmed on direct appeal. *People v. Stoecker*, No. 3-98-0750 (1999) (unpublished order under Supreme Court Rule 23).

¶ 5 After his direct appeal, defendant filed numerous motions and petitions in the circuit court. In 2008, the denial of his postconviction petition was affirmed on appeal. *People v. Stoecker*, 384 Ill. App. 3d 289 (2008). This court further affirmed the denial of his request to file a successive postconviction petition in 2012 (*People v. Stoecker*, 2012 IL App (3d) 120183-U) and the summary dismissal of his section 2-1401 petition in 2014 (*People v. Stoecker*, 2014 IL App (3d) 130389-U). In 2014, the Illinois Supreme Court rejected defendant's request for postconviction DNA testing. *People v. Stoecker*, 2014 IL 115756.

¶ 6 The instant appeal comes from the filing of defendant's second 2-1401 petition on July 5, 2013. He submitted a "Notice of Filing" with the petition stating that he mailed the petition to the circuit clerk and the State's Attorney by putting it "in the United States mail at the Pinckneyville Correctional Center, Pinckneyville, IL 62274." No response was filed by the State, and no hearing was held. The trial court summarily dismissed the petition on December 27, 2013, reasoning that defendant's claims were not cognizable under section 2-1401, were barred by *res judicata*, and were meritless. Defendant filed a motion to reconsider, which did not address the sufficiency of service. The motion to reconsider was denied.

¶ 7 We held defendant's appeal in abeyance pending the Illinois Supreme Court's decision in *People v. Carter*, 2015 IL 117709, which was decided on December 3, 2015.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that "[t]he court's *sua sponte* dismissal of the petition was premature because the petition was not ripe for adjudication since it was not properly served on the State." Specifically, defendant contends that his "Notice of Filing," which states that the petition was placed "in the United States mail at the Pinckneyville Correctional Center," indicates that his petition was "sent to the State by standard mail" as opposed to certified or registered mail as required by statute. See 735 ILCS 5/2-1401(b) (West 2012); Ill. S. Ct. R. 106 (eff. Aug. 1, 1985); Ill. S. Ct. R. 105(b) (eff. Jan. 1, 1989). As neither the record nor the pleadings affirmatively show that defendant's petition was not properly served on the State, we reject this contention.

¶ 10 The facts of *Carter* are very similar to the instant case. In *Carter*, defendant filed a petition that the court construed as a section 2-1401 petition. *Id.* ¶¶ 5-6. "Defendant attached a 'Proof/Certificate of Service' to his pleading, alleging that he placed it in the 'institutional mail' at the Menard Correctional Center." *Id.* ¶ 5. He listed the addresses of the circuit clerk and the State's Attorney's office. *Id.* The State did not file any response, and the court *sua sponte* dismissed the petition on the merits. *Id.* ¶ 6. The *Carter* defendant then appealed, alleging that the dismissal of his petition was premature as it was not properly served on the State. *Id.* ¶ 7.

¶ 11 The Illinois Supreme Court noted that pursuant to Illinois Supreme Court Rules 105 and 106, notice of a section 2-1401 petition may be served by certified or registered mail. *Id.* ¶ 14; Ill. S. Ct. R. 106 (eff. Aug. 1, 1985); Ill. S. Ct. R. 105(b) (eff. Jan. 1, 1989). The court said that it was long recognized that the defendant has the burden of submitting a sufficient record so that the court may determine whether errors were made. *Id.* ¶ 19. The court determined that the record did not "affirmatively demonstrate that there *was* deficient service." (Emphasis in original.) *Id.* ¶ 18.

¶ 12 In order to prove deficient service, the record "must affirmatively establish that defendant mailed his petition via some means other than certified or registered mail," but *Carter's* proof of service only showed from where defendant mailed his petition and that it was to be transmitted by the United States Postal Service. *Id.* ¶ 20. Further, the court noted that:

"Though the regular return receipt for certified mail—for example—is sufficient proof of service by certified mail [citation], *the absence* of such a receipt in the record does not affirmatively establish that service by certified mail was *not* accomplished, as it is up to the sender to file the receipt or not." (Emphases in original.) *Id.* ¶ 23.

Therefore, the court determined that:

"any section 2-1401 petitioner who seeks to use, on appeal, his own error, by way of allegedly defective service, in an effort to gain reversal of a circuit court's *sua sponte* dismissal of his or her petition on the merits, must affirmatively demonstrate the error via proceedings of record in the circuit court." *Id.* ¶ 25.

¶ 13 Here, defendant's "Notice of Filing" is the only portion of the record that deals with service on the State, and it only says that defendant placed the petition "in the United States mail at the Pinckneyville Correctional Center." This statement does not establish whether or not the petition was sent by certified or registered mail. Moreover, defendant did not include the envelope in which he mailed the petition or any other evidence in his pleadings or the record that would be dispositive of this issue. Under *Carter*, defendant has not affirmatively established that service upon the State was improper, and he may not, therefore, use his own error on appeal.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Stark County is affirmed.

¶ 16

Affirmed.