

NOTICE  
Decision filed 03/13/15, corrected 03/18/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130245-U

NO. 5-13-0245

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 11-CF-1784
	)	
HERMAN ADDISON,	)	Honorable
	)	John Baricevic,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE MOORE delivered the judgment of the court.  
Presiding Justice Cates and Justice Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court erred when it dismissed, *sua sponte*, the defendant's section 2-1401 petition prior to the expiration of the 30-day period during which the State, as respondent, could answer the petition or otherwise plead.

¶ 2 The defendant, Herman Addison, appeals the dismissal, by the circuit court of St. Clair County, of his petition filed pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) (the petition).

¶ 3 **FACTS**

¶ 4 The facts necessary to our disposition of this appeal are as follows. Following a trial by jury, the defendant was convicted of felony domestic battery as a result of

severely beating his former paramour and housemate, Stacy Jones, with a cane and with his fists. He received the maximum extended-term sentence of six years in the Illinois Department of Corrections. According to the records of the Illinois Department of Corrections, he was released on "parole" on December 5, 2014. Prior to that, on April 23, 2013, he filed the petition at issue in this case, along with several other motions that are not relevant to this appeal. On the following day, April 24, 2013, the Honorable John Baricevic entered an order in which he *sua sponte* dismissed the petition and the other motions, ruling that the filings occurred "more than 30 days after [the defendant's] sentencing and [judgment] on his conviction" and that accordingly the trial court lacked jurisdiction to consider the filings. This timely appeal followed.

¶ 5

#### ANALYSIS

¶ 6 A petition filed pursuant to section 2-1401 is an avenue by which one may seek relief from a final judgment more than 30 days after the entry of that judgment, "provided the petition proves by a preponderance of evidence certain elements." *People v. Laugharn*, 233 Ill. 2d 318, 322 (2009). The *sua sponte* dismissal of a petition prior to the conclusion of the usual 30-day period during which a respondent may answer or otherwise plead is "premature and requires *vacatur* of the dismissal order." *Id.* at 323. That is because such a *sua sponte* dismissal "short-circuit[s]" the proceedings and deprives the respondent of the time to which it is entitled so that the respondent may adequately answer or otherwise plead. *Id.* Until the respondent has had this opportunity, a petition is not " 'ripe for adjudication.' " *Id.* In the case at bar, it appears that Judge Baricevic simply overlooked the fact that one of the filings before him was a section

2-1401 petition, and therefore dismissed it as untimely along with the other filings before him. Nevertheless, because it was error to *sua sponte* dismiss the petition prior to the conclusion of the 30-day response period, we must vacate his dismissal of the petition and remand for further proceedings.

¶ 7 Although the defendant expressly argues, in his opening brief, that his petition was not yet " 'ripe for adjudication' " when it was dismissed, he nevertheless invites this court to address the merits of the petition on appeal, before the State has had the opportunity to answer or otherwise plead at the trial court level, and before the trial court has had the opportunity to make any necessary findings of fact related to whatever pleadings might be filed in response to the petition. We decline the defendant's invitation to usurp the role of the trial court with regard to the petition. Accordingly, we express no opinion on the merits of the defendant's petition and the arguments contained therein.

¶ 8 CONCLUSION

¶ 9 For the foregoing reasons, we vacate the dismissal of the defendant's petition and remand for further proceedings.

¶ 10 Order vacated; cause remanded.