

NOTICE
Decision filed 05/12/15. 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) 130259-U

NO. 5-13-0259

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Saline County.
)	
v.)	No. 05-CF-133
)	
ROBERT L. MITCHELL,)	Honorable
)	Todd D. Lambert,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing the defendant's *pro se* petition for relief from judgment where the forfeiture "order" the defendant is attacking does not exist.

¶ 2 The defendant, Robert L. Mitchell, appeals the dismissal, by the circuit court of Saline County, of his *pro se* petition for relief from judgment (the petition). For the following reasons, we affirm.

¶ 3 **FACTS**

¶ 4 The facts necessary to our disposition of this appeal follow. On July 26, 2012, the defendant filed the petition. Therein, he alleged, *inter alia*, that: (1) in conjunction with

the arrest that led to the charges in this case, arresting officers seized \$2,265 from the defendant; (2) the State at no time filed a petition for forfeiture; and (3) "the forfeiture of said funds was pursuant to a void [o]rder of the [c]ourt" that could be challenged at any time. He attached several documents to the petition, including a docket entry sheet from a different criminal case, styled No. 04-CF-256, in which the trial judge wrote on August 29, 2005, that in the current case, which as noted in our caption is styled No. 05-CF-133, the defendant would be sentenced to five years' imprisonment, plus costs, one year of mandatory supervised release, and "forfeiture." He also attached the judgment from yet another different criminal case, styled No. 05-CF-125, which showed that as part of the sentence in that case he was ordered to "forfeit the \$846.00 that was confiscated from the defendant" at the time he was arrested in both that case and the present case. We note that the \$846 is separate from the \$2,265 allegedly seized in this case, and that the parties agree that the \$846 has been returned to the defendant. We note as well that the defendant did not attach to the petition a copy of the judgment from the current case; however, a copy of the judgment is present in the record on appeal: it was filed on August 30, 2005, and states that his sentence in this case, No. 05-CF-133, was five years' imprisonment, plus costs and one year of mandatory supervised release. The judgment includes no reference to the \$2,265 or any other funds, nor does it reference forfeiture at all. The trial court's oral pronouncement of sentence is also included in the record on appeal; therein, the court referenced forfeiture of the \$846 in case No. 05-CF-125, but did not include forfeiture as part of the sentence in this case, No. 05-CF-133.

¶ 5 On September 26, 2012, the trial court *sua sponte* dismissed the petition, finding that: (1) the defendant failed to show proper proof of service of the State; and (2) the petition was time-barred and did not allege any facts unknown to the court at the time it rendered its original judgment. The defendant filed a motion to reconsider, which the trial court subsequently denied, finding that the "judgment—or mittimus—in this cause is not void because it does not mention the forfeiture of any funds." This timely appeal followed.

¶ 6

ANALYSIS

¶ 7 On appeal, the defendant contends the circuit court erred in dismissing his petition because the defendant "properly attacked the void judgment unlawfully taking his money." The State concedes that had an order been entered ordering the forfeiture of the \$2,265 in this case without the State first initiating, and then executing, the required statutory forfeiture proceedings, the order would be, as the defendant contends, void. However, the State points out that there is simply no order in this case that ordered the forfeiture of the money in question, and that therefore there is no order for the defendant to attack. We agree with the State. As noted above, the judgment in this case is dated August 30, 2005, is found in the record on appeal, and does not include the forfeiture of the funds in question or any other funds. Moreover, when the judge pronounced sentence orally on August 29, 2005, he referenced forfeiture of the \$846 in case No. 05-CF-125, but did not include forfeiture in his sentence in this case, No. 05-CF-133. Therefore, the reference in the docket entry in case No. 04-CF-256, in which the trial judge wrote on August 29, 2005, that in No. 05-CF-133, the defendant would be sentenced to five years'

imprisonment, plus costs, one year of mandatory supervised release, and "forfeiture," is simply incorrect with regard to forfeiture. Accordingly, the State is correct that there is no order in this case for the defendant to attack, and the trial court did not err in dismissing the petition. Of course, it is also true that to the extent the funds are being held by the State pursuant to the belief that a valid forfeiture order exists in this case on the basis of the trial court's docket entry in case No. 04-CF-256, such holding of the funds is improper and the defendant is entitled to their return. However, this court does not know if the funds are still held by the State, and if so, on what basis; accordingly, we take no position with regard to the funds other than to state that no valid forfeiture order exists in the case on appeal, No. 05-CF-133, either independently or as a result of the docket entry in No. 04-CF-256, and that therefore the funds may not be held by the State pursuant thereto.

¶ 8

CONCLUSION

¶ 9 For the foregoing reasons, we affirm the dismissal of the defendant's petition.

¶ 10 Affirmed.