

No. 1-13-3495

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 10 CR 517
)	
JAKUB KSIAZEK,)	Honorable
)	Rickey Jones,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* We vacated the circuit court's order on remand for failing to follow our mandate and again remanded the matter with directions to conduct an evidentiary hearing on the petitioner's post-conviction petition.

¶ 2 The petitioner, Jakub Ksiazek, appeals from an order of the circuit court dismissing his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). The petitioner argues that the circuit court dismissed his petition without granting him an evidentiary hearing as mandated by this court in *People v. Ksiazek*, 2012 IL App (1st) 110673-U (unpublished order under Supreme Court Rule 23). For the reasons which follow, we

vacate the circuit court's order which granted the State's motion to dismiss the petitioner's post-conviction petition, and again remand the matter with directions to conduct a third-stage evidentiary hearing on the petition.

¶ 3 Following a plea of guilty, the petitioner was convicted of possession of a controlled substance and sentenced to 24 months of felony probation. Subsequently, he filed a post-conviction petition asserting that he had been denied effective assistance of counsel when his immigration attorney erroneously informed him that his guilty plea would not adversely affect his immigration status. The circuit court found that the petitioner's petition was not frivolous and patently without merit and advanced it to the second stage under the Act (see 725 ILCS 5/122-2.1) (West 2010)). Thereafter, the State filed a motion to dismiss the petition, arguing that the petitioner failed to make a substantial showing that he was prejudiced by the advice of his immigration attorney because he had independent knowledge of the deportation consequences of his guilty plea and because the circuit court's admonitions at the time he pled guilty cured the erroneous information provided by his attorney. *Ksiazek*, 2012 IL App (1st) 110673-U, ¶¶ 6-9 (unpublished order under Supreme Court Rule 23). The circuit court granted the State's motion to dismiss the petition, and the petitioner appealed. This court reversed the judgment of the circuit court and remanded the matter "for an evidentiary hearing on the [petitioner]'s postconviction petition." *Id.* ¶ 32.

¶ 4 On remand, the State filed a motion to cite additional authority; namely, *Chaidez v. United States*, 133 S. Ct 1103 (2013), in support of its motion to dismiss the petitioner's post-conviction petition. Specifically, the State requested that the circuit court consider the additional authority and "dismiss the petitioner's *** post[-]conviction petition without a 3rd stage hearing ***." The circuit court gave the State leave to file its motion, and the matter was continued on

several dates thereafter. Ultimately, the circuit court was informed that the petitioner could not be brought in for a hearing on his petition as he had been deported and could not re-enter the country.

¶ 5 When the matter came before the circuit court on August 29, 2013, the assistant State's Attorney informed the court that she was "going to be making an oral motion to reconsider your Honor's ruling based upon my previously filed motion to cite additional authority ***." The matter was continued to September 26, 2013. On that date, the circuit court acknowledged this court's earlier decision and then stated:

"But now [the] State has brought before the Court even additional authority that contravenes the law that the Appellate Court based its ruling on, so having heard the arguments of counsel and considered the additional authority cited by the State, the State's motion to dismiss is allowed, and the petitioner's *** post-conviction petition is dismissed and denied."

¶ 6 The petitioner filed the instant appeal, arguing, *inter alia*, that by failing to hold an evidentiary hearing and dismissing his post-conviction petition in response to the State's motion, the circuit court failed to comply with this court's mandate. We agree.

¶ 7 A circuit court is required to obey the clear and unambiguous directions in a mandate issued by a reviewing court. When, as in this case, the directions of the Appellate Court are specific, a positive duty devolves upon the trial court on remand to act in accordance with the directions contained in the mandate. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982).

¶ 8 Our mandate in *Ksiazek*, 2012 IL App (1st) 110673-U, ¶ 35 (unpublished order under Supreme Court Rule 23), was specific and unambiguous. The circuit court was directed to conduct an evidentiary hearing on the petitioner's post-conviction petition. No evidentiary

hearing was conducted; rather, the circuit court granted the State's motion to dismiss. As a consequence, we vacate the circuit court's order of September 26, 2013, and again remand the matter with specific instructions to conduct an evidentiary hearing on the petitioner's post-conviction petition.

¶ 9 Vacated and remanded with directions.