2016 IL App (1st) 133982-U

THIRD DIVISION
January 27, 2016

No. 1-13-3982

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 89 CR 26747
	)	
STANLEY HUGHES,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 ***Held:*** Trial court's granting of State's motion to dismiss defendant's petition for postjudgment relief without notice to defendant was harmless error where the defendant's petition was clearly meritless.

¶ 2 Defendant Stanley Hughes appeals from the trial court's order granting the State's motion to dismiss his *pro se* petition for postjudgment relief filed pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2012)). On appeal, defendant contends that the court's dismissal of his petition violated his procedural due process rights where he had

no notice of or opportunity to respond to the State's motion. He also argues that the court's ruling was premature under *People v. Laugharn*, 233 Ill. 2d 318 (2009). While we agree defendant was entitled to notice of the State's motion, we find that any error by the trial court was harmless because defendant's petition was meritless. Accordingly, we affirm.

¶ 3 The evidence at trial established that Diane Johnson was speaking with her nephew, Leonard Johnson, and his friend, James Taylor, in an alleyway behind her home around 9 p.m. on November 8, 1989. According to Diane, defendant and another man ran into the alley. Defendant identified himself as a police officer and demanded that they get down on the ground. The two men searched them and took a gun belonging to Leonard. They then forced Diane, Leonard, and Taylor into Leonard's van and bound their hands and eyes with duct tape. The van was driven to a garage behind the home of Consuela Shaw, defendant's former girlfriend. While Leonard was taken inside the garage, Diane was asked where Leonard kept his money. At some point, Taylor was removed from the van, driven to another area, and released.

¶ 4 According to Shaw, defendant and another man entered her house on November 8, 1989. While defendant spoke with Shaw in the bedroom, the other man used her telephone. Phone records established that he called Kimberley Hayes, Leonard's girlfriend. According to Hayes, Leonard called at about 9:50 p.m. and stated that he was in trouble with the police. When she said she would go to the police station, Leonard shouted “no,” and another man spoke. He told Hayes to “come up with” $15-$16,000 or Leonard would be killed. After the phone call, defendant brought Leonard back out to the garage. Defendant called Hayes twice more that night, but she was unable to come up with the money.

¶ 5 Leonard was eventually brought back to the van, and he and Diane were driven away. Someone removed the duct tape from Diane's hands and eyes shortly before the van stopped. She heard a “knocking sound” and the abductors left the van. Diane called to Leonard but received no reply. Diane got into the driver's seat and drove to a nearby gas station where the police were called. It was discovered that Leonard was dead. His autopsy revealed that he had been shot six times in the head, at close range. Diane Johnson later identified defendant from a photo array and a lineup. Taylor also subsequently identified defendant.

¶ 6 The jury found defendant guilty of one count of murder and three counts of aggravated kidnapping. The trial court sentenced defendant to an extended sentence of natural life imprisonment for murder based upon its finding that defendant's actions were exceptionally brutal and heinous. It also sentenced him to three, concurrent extended-terms of 60 years' imprisonment on the aggravated kidnapping counts, to run consecutively to the life sentence. This court affirmed his convictions upon direct appeal. *People v. Hughes*, 274 Ill. App. 3d 107 (1995).

¶ 7 Defendant subsequently filed a *pro se* postconviction petition alleging, *inter alia*, that he was denied his right to have a jury sentence him and that his extended-term sentences are void under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The trial court denied defendant's petition after a hearing, but this court remanded for further proceedings based on post-conviction counsel's failure to comply with Illinois Supreme Court Rule 651(c) (eff. December 1, 1984). *People v. Hughes*, No. 1-04-1230 (2005) (dispositional order). On remand, appointed counsel

filed a Rule 651(c) certificate and the trial court dismissed the petition on the State's motion. We affirmed that dismissal on appeal. *People v. Hughes*, 2013 IL App (1st) 111167-U.

¶ 8 On August 13, 2013, defendant filed the *pro se* petition for relief from judgment which is the subject of the current appeal. In the petition, defendant argues that his extended-term sentences for murder and aggravated kidnapping are void where the offenses were not "exceptionally brutal or heinous" and the offenses were not charged as such. On October 11, 2013, the State noted that defendant's petition was ripe for adjudication and moved to dismiss the petition, arguing that it was untimely. The circuit court granted the motion. Defendant appeals.

¶ 9 Defendant contends that the trial court erroneously granted the State's motion to dismiss because he was entitled to notice of the motion and an opportunity to respond. He further argues that the court's improper dismissal violated his procedural due process rights, and thus we must remand the case without considering the merits of his petition. The State responds that defendant had no right to notice of its motion under the Code and that the trial court's dismissal was proper under *People v. Vincent*, 226 Ill. 2d 1 (2007). It argues alternatively that any error was harmless because defendant's petition reiterates his earlier claim under *Apprendi* which is barred by *res judicata* and clearly meritless under *People v. De La Paz*, 204 Ill. 2d 426 (2003). We must therefore consider two issues: (1) whether defendant was entitled to notice of the State's motion to dismiss and a chance to respond, and if so, (2) whether a dismissal absent such notice can be harmless error. We consider each issue in turn.

¶ 10 Generally, due process requires that a litigant receive notice of the opposing party's motions and be given an opportunity to respond. See *In re D.W.*, 214 Ill. 2d 289, 316 (2005).

Furthermore, case law clearly supports defendant's position that this principle applies in the context of petitions under section 2-1401. Section 2-1401 provides a statutory procedure for vacating final judgments older than 30 days. *Vincent*, 226 Ill. 2d at 7; see also 735 ILCS 5/2-1401 (West 2012). Section 2-1401 requires that the petition be filed in the same proceeding in which the order or judgment was entered, but it is not a continuation of the original action. 735 ILCS 5/2-1401(b) (West 2012). Generally, section 2-1401 petitions must be filed no later than two years after the entry of the order or judgment. *People v. Nitz*, 2012 IL App (2d) 091165, ¶ 9. To obtain relief, a petitioner must establish both errors of fact and also diligence in discovering the error and in presenting the petition. See *Vincent*, 226 Ill. 2d at 7-8. A defendant may challenge his sentence as void in a section 2-1401 petition. *People v. Thompson*, 209 Ill. 2d 19, 29 (2004).

¶ 11 Although section 2-1401 is a civil remedy, it extends to both criminal and civil cases. *Vincent*, 226 Ill. 2d at 7-8. Accordingly, all proceedings under section 2-1401 are governed by the usual civil-practice rules. *Id.* at 8. Petitions filed under section 2-1401 are treated as "complaints inviting responsive pleadings." *Id.* The State may answer the petition, move to dismiss it, or ignore it. See *Laugharn*, 233 Ill. 2d at 323. By ignoring the petition for 30 days, the State admits all well-pleaded facts and renders the petition ripe for adjudication. See *id.*; see also *Vincent*, 226 Ill. 2d at 9-10. Just as trial courts may dismiss actions on the pleadings, trial courts may *sua sponte* dismiss section 2-1401 petitions with no responsive pleadings, if the 30-day period during which the State may file an answer has elapsed. See *Laugharn*, 233 Ill. 2d at 323. Dismissals of section 2-1401 petitions are reviewed *de novo*. *Id.* at 322.

¶ 12 Both the United States and Illinois constitutions guarantee an individual's right to procedural due process. See U.S. Const., amend. XIV, § 1; Ill. Const.1970 art. I, § 2. This includes an individual's "opportunity to be heard at a meaningful time and in a meaningful manner." *In re D.W.*, 214 Ill. 2d at 316. "Due process is a flexible concept," and thus different circumstances may call for different procedures. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009). However, the right to the opportunity to be heard " 'has little reality or worth unless one is informed that the matter is pending'." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 28 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). A petitioner's claim of a denial of due process is also reviewed *de novo*. *In re Shirley M.*, 368 Ill. App. 3d 1187, 1190 (2006).

¶ 13 Defendant analogizes his case to *Merneigh v. Lane*, 87 Ill. App. 3d 852 (1980). In *Merneigh*, the defendant filed a *pro se* complaint for *mandamus*, asking the court to compel a prison warden to allow him more time at the prison library. *Id.* at 853. The State filed a motion to dismiss and the trial court granted the motion on the same day. *Id.* at 854. Defendant was never given notice of the State's motion and was not given a chance to respond. *Id.* The appellate court acknowledged that a prisoner does not have an automatic right to be present in court on civil matters, but held that "considerations of basic due process require" that a defendant be given a copy of any motion to dismiss and a meaningful opportunity to respond. *Id.* at 854-55. While *Merneigh* involved a request for *mandamus* and not a section 2-1401 petition, we find its reasoning equally applicable to the current facts. See *Vincent*, 226 Ill. 2d at 8 ("This court has consistently held that proceedings under section 2-1401 are subject to the usual rules of civil

practice.") We have also echoed the reasoning of *Merneigh* in the context of section 2-1401 petitions. See, *e.g.*, *People v. Coleman*, 358 Ill. App. 3d 1063, 1070 (2005) ("It thus appears from the court's record that the petition was dismissed on the basis of the State's motion without an opportunity for the defendant to respond or be heard. Such a situation is inimical to our tradition of due process.")

¶ 14 The State argues that the supreme court's decision in *Vincent*, and numerous appellate court opinions following *Vincent*, foreclose defendant's argument because they establish that a trial court may *sua sponte* dismiss a defendant's section 2-1401 petition. In *Vincent*, the defendant filed a section 2-1401 petition and the trial court dismissed the petition without a response from the State. *Vincent*, 226 Ill. 2d at 4-5. The supreme court held that "responsive pleadings are no more required in section 2-1401 proceedings than they are in any other civil action" and that the trial court may dismiss a petition *sua sponte*, without notice to the defendant. *Id.* at 9, 13. Despite the State's contentions, however, these holdings are not relevant to the current case. The trial court did not *sua sponte* dismiss defendant's petition without a response from the State. The current dismissal was a direct response to the State's motion, and adopted the reasoning argued by the State. As such, *Vincent*'s discussion of *sua sponte* dismissals is inapposite to the question of whether a defendant must have notice of an opposing party's motion to dismiss.

¶ 15 Moreover, *Vincent* notes that a section 2-1401 petition is “essentially [a] complaint [ ]” and is governed by the rules of civil procedure. *Id.* at 8. While complaints may be dismissed absent a responsive pleading, it is well established that due process does not allow a court to

grant a motion to dismiss a complaint without allowing the opposing party notice and a meaningful opportunity to be heard. See, *e.g.*, *Berg v. Mid-America Industrial, Inc*., 293 Ill. App. 3d 731, 735 (1997) (“It would be unjust, unfair, and inequitable to allow the dismissal order to stand because, from the foregoing litany of events, it is unclear that plaintiffs received proper notice of the [hearing at which the trial court granted the motion to dismiss.]") It follows the same is true for section 2-1401 petitions, which are governed by the same rules of civil procedure. Therefore, we hold that defendant was entitled to notice of the State's motion to dismiss and an opportunity to respond. Accordingly, the trial court erred by granting the State's motion where there was no notice to defendant.

¶ 16 Our determination of a procedural error does not end our discussion, however, because the parties dispute whether such an error may be harmless. Defendant does not argue that his petition has merit, and has therefore forfeited any argument that the petition is meritorious on appeal. See *People v. Saterfield*, 2015 IL App (1st) 132355, ¶ 11. Instead, he contends that *Merneigh* stands for the proposition that defendant's lack of notice constitutes reversible error without consideration of his petition's merits. While the appellate court in *Merneigh*, did decline to review the merits of the defendant's claims, it did so because it determined that "he might well overcome obvious defects [in his petition] by additional allegations of fact." *Merneigh*, 87 Ill. App. 3d at 855. Conversely, this court has repeatedly held that procedural errors in the consideration of a section 2-1401 petition may be found harmless where it is clear that amendment could not salvage an inherently meritless claim. See *People v. Taylor*, 349 Ill. App. 3d 718, 720 (2004); see also *People v. Ocon*, 2014 IL App (1st) 120912, ¶ 42, ("Any remand

when the petition lacks merit would be a waste of judicial resources.") We note that it is clear from the record that the claims in defendant's section 2-1401 petition merely reiterate the *Apprendi* claims that defendant raised in his prior post-conviction petition. As such, these claims are barred by *res judicata*. See *People v. Williams*, 209 Ill. 2d 227, 233 (2004). Furthermore, our supreme court has held that the rule announced by the United States Supreme Court in *Apprendi* does not apply retroactively to cases on collateral review. *De La Paz*, 204 Ill. 2d at 439; see also *Taylor*, 349 Ill. App. 3d at 721. Defendant's conviction was finalized eight years before the decision in *Apprendi*, and thus defendant's petition is clearly without merit. As such, we find the trial court's granting of the State's motion without notice to defendant to be harmless error.

¶ 17 Finally, defendant argues alternatively that the trial court dismissed his petition before it was ripe for adjudication under civil rules of pleading, relying on *Laugharn*. He notes that *Laugharn* requires remand of a section 2-1401 petition without regard to its merits if the trial court dismisses the petition before it is ripe for adjudication. See *Laugharn*, 233 Ill. 2d at 324. He further argues that Illinois Supreme Court Rule 182 (eff. Feb. 6, 2011) allows a petitioner 21 days to respond to an answer, and thus the logic of *Laugharn* dictates that a petition is not ripe for adjudication until 21 days after the State has responded. In *Laugharn*, the supreme court considered the propriety of the trial court's *sua sponte* dismissal of a prisoner's initial section 2-1401 petition seven days after its filing with the court. *Id*. at 323. The supreme court held that the *sua sponte* dismissal of the prisoner's petition before the expiration of the 30-day period in which the State could answer or plead was premature, explaining that "[w]hile Vincent allows for *sua sponte* dismissals of section 2-1401 petitions, it did not authorize such action prior to the

expiration of the 30-day period." *Id. Laugharn* set forth a bright-line rule that a trial court must wait 30 days before *sua sponte* dismissing a defendant's petition. Unlike in *Laugharn*, the trial court did not *sua sponte* dismiss defendant's petition. It dismissed the petition on the State's motion. We therefore find *Laugharn* inapposite.

¶ 18 For the foregoing reasons, we find that the trial court's error in granting the State's motion for dismissal of defendant's section 2-1401 petition where defendant received no notice of the motion was harmless because the petition was clearly meritless. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 19 Affirmed.