

Nos. 1-13-4000 & 1-14-0735  
(Consolidated)

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 98 CR 10112
	)	
NATHANIEL WILLIAMS,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Cunningham and Connors concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Circuit court's *sua sponte* dismissal of defendant's *pro se* section 2-1401 petition affirmed where defendant did not affirmatively establish improper service on the State.

¶ 2 Defendant Nathaniel Williams appeals from an order of the circuit court of Cook County dismissing *sua sponte* his *pro se* petition for relief from judgment filed pursuant to section 2-

1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). On appeal, defendant solely contends that because he did not properly serve his petition on the State, the circuit court's dismissal was premature, and thus, his petition must be remanded for further proceedings. We affirm.

¶ 3 Following a 1999 bench trial, defendant was convicted of armed robbery for robbing a Payless shoe store at gunpoint. Based on his prior Class X convictions, the trial court sentenced defendant as a habitual criminal to a term of life imprisonment without parole. 720 ILCS 5/33B-1(a) (West 1998). On direct appeal, this court affirmed that judgment. *People v. Williams*, No. 1-00-0983 (2003) (unpublished order under Supreme Court Rule 23).

¶ 4 Defendant's original mittimus did not indicate that he had been sentenced as a habitual criminal. Consequently, in 2009, the trial court issued a corrected mittimus which included his status as a habitual criminal, but also indicated that his sentence was 888 years and 88 months. In 2011, the trial court issued a second corrected mittimus removing the 888 years and 88 months notations.

¶ 5 Since 2002, defendant has filed several unsuccessful *pro se* pleadings seeking collateral relief, including petitions filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2002)), a section 2-1401 petition for relief from judgment, a petition for writ of *habeas corpus*, and a motion to strike his mittimus. On review, this court either entered a dispositional order dismissing the appeal on defendant's motion, or entered a summary order granting appellate counsel's motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirming the judgment of the circuit court. *People v. Williams*, Nos. 1-07-3484 (2009) and 1-10-2105 (2011) (dispositional orders); *People v. Williams*, 2012 IL App (1st) 110121-U, 2013

IL App (1st) 121458-U and 2013 IL App (1st) 12-2556-U (unpublished summary orders under Supreme Court Rule 23(c)).

¶ 6 On April 18, 2013, defendant mailed the instant *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code. Defendant alleged that his life sentence was void and unconstitutionally imposed because his prior armed robbery convictions from the 1970s could not be used as Class X convictions under the habitual criminal statute. He also claimed that the trial court did not actually sentence him to life in prison, and that the court failed to consider the facts of his case before sentencing him to life imprisonment in violation of *People v. Arna*, 168 Ill. 2d 107 (1995). Defendant further alleged that his trial counsel, appellate counsel and post-conviction counsel had rendered ineffective assistance. Defendant attached to his petition a motion for appointment of counsel and to proceed or defend as a poor person, an application to sue or defend as a poor person, an affidavit in support of his petition, and numerous exhibits. He also filed a motion for trial transcripts and common law records, and a combined motion to proceed *in forma pauperis* and request free transcripts.

¶ 7 Defendant attached to his petition a "Proof/Certificate of Service" which indicated that he mailed his petition and other documents to both the State's Attorney's Office and the clerk of the circuit court at "2650 S. California, Chicago, IL. 60608." The proof of service further stated that defendant "placed the documents listed below in the institutional mail at Menard Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service." The proof of service was stamped "FILED" by the clerk of the circuit court on May 7, 2013.

¶ 8 In addition, defendant also included an "Affidavit of Service" which stated that he "served a copy of the document to which this affidavit is attached upon each party, or, if

represented by counsel, upon the attorney of record for said party(ies) by enclosing the same in a sealed envelope plainly addressed as is disclosed by the pleadings of record herein and by depositing each of such envelopes in the box designated for United States mail at Menard Correctional Center, Menard Illinois, together with the appropriate request to the prison official responsible to affix fully prepaid postage thereon, on this 18 day of April, 2013."

¶ 9 The clerk's memorandum of orders indicates that on May 7, 2013, a hearing date of May 14, 2013, was assigned for defendant's petition for relief from judgment. The report of proceedings shows that on May 14 and May 17, 2013, the circuit court continued defendant's case. On May 24, 2013, the court stated that it believed defendant's case was on its call to rule on a previously filed motion to reconsider the dismissal of his *habeas corpus* petition and a motion to strike. The court stated that those motions were denied and removed the case from its call. The court did not address defendant's section 2-1401 petition. The record does not expressly indicate that an assistant State's Attorney (ASA) was present in court on any of these dates.

¶ 10 On July 8, 2013, the court stated that it had received a document that defendant had sent to the clerk of the circuit court which should have been filed with the appellate court. The court stated that the case was misdirected on its call and again removed the case from its call.

¶ 11 On November 6, 2013, defendant filed a *pro se* late notice of appeal indicating that he was appealing the court's ruling on his section 2-1401 petition, but that he did not know the date of that judgment because he never received a copy of the court's order. On January 16, 2014, this court allowed defendant's late notice of appeal, and indicated that defendant was appealing the circuit court's order from July 8, 2013. This appeal was assigned case number 1-13-4000.

¶ 12 On November 8, 2013, defendant's case appeared on the circuit court's call, and the court stated that it wanted to writ him in and talk to him in person. The ASA was present and agreed with the court's decision.

¶ 13 On December 6, 2013, defendant appeared in court, and the court asked him if he knew what he had filed that placed him on the court's docket. Defendant replied that he thought it was his petition for relief from judgment which he had filed in April. Defendant pointed out to the court that the memorandum of orders showed that the court had continued the petition twice, but that there were no further rulings on it. Defendant then explained that he thought that the court had dismissed the petition, and therefore, had filed a late notice of appeal. The court then made a copy of the petition that defendant had brought with him to court and continued the case. The record shows that the ASA was present in court, but did not speak.

¶ 14 On December 30, 2013, the court stated that it was signing a written order dismissing defendant's section 2-1401 petition. In that order, the court found that defendant had failed to present a claim for relief under section 2-1401 of the Code and dismissed his petition *sua sponte*. The record does not indicate that an ASA was present in court on this date.

¶ 15 On January 3, 2014, defendant appeared in court and the court informed him that his section 2-1401 petition was dismissed. The record does not indicate that an ASA was present in court on this date. Defendant filed a late notice of appeal from this judgment, which this court allowed. This appeal was assigned case number 1-14-0735, and this court subsequently consolidated the two appeals.

¶ 16 On appeal, defendant raises no substantive issues regarding the claims alleged in his petition. Rather, he solely contends that because he did not properly serve his petition on the

State, the circuit court's dismissal was premature, and thus, his petition must be remanded for further proceedings.

¶ 17 In his opening brief, defendant relies primarily on *People v. Carter*, 2014 IL App (1st) 122613, where the court found that because defendant failed to properly serve his section 2-1401 petition on the State, the circuit court's dismissal of the petition was premature. Consequently, the appellate court vacated the circuit court's judgment and remanded the petition for further proceedings. *Carter*, 2014 IL App (1st) 122613, ¶ 26. Defendant argues that the appellate court's decision in *Carter* is dispositive of the issue here, and that his case is "indistinguishable from *Carter*."

¶ 18 In response, the State points out that since defendant filed his opening brief, the Illinois Supreme Court overruled the appellate court's opinion in *Carter*. *People v. Carter*, 2015 IL 117709. Relying on the supreme court's analysis and holding in *Carter*, the State argues that defendant failed to present a sufficient record for this court to determine whether an error in service occurred, and thus, he failed to affirmatively establish that he did not properly serve the State.

¶ 19 In his reply brief, defendant acknowledges that he is aware of the supreme court's recent decision in *Carter*. However, he states that he "otherwise rests upon the arguments made in his opening brief."

¶ 20 Initially, we observe that by solely challenging the *sua sponte* dismissal of his petition as premature, defendant has waived any challenge to the actual merits of his petition. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006). We review the circuit court's dismissal of defendant's section 2-1401 petition *de novo*. *Carter*, 2015 IL 117709, ¶ 13.

¶ 21 Section 2-1401(b) of the Code provides that "[a]ll parties to the petition shall be notified as provided by rule." 735 ILCS 5/2-1401(b) (West 2012). Supreme Court Rule 106 (eff. Aug. 1, 1985) provides that service of a section 2-1401 petition must comply with Supreme Court Rule 105 (eff. Jan. 1, 1989). Pursuant to Rule 105, notice of the filing of a petition must be directed at the party against whom relief is sought, and must be served either by summons, prepaid certified or registered mail, or publication. Ill. S. Ct. R. 105(b). After notice has been served, the responding party has 30 days to file an answer or otherwise appear. Ill. S. Ct. R. 105(a).

¶ 22 Our supreme court has held that where the State fails to answer the petition within the 30-day period, it is deemed to have admitted to all well-pleaded facts, and the petition is ripe for adjudication. *People v. Vincent*, 226 Ill. 2d 1, 9-10 (2007). The circuit court may then deny the petition if it determines that the allegations raised therein do not provide a legal basis for relief under section 2-1401. *Id.* at 12.

¶ 23 We observe that the facts of the instant case are nearly identical to those in *Carter*, and thus, find that the supreme court's recent decision in *Carter* is dispositive of this case. In *Carter*, the defendant mailed a "Motion to Vacate Judgment" and attached a "Proof/Certificate of Service" to his pleading stating that he had placed it in the "institutional mail" at the Menard Correctional Center for mailing through the United States Postal Service, addressed to the clerk of the court and the State's Attorney's Office, both at 2650 S. California in Chicago, Illinois. *Carter*, 2015 IL 117709, ¶¶ 5, 20. The circuit court dismissed the petition *sua sponte* more than 30 days after it had been filed. *Id.* at ¶ 6. On appeal, the defendant argued that the circuit court's dismissal of his petition was premature because it was never properly served on the State. *Id.* at ¶ 7. The appellate court agreed, reversed the dismissal, and remanded the petition for further proceedings. *Id.* at ¶ 10.

¶ 24 Upon further review, our supreme court pointed out that the claimed error of deficient service was never raised or addressed in the circuit court, and thus, there was no meaningful record from the circuit court to be reviewed. *Id.* at ¶ 20. The court found that the defendant's proof of service merely established where he mailed his petition, through the institutional mail, and the medium through which it was transmitted, *i.e.*, the United States Postal Service, but that it did not affirmatively establish that he had transmitted his petition via regular mail. *Id.* Consequently, the supreme court found that the record was insufficient to demonstrate the deficiency in service that the defendant was required to establish in order to advance his argument. *Id.* at ¶ 22. However, the record did show that the circuit court dismissed the petition *sua sponte* on the merits more than 30 days after the defendant had filed it. *Id.* at 24. Accordingly, where nothing in the record affirmatively established that the State was not given proper notice, or that the circuit court's *sua sponte* dismissal was premature, the supreme court presumed that the circuit court's order conformed with the law and affirmed that judgment. *Id.* at ¶¶ 23, 26.

¶ 25 As in *Carter*, in this case, defendant's claimed error of deficient service was not raised in the circuit court, and thus, there is no meaningful record from the circuit court to be reviewed. The record here merely shows that defendant placed his petition in the institutional mail at the Menard Correctional Center for mailing through the United States Postal Service, addressed to both the State's Attorney's Office and the clerk of the circuit court at "2650 S. California, Chicago, IL. 60608." The record does not affirmatively establish that defendant transmitted his petition via regular mail, and consequently, it does not demonstrate the deficiency in service that he was required to establish in order to advance his argument.



¶ 26 The record does show that defendant filed his petition on May 7, 2013, and that it first appeared on the circuit court's docket on May 14, 2013. The record further shows that the circuit court dismissed defendant's petition *sua sponte* on the merits on January 3, 2014, nearly eight months after it was filed, and well beyond the 30-day period. Therefore, based on this record, we presume that the circuit court's order was in conformity with the law.

¶ 27 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.