

No. 1-14-0337

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 C6 61661
)	
CHRISTOPHER BRANCH,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice DELORT concurred in the judgment.

O R D E R

¶ 1 *Held:* Circuit court did not *sua sponte* recharacterize defendant's section 2-1401 petition as a petition under the Post-Conviction Hearing Act.

¶ 2 Defendant Christopher Branch appeals from the *sua sponte* dismissal of his *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2012). Pursuant to a 2011 negotiated guilty plea, defendant was convicted of possession of a controlled substance with intent to deliver (PCSI) and sentenced to eight years'

imprisonment. Defendant's sole contention on appeal is that we should remand for the circuit court to clarify whether it recharacterized the petition as a post-conviction petition under the Post-Conviction Hearing Act (Act), 725 ILCS 5/122-1 *et seq.* (West 2012). For the reasons stated below, we affirm.

¶ 3 Defendant was charged with PCSI and possession of a controlled substance for allegedly possessing one or more, but less than 15, grams of cocaine on or about September 9, 2008. Defendant's motion to quash arrest and suppress evidence (motion to quash) was denied following a November 2009 hearing. On June 27, 2011, defendant and the State negotiated a guilty plea whereby he would receive eight years in prison for PCSI with the possession charge *nol prossed*. Following admonishments, waivers, and ascertainment of the factual basis for the plea, the court accepted the plea and entered judgment thereon.

¶ 4 Defendant filed the instant petition in October 2013 by mail. His cover letter stated that he enclosed a "Post-Conviction Petition, Affidavit," and related documents. The petition was entitled "Petition for Post-Conviction Relief [new line] For Relief From Judgment," referenced section 2-1401, and asked the court to "grant his Petition for Post-Conviction Relief, For Relief From Judgment, or Relief as Deemed More Accurately Appropriate by" the court. In the petition, defendant claimed that he pled guilty "against his better judgment" and not knowingly or intelligently due to trial counsel's "unprofessional advice and exercise of unethical influence," which he then alleged in detail. In his affidavit, defendant averred that he had "read and understand the above Petition for Post-Conviction Relief" and that the facts therein were true and correct to the best of his recollection.

¶ 5 At a November 8, 2013 court date, the court stated: "Post-conviction petition. Actually, it's in the nature of a 1401 petition. It's a 1401 petition. Petition for 1401 filed. This court has to wait 45 days to rule on it, or at least 30 days, so I will diary it. Order of court 12/23 for ruling on 1401 petition." On December 23, 2013, the court mentioned that "this is a petition for post-conviction relief" but also that the "court had to wait 30 days in order for the Court to move on and decide the matter" and that the court "has had the ability to review the petition for post-conviction relief pursuant to [section 2-]1401 of the Code of Civil Procedure, and the court rules as follows." The court found that defendant had been duly admonished of his rights and understood them, and that the denial of his motion to quash was insufficient indication of counsel's ineffectiveness and "therefore, the petition for relief from judgment is hereby denied." This appeal followed.

¶ 6 On appeal, defendant contends that we should remand this case for the circuit court to clarify whether it recharacterized his petition as a petition under the Act rather than as a section 2-1401 petition and, if the court did recharacterize it, to admonish defendant and allow him to amend or withdraw his petition as provided in *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005).

¶ 7 However, his contention fails on two grounds. The first is that a court is not required to give *Shellstrom* admonishments when it is not *sua sponte* recharacterizing a petition, including when the petition references more than one remedy or action. *People v. Bland*, 2011 IL App (4th) 100624, ¶¶ 22-24. In his petition, defendant not only referred to it as a post-conviction petition as well as a section 2-1401 petition but also expressly invited the circuit court to "grant

his Petition for Post-Conviction Relief, For Relief From Judgment, or Relief as Deemed More Accurately Appropriate by the" court itself.

¶ 8 The second basis is that we find it clear and unambiguous that the circuit court did not recharacterize defendant's petition as a petition under the Act, whether *sua sponte* or at defendant's invitation. The court making off-hand references to a post-conviction petition does not by itself constitute recharacterization because a section 2-1401 petition is a kind of post-conviction or collateral petition: a petition filed after and challenging a conviction, in the same way that a post-trial motion follows and challenges a trial or a post-sentencing motion follows and challenges sentencing. The court did not cite the Act on either November 8 or December 23, expressly referred to section 2-1401 in both proceedings (belying defendant's argument that the court "reversed course" between the two proceedings), and stated at the end of the latter proceeding that it was denying a petition for relief from judgment. Most tellingly, the court noted at both proceedings that it could not dispose of the petition until 30 days had passed, a requirement applicable to section 2-1401 petitions but not petitions under the Act. Cf. *People v. Laugharn*, 233 Ill. 2d 318 (2009)(court cannot rule *sua sponte* on section 2-1401 petition before 30 days); 725 ILCS 5/122-2.1(a) (West 2012)(court may not summarily dismiss petition under the Act after 90 days). We have no doubt that the court considered and dismissed defendant's petition under section 2-1401 and not under the Act.

¶ 9 Defendant raising no other challenge to the *sua sponte* dismissal of his section 2-1401 petition by the circuit court of Cook County, we affirm that judgment.

¶ 10 Affirmed.