

SIXTH DIVISION
February 26, 2016

No. 1-14-0448

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. 90 CR 27354
)	
RAYMOND SOJAK,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

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

O R D E R

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

¶ 2 Defendant Raymond Sojak appeals from the *sua sponte* dismissal of his *pro se* petition for relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). On appeal, defendant contends that because he did not serve his petition on the State, the trial court's dismissal was premature. For the reasons that follow, we affirm the trial court's judgment dismissing defendant's petition.

¶ 3 Following a 1993 bench trial, defendant was found guilty but mentally ill of the murders of his wife and two children. He was sentenced to three concurrent terms of natural life in prison with no possibility of parole. We affirmed on direct appeal. *People v. Sojak*, 273 Ill. App. 3d 579 (1995). In 1996, defendant filed a postconviction petition, which was summarily dismissed by the trial court. On appeal, defendant's appointed counsel moved to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). We granted counsel's motion and affirmed. *People v. Sojak*, No. 1-96-2477 (1996) (unpublished order under Supreme Court Rule 23).

¶ 4 On May 29, 2013, defendant mailed a section 2-1401 petition to the clerk of the circuit court of Cook County and the Cook County State's Attorney, both at 2650 South California Avenue, Chicago. Specifically, the attached "Proof / Certificate of Service" indicated that defendant "placed the attached or enclosed documents in the institutional mail at the Stateville Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service, & as 'legal mail,' as follows: Petition for Relief from Judgement Pursuant to 735 ILCS 5/2-1401(f) with Motion for Appointment of Counsel." The clerk of the circuit court received the petition on June 10, 2013, and stamped it "filed" on June 19, 2013. The matter appeared on the circuit court's call on June 26, July 19, July 25, August 9, August 23, August 27, and August 30, 2013. The transcripts of proceedings from all those dates except August 30, 2013, indicate that only the judge and court reporter were present.

¶ 5 The cover page of the transcript from August 30, 2013, indicates that an assistant State's Attorney was present. The entire court proceedings, during which the trial court *sua sponte* dismissed the petition, were transcribed as follows:

"THE COURT: The post conviction petition for Raymond Sojak. He filed actually a 2-1401 petition and then followed it recently with a Motion for Grand Jury Transcripts. I find that the petition or rather that the issues that are raised and presented by the petitioner in his petition are frivolous and patently without merit. Petitioner has failed to advance a claim or a defense establishing entitlement to relief under 2-1401. Accordingly, the petition is dismissed. Petitioner's requests for leave to proceed in the form of paupers and for appointment of counsel [are] likewise denied, and his motion for grand jury transcripts [is] also denied.

A copy of this order is to be mailed to the defendant by the clerk's office.
Off call.

[ASSISTANT STATE'S ATTORNEY]: Is that Sojak?

THE COURT: Sojak."

¶ 6 On appeal, defendant contends that remand for further proceedings is necessary because the trial court dismissed his section 2-1401 petition before it was properly served on the State. He acknowledges that an assistant State's Attorney was present in court when the petition was dismissed, but asserts that the attorney's presence is insufficient to establish a waiver of defective service.

¶ 7 Section 2-1401 establishes a comprehensive procedure for allowing the vacatur of final judgments more than 30 days after their entry. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). Section 2-1401(b) provides that "[a]ll parties to the petition shall be notified as provided by rule." 735 ILCS 5/2-1401(b) (West 2012). Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985) provides that service of a section 2-1401 petition must comply with Illinois Supreme Court Rule 105 (eff.

Jan. 1, 1989), which in turn mandates service either by summons, prepaid certified or registered mail, or publication. Under Rule 105(a) (eff. Jan. 1, 1989), a party responding to a section 2-1401 petition has 30 days after notice has been served in which to file an answer or otherwise appear. In *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009), our supreme court determined that a petition is not ripe for adjudication before the 30-day period for a response expires. Where the State fails to answer the petition within the 30-day period, it is deemed to admit all well-pleaded facts, and the petition is ripe for adjudication. *Laugharn*, 233 Ill. 2d at 323; *Vincent*, 266 Ill. 2d at 9-10. Our review of the denial of a section 2-1401 petition is *de novo*. *Laugharn*, 233 Ill. 2d at 322.

¶ 8 In the instant case, we find dispositive our supreme court's recent decision in *People v. Carter*, 2015 IL 117709. In *Carter*, the defendant filed a "Motion to Vacate Judgment" and attached a certificate of service indicating that he had placed it in the "institutional mail" at the correctional center where he was incarcerated. *Id.* ¶ 5. The circuit court dismissed the pleading *sua sponte*. *Id.* ¶ 6. On appeal, the defendant claimed that the circuit court's dismissal of his section 2-1401 petition was premature given that the petition was not properly served on the State. *Id.* ¶ 7. This court vacated the circuit court's judgment and remanded for further proceedings. *Id.* ¶ 11.

¶ 9 On further review, our supreme court held that there was no meaningful record from the circuit court to be reviewed regarding the defendant's claimed error of defective service. *Id.* ¶ 20. The "scant record" from the circuit court consisted solely of the defendant's statement in the proof of service that he "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." *Id.* The *Carter* court found that this statement did not serve as a basis for the defendant's contention of error because it only showed where the defendant mailed his petition -- the institutional mail -- and the medium through which it was to be transmitted -- the United States Postal Service. *Id.* The language in the proof of service did not, however, affirmatively establish transmittal by regular mail, and thus deficient service. *Id.* ¶¶ 20, 23.

Because the defendant failed to affirmatively establish through the record that the State was not given proper service or that the circuit court's *sua sponte* dismissal was premature, which was the defendant's burden as the appellant, the *Carter* court presumed the circuit court's order was rendered in accordance with applicable law. *Carter*, 2015 IL 117709, ¶¶ 19, 24-26. Accordingly, the *Carter* court affirmed the circuit court's judgment dismissing the defendant's petition. *Id.* ¶ 26.

¶ 10 As in *Carter*, we cannot say in the instant case that the record affirmatively establishes that defendant's service upon the State was deficient. Here, as in *Carter*, there is a scant record with which to review defendant's claim of deficient service. The sole evidence of service is the "Proof / Certificate of Service" attached to defendant's petition, which alleges that defendant placed the petition in the "institutional mail at the Stateville Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service." The only information we are able to ascertain from this document is where defendant mailed his petition -- the institutional mail at the Stateville Correctional Center -- and the medium through which it was to be transmitted -- the United States Postal Service. However, nothing in defendant's petition or the proof of service indicates whether his petition was mailed via regular, certified, or registered mail. Absent an affirmative showing that defendant did not properly serve

the State, we must presume the circuit court rendered its order dismissing defendant's section 2-1401 petition in conformance with the law. See *id.* ¶ 24; see also *People v. Jones*, 2015 IL App (1st) 133123, ¶ 36 (affirming the dismissal of section 2-1401 petition where the defendant failed to satisfy his burden to present a sufficient record showing that his means of service was improper). Defendant's contention fails.

¶ 11 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 12 Affirmed.