

No. 1-14-1518

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. 06 CR 3104
)	
CRAIG WILLIAMS,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* Summary dismissal of defendant's postconviction petition affirmed over his contention that his cause should be remanded for further proceedings where the clerk of the circuit court failed to timely notify him of the dismissal of his petition.

¶ 2 Defendant, Craig Williams, appeals from an order of the circuit court of Cook County summarily dismissing his *pro se* petition for relief under the Post-Conviction Hearing Act (Act).

725 ILSC 5/122-1 *et seq.* (West 2010). On appeal, he solely contends that his cause should be

remanded for further proceedings because the clerk of the circuit court failed to timely notify him that his petition had been dismissed.

¶ 3 The record shows that defendant was charged by indictment with six counts of first degree murder in connection with the shooting death of Willie Miles on January 12, 2006. On September 7, 2010, defendant pleaded guilty to the amended charges of second degree murder and aggravated discharge of a firearm in exchange for the State's recommendation of consecutive terms of imprisonment of 20 and 4 years, respectively. After the State supplied the factual basis for defendant's plea, defendant waived his right to a presentence investigation report and the court sentenced him in accordance with the plea agreement. Defendant did not move to withdraw his guilty plea or file a direct appeal.

¶ 4 On August 29, 2013, defendant filed the *pro se* postconviction petition at bar alleging, *inter alia*, that his trial counsel was ineffective and that he entered into the plea agreement involuntarily. On November 8, 2013, the circuit court summarily dismissed defendant's petition in a written order. In its order, the circuit court found that defendant failed to present the gist of a claim of the deprivation of his constitutional rights and that his petition was frivolous and patently without merit.

¶ 5 On November 25, 2013, the clerk of the circuit court sent a notice to defendant at the Pinckneyville Correctional Center that the circuit court had dismissed his petition. On June 6, 2014, defendant filed a motion in this court for leave to file a late notice of appeal from the circuit court's judgment of November 8, 2013. In his motion, defendant stated that on November 6, 2013, he was transferred from the Pinckneyville Correctional Center to the Dixon Correctional

Center and never received notice that his petition had been dismissed. On June 6, 2014, this court granted defendant's motion for leave to file a late notice of appeal.

¶ 6 On appeal, defendant abandons the arguments made in his postconviction petition, and solely contends that his cause should be remanded for further postconviction proceedings because the clerk of the circuit court failed to timely notify him that his petition had been dismissed. He maintains that his right to appeal was affected by the untimely service of the final disposition of his *pro se* petition. The State responds that defendant did not suffer any prejudice as a result of the untimely notice, and, therefore, there is no cause for remand.

¶ 7 We initially observe that in solely contending that the notice of the dismissal of his petition was untimely, defendant has waived for review all of the substantive issues raised in his petition. *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006). The Act provides that if defendant is sentenced to imprisonment and the circuit court determines that his petition is frivolous or patently without merit, it shall dismiss the petition in a written order and such order "shall be served upon the petitioner by certified mail within 10 days of its entry." 725 ILCS 5/122-2.1(a)(2) (West 2012). Here, the parties do not dispute that more than 10 days elapsed between the entry of the circuit court's judgment on November 8, 2013, and when the clerk sent notice to defendant via certified mail on November 25, 2013. The State contends, however, citing *People v. Robinson*, 217 Ill. 2d 43 (2005), that defendant suffered no prejudice as a result of the late notice where this court granted him leave to file a late notice of appeal.

¶ 8 In *Robinson*, defendant filed a *pro se* postconviction petition that the circuit court summarily dismissed, but the notice of the dismissal was not sent until 12 days after the entry of the judgment. *Id.* at 47. Nevertheless, defendant filed a timely notice of appeal. *Id.* The supreme

court determined that the language of section 122-2.1(a)(2) directing the clerk to send notice within 10 days was "directory, and thus the clerk's tardiness did not invalidate the judgment of the circuit court." *Id.* at 59. The court explained that the 10-day service provision is designed to protect defendant's right to appeal. *Id.* at 57. The court reasoned that where defendant still had adequate time to file a notice of appeal and "it is not difficult to prepare a notice of appeal," that he was unaffected by the untimely service. *Id.* The court concluded that defendant required "no remedy because he was not prejudiced by the clerk's error. He filed his notice of appeal on time." *Id.* at 60.

¶ 9 In this case, although defendant did not file a timely notice of appeal, he was not prejudiced the clerk's tardiness because this court allowed him leave to file a late notice of appeal. Here, as in *Robinson*, defendant had adequate time to file a timely notice of appeal despite the late notice by the clerk because only 17 days had passed between the entry of the court's judgment and the clerk's mailing of the notice and "it is not difficult to prepare a notice of appeal." *Robinson*, 217 Ill. 2d at 57; see also Ill. S. Ct. R. 303(a) (eff. June 4, 2008) ("The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from"). Even assuming defendant did not receive the notice from the clerk as stated in his motion for leave to file a late notice of appeal, this court granted his motion allowing him leave to file a late notice, and his appeal is currently before this court. Accordingly, defendant is not entitled to any remedy on account of the clerk's error because he ultimately suffered no prejudice. *Robinson*, 217 Ill. 2d at 60.

¶ 10 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 11 Affirmed.