SIXTH DIVISION
March 25, 2016

No. 1-14-1571

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. 10 CR 2740
	)	
RICHARD BILIK,	)	Honorable
	)	Garritt E. Howard,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court's *sua sponte* dismissal of defendant's *pro se* section 2-1401 petition is affirmed because defendant could not affirmatively establish, based upon the record on appeal, improper service on the State.

¶ 2 Defendant Richard Bilik appeals from the *sua sponte* dismissal of his *pro se* petition for relief pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2014)). On appeal, defendant contends that because he did not properly serve his section

2-1401 petition on the State, the trial court's order dismissing the petition was "premature" and should be vacated. We affirm.

¶ 3 Following a jury trial, defendant was found guilty of aggravated arson and sentenced to 15 years in prison. We affirmed his conviction on direct appeal. See *People v. Bilik*, 2014 IL App (1st) 122903-U. Defendant then filed an unsuccessful collateral attack upon that conviction. See *People v. Bilik*, 2015 IL App (1st) 132821-U.

¶ 4 Defendant then filed a *pro se* petition for relief from judgment alleging, in pertinent part, that he was denied due process because he was prosecuted by a member of the judicial branch who used and abused "powers" that belonged to a different branch of government. The petition was signed by defendant and dated March 25, 2014. Although the petition's index indicates that the "Notice of Filing/Affidavit of Service" is attached as "Exhibit G," no such document is included in the record on appeal.

¶ 5 The clerk of the circuit court stamped the petition "filed" on April 7, 2014. The petition was docketed on April 15, 2014, and the matter appeared before the trial court on April 16, 2014.

¶ 6 At the April 16, 2014 hearing, the trial court stated that defendant filed a section 2-1401 petition in which defendant alleged that the State's Attorney's office did not have the authority to prosecute him. The court then dismissed the petition because it did not "state a proper basis" for a petition for relief from judgment. The transcript from April 16, 2014, indicates that an assistant State's Attorney was present in court.

¶ 7 On appeal, defendant contends that because "the record does not reflect that the State was properly served" with the petition at issue here, the trial court's *sua sponte* dismissal of the petition was premature. Defendant therefore concludes that the dismissal must be vacated and

the cause remanded for further proceedings. Defendant makes no argument on appeal regarding the merits of his petition.

¶ 8 Initially, we note that by solely challenging the *sua sponte* dismissal of his petition as premature because the State was not properly served, defendant has waived any challenge to the actual merits of his petition. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 9 Section 2-1401 of the Code 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) states that "[a]ll parties to the petition shall be notified as provided by rule." 735 ILCS 5/2-1401(b) (West 2014). Supreme Court Rule 106 (eff. Aug. 1, 1985), states that service of a section 2-1401 petition must comply with Supreme Court Rule 105 (eff. Jan. 1, 1989), which in turn mandates service either by summons, prepaid certified or registered mail, or publication.

¶ 10 Pursuant to Supreme Court 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. Our supreme court has determined that a petition is not ripe for adjudication before the 30-day period for a response expires. See *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009). In those cases 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. *Id*. Our review of the denial of a section 2-1401 petition is *de novo*. *Id.* at 322.

¶ 11 Since the parties filed their briefs in this case, our supreme court decided *People v. Carter*, 2015 IL 117709, which is dispositive of the issue presented here. In *Carter*, the defendant filed a motion to vacate the judgment and attached a certificate of service indicating that he had placed the motion in the institutional mail at the facility where he was incarcerated.

The circuit court dismissed the pleading *sua sponte*. On appeal, the defendant claimed that the dismissal was premature because the petition was never properly served on the State. *Id.* ¶ 7.

¶ 12 Our supreme court determined that there was no meaningful record from the circuit court which could be reviewed to analyze the defendant's alleged error, *i.e.*, 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 court found that this statement could not serve as a basis for the defendant's contention of error because it only showed where the defendant mailed his petition, the correctional facility's 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 affirmatively establish transmittal by regular mail, and the court declined to assume, based upon the record before it, that the defendant's service on the State was deficient. *Id.* ¶¶ 20, 23. Because the defendant, as the appellant, failed to affirmatively establish through the record on appeal that the State was not properly served, the court presumed the circuit court's order dismissing the petition was rendered in accordance with applicable law. *Id.* ¶¶ 19, 23-24.

¶ 13 Here, we cannot conclude that the record on appeal affirmatively establishes that defendant's service upon the State was deficient. As in *Carter*, there is but a "scant record" with which to review defendant's claim of deficient service. Although the index to defendant's petition indicates that a "Notice of Filing/Affidavit of Service" is attached as "Exhibit G," no such document is included in the record on appeal. In other words, nothing in the record on appeal indicates whether his petition was actually mailed by regular, certified, or registered mail. Our supreme court has held that a defendant who "seeks to use, on appeal, his own error, by way

of allegedly defective service, in an effort to gain reversal of a circuit court's *sua sponte* dismissal" of his section 2-1401 petition "must affirmatively demonstrate the error via proceedings of record." See *id*. ¶¶ 19, 25. Under *Carter*, we must find that defendant has failed to satisfy his burden to present a sufficient record showing that his means of service was, in fact, improper, and we therefore affirm the dismissal of his section 2-1401 petition.

¶ 14 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.