

SIXTH DIVISION  
April 15, 2016

No. 1-14-1936

**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 CR 18047
	)	
EVERETT WEST,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirmed the dismissal of defendant's postconviction petition over argument that the circuit court, in dismissing the petition, did not comply with the written order provision of section 122-2.1(a) of the Post-Conviction Hearing Act.

¶ 2 Defendant filed a *pro se* petition (petition) under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West 2012)), which was dismissed with oral findings of fact and conclusions of law by the circuit court. On appeal, defendant, citing *People v. Perez*, 2014 IL 115927, argues that the dismissal of a postconviction petition must occur by the entry of a

written order with findings within 90 days of its filing and, since that was not done here, his petition must be remanded for further proceedings under the Act. We affirm.

¶ 3 The evidence at defendant's jury trial showed that on August 19, 2008, defendant and codefendant, Wallace Simmons, entered a store where Ghazi Hijazin, Salem Hijazin, and Jamil Zumot were present. After initially looking at merchandise, defendant produced a handgun and held Ghazi, Salem, and Zumot at gunpoint. Defendant placed the gun to Salem's head and repeatedly threatened to kill him. Defendant forced the three men to lie on the floor, and codefendant took each man's wallet. Defendant kicked Salem several times. Eventually a police officer appeared outside the store. Salem grabbed defendant's handgun, threw it to the floor, and struck defendant in the face. Salem and Ghazi eventually chased defendant and codefendant out of the store. Police officers arrested them shortly thereafter. Defendant and codefendant were found with items taken from Ghazi and Salem.

¶ 4 The jury found defendant guilty of two counts of armed robbery. He was sentenced to two concurrent terms of 29 years' imprisonment; each term included a 15-year enhancement based upon defendant's use of a firearm. This court affirmed defendant's convictions on direct appeal in *People v. West*, 2013 IL App (1st) 102984-U.

¶ 5 On December 26, 2013, defendant filed a motion requesting that the petition proceed to the second stage. In his motion, defendant alleged that he had mailed the petition on July 29, 2013, and it had not been dismissed within the mandatory 90 days. The petition was attached to the motion and was stamped as filed on January 15, 2014 and docketed on January 24, 2014. In the petition, defendant argued that: (1) trial counsel provided ineffective assistance; (2) appellate

counsel was ineffective for failing to raise trial counsel's performance on appeal; and (3) his sentences were an abuse of discretion.

¶ 6 The petition was before the circuit court on March 21, 2014. On that date, the circuit court found that there was no proof to support defendant's allegation that he had mailed the petition in July 2013. The court then determined that defendant's petition was frivolous and patently without merit and dismissed it. The circuit court made the following oral findings:

"[Defendant] questions suppressing the evidence – the gun that was in the car. However, the gun that was in the car had nothing to do with the crime because the gun that was used in the crime was taken from him by the complaining witness, and he ran from the police.

The evidence in this case was overwhelming. He was caught a short time later. He also makes issue regarding fingerprints and DNA on the gun. The gun was handled by – there was a struggle with the gun between the defendant and one of the complaining witnesses. And, actually, then turned over to the police as the complaining witness was running out.

He also makes mention of the fact that there was no motion to reconsider his sentence. If I remember correctly, this certainly was within the guidelines of the sentencing statute. And I remembered correctly, and I did refresh my memory.

Defendant was given – he had one previous armed robbery and three previous aggravated robberies. So this made it his second armed robbery. Certainly, there's nothing that I would have done differently."

¶ 7 The half-sheet entry for March 21, 2014 stated that the petition had been dismissed. Additionally, the record includes "a criminal disposition sheet," with defendant's name, the case number, and the charges against him. The disposition sheet indicated that, on March 21, 2014, an "order" was entered dismissing the petition. The clerk, on March 31, 2014, mailed the disposition sheet to defendant with a notice that the dismissal order was entered on March 21, 2014, and set forth the necessary steps for an appeal. Defendant has appealed the dismissal of his petition.

¶ 8 Defendant's sole argument on appeal is that the circuit court did not enter a written dismissal order with written findings within 90 days of the petition being filed and docketed as required by section 122-2.1(a)(2) of the Act. Defendant does not argue the merits of his petition. Further, defendant does not argue that the petition was mailed in July 2013, and does not argue that the March 21, 2014, dismissal of his petition did not occur within 90 days of its filing on January 15, 2014, and docketing on January 25, 2014. Defendant, thus, has forfeited these issues. See *People v. Skaterfield*, 2015 IL App (1st) 132355, ¶ 11.

¶ 9 The State, in response, citing *People v. Porter*, 122 Ill. 2d 64 (1988), maintains that the language of section 122-2.1(a)(2) of the Act, which states that the court must dismiss a petition with written findings, is directory and not mandatory. After filing its brief, the State, with leave of the court, cited as additional authority, *People v. Cooper*, 2015 IL App (1st) 132971, to support its position that the dismissal was properly entered of record on March 21, 2014.

¶ 10 A postconviction proceeding consists of three stages. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001)). The initial stage of proceedings is governed by section 122-2.1(a) of the Act which states: "Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to this Section." *Id.* at 244 (citing 725 ILCS

5/122-2.1(a) (West 2012)). "If the court determines that the petition is either frivolous or patently without merit, the court must dismiss the petition in a written order" (*id.*) and must specify "the findings of fact and conclusions of law it made in reaching its decision." *Id.* at 258-59. Such order of dismissal is a final judgment and 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). A petition which is not dismissed within 90 days must advance to second-stage proceedings. 725 ILCS 5/122-2.1(b) (West 2012).

¶ 11 We review the dismissal of a postconviction petition under a *de novo* standard. *Edwards*, 197 Ill. 2d 239 at 247. Further, the issue before this court is a matter of statutory construction of section 5/122-2.1(a)(2), which we review *de novo*. *People v. Conick*, 232 Ill. 2d 132, 138 (2008). The guiding rule of statutory construction is to determine and give effect to the legislature's intent. *People v. Alcozer*, 241 Ill. 2d 248, 254 (2011).

¶ 12 On March 21, 2014, the circuit court, in open court before a court reporter, reviewed the petition, found it frivolous and without merit, and dismissed it. The dismissal was made of record and memorialized by the March 21, 2014, entry on the half-sheet and the criminal disposition sheet. Defendant was timely notified of the entry of the dismissal by the transmission of the criminal disposition sheet. Further, the notice serving the disposition sheet informed defendant of his right to appeal the dismissal and steps necessary to preserve an appeal. Defendant does not claim he never received the disposition sheet.

¶ 13 We first consider whether the dismissal was entered by the court. The holding in *Cooper* guides our analysis. In *Cooper*, the defendant's *pro se* postconviction petition was summarily dismissed by the circuit court. The dismissal was memorialized in a disposition sheet sent to

defendant and on the circuit court's half-sheet. *Cooper*, 2015 IL App (1st) 132971, ¶ 7. Citing *Perez*, we found that "a written order of summary dismissal is not required." *Id.* ¶ 14 (citing *Perez*, 2014 IL 115927, ¶¶ 15, 29). Instead, "a court summarily dismisses a postconviction petition when its decision is entered of record." *Id.* (citing *Perez*, 2014 IL 115927, ¶¶ 15, 29). We found that the dismissal was "entered" on the date documented by the half sheet entry of dismissal and the disposition sheet. *Id.*

¶ 14 As in *Cooper*, the circuit court's dismissal of the petition in this case was entered on March 21, 2014, as evidenced by the half-sheet entry and the disposition sheet which was sent to defendant. Thus, the dismissal was entered within 90 days of the filing and docketing of the petition.

¶ 15 As to defendant's argument that the circuit court erred in not making written findings at the time the dismissal was entered, we look to *Porter* for guidance. In *Porter*, the defendants argued that the summary dismissals of their postconviction petitions without the entry of written orders containing specific findings and conclusions were erroneous under section 122-2.1(a). *Porter*, 122 Ill. 2d at 81. Looking at the language of section 122-2.1(a), our supreme court made certain determinations. The court concluded that "the use of the term 'shall' does not refer to the contents of the court's order of dismissal itself, but rather to the court's duty to dismiss a petition if it is frivolous or patently without merit. The statute merely directs that the court's written order specify its findings of fact or conclusions of law in order to facilitate appellate review of the court's dismissal." *Id.* at 81-82 (quoting *People v. Wilson*, 146 Ill. App. 3d 567, 579 (1986)). To support this conclusion the court stated that "a mandatory interpretation of section 122-2.1(a) would violate the doctrine of separation of powers." *Id.* at 82. The court further observed that

section 122-2.1(a) " 'contains no expression that the proceedings should be held void if the circuit court fails to specify its findings, nor would such a failure injure a defendant's rights since the dismissal of a post-conviction petition is subject to review.' " (Citations omitted.) *Id.* (quoting *People v. Wilson*, 146 Ill.App.3d 567, 579 (1986)). Accordingly, our supreme court ruled that the "the failure to specify the findings of fact and conclusions of law in the written order does not require reversal of the dismissal order." *Id.* at 82.

¶ 16 On March 21, 2014, the circuit court, in support of the dismissal, made detailed oral findings on the record which were later transcribed. Thus the circuit court facilitated appellate review of the merits of the petition by providing the basis for its dismissal. Pursuant to *Porter*, we find no reason to reverse the dismissal here because the circuit court made oral findings rather than written findings.

¶ 17 Defendant however argues that our supreme court's more recent opinion in *Perez* requires that a first-stage dismissal be accomplished by a written order with findings. We disagree.

¶ 18 The issue in *Perez* was whether a first stage dismissal was timely where the circuit court signed a written dismissal order on the ninetieth day, but the clerk did not enter the dismissal order until the following day. *Perez*, 2014 IL 115927, ¶ 1. Specifically *Perez* addressed the issue of when the written dismissal order was "entered" and, thus, made final for purposes of the 90-day requirement of section 122-2.1(a). *Id.* ¶ 10. After examining the language of Section 122-2.1(a) and analyzing at length Supreme Court Rule 272 (Ill. S. Ct. R. 272 (eff. Nov. 1, 1990)), the court found that the dismissal order was not entered at the time the judge signed it, but when it was entered on the record. See *Perez*, 2014 IL 115927, ¶¶ 11-25.

¶ 19 During its discussion, our supreme court addressed the State's hypothetical argument that the circuit court would have met the 90-day requirement if it had announced in court that it was dismissing the petition, relying on the public expression doctrine. *Id.* at ¶ 23. Our supreme court noted that the defendant's reliance on the public expression doctrine was misguided, and that a simple announcement of a dismissal by the court would not have met the requirements of section 122-2.1(a) that a dismissal be "entered." *Id.*

¶ 20 The issue which is before this court was not before the supreme court in *Perez*. The question here is whether the lack of an order of dismissal with written findings within 90 days required the advancement of the petition to the second-stage of proceedings. Further, our supreme court, in its opinion in *Perez* did not address or consider its earlier holding in *Porter*. Consequently, we conclude that *Perez* does not require reversal of the dismissal of defendant's petition.

¶ 21 We acknowledge that the *Perez* opinion indicated that the mere announcement of a dismissal in open court within 90 days may not be sufficient under section 122-2.1(a). *Id.* ¶ 23. However, this case does not concern a simple oral pronouncement of a dismissal. The circuit court gave its findings when it dismissed the petition in open court and the dismissal was entered and memorialized by the entry on the half-sheet and by the disposition sheet.

¶ 22 As discussed, this court's holding in *Cooper* recognized and cited *Perez*. Under *Cooper*, the dismissal in this case was "entered" of record within 90 days of its filing and docketing as evidenced by the notation on the court's half-sheet and the disposition sheet and, therefore, section 122-2.1(a) was satisfied.



No. 1-14-1936

¶ 23 In summary, while a written order with findings is advisable, the circuit court's oral dismissal was entered of record on March 21, 2014, well within the 90-day requirement. The circuit court made detailed findings on the record to facilitate appellate review of the dismissal. As such, the reversal of the circuit court's dismissal is not required by section 122-2.1(a) of the Act.

¶ 24 For the foregoing reasons, we affirm the dismissal of the petition at the first stage of postconviction proceedings.

¶ 25 Affirmed.