

Nos. 1-14-1997 and 1-14-2827
(CONSOLIDATED)

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. 89 CR 5408
)	
HAROLD OLIVER,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors 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 Harold Oliver 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

Nos. 1-14-1997 and 1-14-2827 (Consol.)

2014)). 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 1991 jury trial, defendant was convicted of aggravated criminal sexual assault and armed robbery. He was sentenced to an extended term of 60 years in prison for aggravated criminal sexual assault and a consecutive term of 30 years in prison for armed robbery. On direct appeal, this court reversed and remanded for a new trial. *People v. Oliver*, 265 Ill. App. 3d 543 (1994). Following retrial in 1997, a jury again found defendant guilty of aggravated criminal sexual assault and armed robbery. The trial court sentenced defendant to consecutive terms of 60 and 30 years in prison, respectively. This court affirmed. *People v. Oliver*, 306 Ill. App. 3d 59 (1999). Defendant filed a *pro se* petition for postconviction relief on February 1, 2001. He subsequently filed other motions and claims, and on June 7, 2011, filed a petition to consolidate all of his claims in one petition. The trial court granted the State's motion to dismiss, and this court affirmed the dismissal on appeal. *People v. Oliver*, 2013 IL App (1st) 120793. Defendant subsequently filed a motion for leave to file a successive postconviction petition. The trial court denied the motion and defendant appealed. This court granted appointed counsel's motion to withdraw and affirmed the trial court's judgment. *People v. Oliver*, 2014 IL App (1st) 130927-U.

¶ 4 On February 3, 2014, defendant mailed the section 2-1401 petition at issue in the instant case 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 "Notice and Proof of Service" indicated that defendant "served upon the attorney for respondent *** via the United States mail system through the Stateville Prison mailroom, with postages sufficiently fully

prepaid prior to mailing out for delivery." The clerk of the circuit court received the petition on February 18, 2014, and stamped it "filed" on February 27, 2014.

¶ 5 The circuit court first addressed the petition on April 23, 2014, when it stated that it was continuing the matter for review. The transcript of proceedings from that date reflects that an Assistant State's Attorney was present, but did not speak on the record. On May 9, 2014, the circuit court denied defendant's petition. No prosecutor's name appeared on the cover sheet of the transcript of proceedings and no one other than the court spoke on the record.

¶ 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.

¶ 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 "Notice and Proof of Service" attached to defendant's petition, which alleges that defendant served the State "via the United States mail system through the Stateville Prison mailroom, with postages sufficiently fully prepaid prior to mailing out for delivery." The only information we are able to ascertain from this document is where defendant mailed his petition -- the Stateville Prison mailroom -- and the medium through which it was to be transmitted -- the United States mail. 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); *People v. Rolfe*, 2016 IL App (4th) 130832, ¶ 12 (same). Defendant's contention fails.

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

¶ 12 Affirmed.