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2016 IL App (3d) 140302-U

Order filed January 19, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0302
)	Circuit No. 11-CF-311
ROBERT L. TEAGUE,)	Honorable
Defendant-Appellant.)	Paul L. Mangieri, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Carter concurred in the judgment.
Presiding Justice O'Brien specially concurred.

ORDER

- ¶ 1 *Held:* The record is inadequate to determine whether defendant failed to comply with Illinois Supreme Court Rule 105 when he served his section 2-1401 petition on the State, and we affirm the trial court's dismissal.
- ¶ 2 Defendant, Robert L. Teague, appeals from the dismissal of his section 2-1401 petition for relief from judgment. 735 ILCS 5/2-1401 (West 2012). We affirm.

¶ 3

FACTS

¶ 4

Defendant pled guilty to one count of attempted escape (720 ILCS 5/8-4(a), 31-6(a) (West 2010)) and was sentenced to a term of three years' and four months' incarceration. On January 16, 2014, defendant filed a section 2-1401 petition. In a contemporaneously filed certificate of service, defendant averred:

"Please take notice that on Saturday, January 11, 2014, I cause [*sic*] the petition for relief from judgement to be served upon the assistant State's Attorney by placing said petition in Pontiac Correctional Center Mail."

¶ 5

On March 11, 2014, the court dismissed defendant's section 2-1401 petition noting that defendant's argument was without merit. On April 7, 2014, defendant filed a notice of appeal.

¶ 6

ANALYSIS

¶ 7

On appeal, defendant argues that the trial court erred in sua sponte dismissing his section 2-1401 petition as it was not ripe for adjudication where it was not properly served on the State. Applying the supreme court's recent decision in *People v. Carter*, 2015 IL 117709, we hold defendant has failed to affirmatively establish that the State was not given proper notice. Without such a showing, we must presume the trial court's order conforms with the law. *Id.*

¶ 23.

¶ 8

Section 2-1401 of the Code of Civil Procedure provides a statutory procedure for the vacatur of a final judgment that is more than 30 days but less than 2 years old. 735 ILCS 5/2-1401 (West 2012). The notice requirements for filing a section 2-1401 petition are established by Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989). Rule 105 provides that notice may be served either by summons, certified or registered mail, or by publication. Ill. S. Ct. R. 105(b) (eff. Jan. 1, 1989). After notice has been served, the responding party has 30 days to file an

answer or otherwise appear. Ill. S. Ct. R. 105(a) (eff. Jan. 1, 1989). The party opposing the petition need not file a responsive pleading (*People v. Vincent*, 226 Ill. 2d 1, 9 (2007)), and the court may sua sponte dismiss a petition after the expiration of the 30-day response period (*People v. Laugharn*, 233 Ill. 2d 318, 323 (2009)). We review the dismissal of a section 2-1401 petition de novo. *Id.* at 322.

¶ 9 In *Carter*, our supreme court reviewed the issue of whether a trial court's sua sponte dismissal of a section 2-1401 petition was premature because the State was not properly served. Defendant's section 2-1401 petition was accompanied by a "Proof/Certificate of Service" that alleged defendant placed the pleading in the "institutional mail." *Carter*, 2015 IL 117709, ¶ 5. The addressees on the certificate included the clerk of the court and the State's Attorney. *Id.* The trial court dismissed defendant's section 2-1401 petition, and on appeal, defendant argued that the sua sponte dismissal was premature, given the petition was not properly served on the State. *Id.* ¶¶ 6, 7. The appellate court held that the trial court prematurely dismissed defendant's section 2-1401 petition. *Id.* ¶ 10; *People v. Carter*, 2014 IL App (1st) 122613, ¶ 25. On review, the supreme court reversed the appellate court's finding on the grounds that defendant did not affirmatively demonstrate deficient service. Specifically, defendant's proof of service did not "affirmatively establish that defendant mailed his petition via some means other than certified or registered mail." *Carter*, 2015 IL 117709, ¶ 20. The supreme court affirmed the trial court's dismissal noting that "the absence of [certified mail return receipt] in the record does not affirmatively establish that service by certified mail was not accomplished, as it is up to the sender to file the receipt or not." (Emphases in original.) *Id.* ¶ 23.

¶ 10 In this case, defendant argues that his certificate of service shows that a copy of his section 2-1401 petition was erroneously sent to the State by standard mail. However, analogous

to Carter, we find that the record does not support this proposition. The certificate of service merely establishes that defendant served the State, it does not conclusively establish that the State was served in violation of Rule 105 nor does it foreclose the possibility that the State was served via certified or registered mail. Ill. S. Ct. R. 105(b)(1) (eff. Jan. 1, 1989). Further, the trial court dismissed the section 2-1401 petition more than 30 days after defendant certified that he served the State. See *Laugharn*, 233 Ill. 2d at 323. Under *Carter*, defendant has not affirmatively proven that service to the State was defective. Therefore, he may not use his own alleged deficiency on appeal.

¶ 11

CONCLUSION

¶ 12 The judgment of the circuit court of Knox County is affirmed.

¶ 13 Affirmed.

¶ 14 PRESIDING JUSTICE O'BRIEN, specially concurring.

¶ 15 I concur in the majority's overall resolution of this case, but I write separately as I would affirm the trial court's dismissal on grounds that defendant lacked standing to challenge the purported improper service of the section 2-1401 petition on the State.

¶ 16 While I acknowledge that our supreme court has resolved this issue on the adequacy of the record grounds (*Carter*, 2015 IL 117709, ¶ 23), I believe that the alternative approach is to analyze defendant's standing to assert that the State was not served in compliance with Supreme Court Rule 105 (eff. Jan. 1, 1989). See *People v. Kuhn*, 2014 IL App (3d) 130092, ¶ 16. Here, defendant argues that the trial court's dismissal was premature as the State did not receive notice of the petition in accordance with the Rule 105 filing requirements. As the opposing party, defendant does not have standing to object to his own improper service of process on behalf of

the State. See *In re M.W.*, 232 Ill. 2d 408, 427 (2009) (noting a party may object to improper service only on behalf of himself).

¶ 17 I note that *Carter* does not foreclose this analysis, and therefore, I would affirm the trial court's dismissal on grounds that defendant does not have standing to assert a violation of the State's right to proper service.