

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).

2018 IL App (4th) 150977-U

NO. 4-15-0977

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 26, 2018

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Douglas County
ANTONIO SUSTAITA,)	No. 10CF14
Defendant-Appellant.)	
)	Honorable
)	Richard Lee Broch, Jr.,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred by failing to provide defendant with admonitions before recharacterizing his section 2-1401 petition for relief from judgment as a postconviction petition; cause remanded for compliance with those admonitions.

¶ 2 In January 2013, a jury convicted defendant, Antonio Sustaita, of unlawful cannabis trafficking, unlawful possession with intent to deliver cannabis, and unlawful possession of cannabis. In February 2013, the trial court sentenced him to 24 years in prison. This court affirmed his convictions and remanded for the issuance of an amended sentencing judgment. In December 2014, defendant filed a *pro se* petition for relief from judgment. In November 2015, the court recharacterized defendant's petition as a postconviction petition, then dismissed after finding it frivolous and patently without merit.

¶ 3 On appeal, defendant argues the trial court erred in recharacterizing his petition without first providing him the admonitions required under *People v. Shellstrom*, 216 Ill. 2d 45,

833 N.E.2d 863 (2005). We agree and vacate the dismissal and remand the matter for *Shellstrom* admonitions.

¶ 4

I. BACKGROUND

¶ 5 In January 2013, a jury convicted defendant of unlawful cannabis trafficking (720 ILCS 550/5.1(a) (West 2010) (2,500 grams or more)), unlawful possession with intent to deliver cannabis (720 ILCS 550/5(g) (West 2010) (more than 5,000 grams)), and unlawful possession of cannabis (720 ILCS 550/4(g) (West 2010) (more than 5,000 grams)). In February 2013, the trial court sentenced defendant to 24 years in prison. Defendant appealed, arguing (1) the trial court abused its discretion in sentencing him to a term of 24 years in prison; and (2) he was entitled to additional days of credit against his sentence for time spent in custody. This court affirmed defendant's convictions and remanded for the issuance of an amended sentencing judgment.

People v. Sustaita, 2015 IL App (4th) 130445-U.

¶ 6

In December 2014, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2014)), alleging, *inter alia*, his defense counsel conspired with "officers and employees" of the Douglas County sheriff's office to prevent him from (1) "communicating with attorney" and (2) challenging his confinement. In one allegation, defendant claimed the State's Attorney "prevented and deterred witness testimony" by threatening a witness who "would have been favorable" to defendant at trial.

¶ 7

On November 16, 2015, the trial court held a hearing on defendant's petition, referencing the petition as a "Post Conviction Motion Pursuant to Section 2-1401." The court noted it considered the hearing a "stage one hearing with regard to a post conviction motion." The court advised defendant it would "be ruling on [defendant's] request to have counsel

appointed and to determine whether or not his post conviction petition has shown a gist of an issue which would allow the Court to proceed to the next stage." Based upon "the pleadings on file," the trial court found defendant (1) relied on facts in his petition "that [he] knew or should have known at the time [his] original appeal was taken," and (2) failed to establish ineffective assistance of counsel. The court dismissed defendant's petition as frivolous and patently without merit.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues the trial court erred by recharacterizing his *pro se* petition as a postconviction petition without first providing him the admonitions required by *Shellstrom*. The State concedes and we agree.

¶ 11 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2014)) provides a remedy for defendants whose convictions resulted from a substantial violation of their constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). The Act sets up a three-stage process for adjudicating postconviction petitions. *People v. Bocclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002). A defendant may file only one postconviction petition without obtaining leave of court. 725 ILCS 5/122-1(f) (West 2014). To obtain leave of court, the defendant must satisfy the cause-and-prejudice standard by showing "cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure." 725 ILCS 5/122-1(f) (West 2014).

¶ 12 A trial court may recharacterize an otherwise labeled *pro se* pleading and treat it as a postconviction petition. "[W]here a *pro se* pleading alleges a deprivation of [constitutional] rights cognizable in a postconviction proceeding, a trial court may treat the pleading as a

postconviction petition, even where the pleading is labeled differently." *Shellstrom*, 216 Ill. 2d at 53. However, when a court recharacterizes a *pro se* pleading as a postconviction petition, the court must first do the following:

"(1) notify the *pro se* litigant that the court intends to recharacterize the pleading, (2) warn the litigant that this recharacterization means that any subsequent postconviction petition will be subject to the restrictions on successive postconviction petitions, and (3) provide the litigant an opportunity to withdraw the pleading or to amend it so that it contains all the claims appropriate to a postconviction petition." *Shellstrom*, 216 Ill. 2d at 57.

¶ 13 These admonishments help ensure defendants raise all applicable claims in their recharacterized postconviction petition, lest they lose the opportunity to raise them later because of the cause-and-prejudice test. See also *People v. Pearson*, 216 Ill. 2d 58, 68, 833 N.E.2d 827, 832 (2005) (*Shellstrom* rationale also applies to situations where the trial court recharacterizes a pleading as a *successive* postconviction petition.)

¶ 14 The record shows the trial court failed to give defendant the requisite admonishments prior to recharacterizing his section 2-1401 petition as a postconviction petition. We vacate the circuit court's dismissal of defendant's petition and remand this cause for compliance with the *Shellstrom* admonishments. *Shellstrom*, 216 Ill. 2d at 57.

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we vacate the trial court's dismissal of defendant's *pro se* petition, and we remand this case with directions the court admonish defendant pursuant to *Shellstrom*, 216 Ill. 2d at 57.

¶ 17 Vacated and cause remanded with directions.