

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).

FILED

October 10, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 160512-U

NO. 4-16-0512

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee)	Circuit Court of
v.)	McLean County
ERNEST JAMISON,)	No. 95CF609
Defendant-Appellant.)	
)	Honorable
)	Paul G. Lawrence,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed defendant’s appeal because the trial court had not entered a final and appealable order, and thus, the appellate court lacked jurisdiction.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel. In March 2016, defendant, Ernest Jamison, filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)), alleging that the failure of the trial court to hold a preliminary hearing on an armed robbery charge that was added by information just prior to his guilty plea to that charge and first degree murder rendered these pleas void. In April 2016, the trial court wrote defendant a letter informing him that he failed to serve his petition on the State in compliance with Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989) and it would be dismissed for want of prosecution if defendant did not obtain proper service.

¶ 3 Later in April, defendant refiled his petition but did not serve it on the State via certified mail. In May 2016, the trial court dismissed the petition for want of prosecution. In June 2016, defendant filed a motion to reconsider which the court denied. Defendant appealed.

¶ 4 In April 2018, OSAD filed a motion to withdraw. In its brief, OSAD contends that appeal of this case presents no potentially meritorious issues for review. We conclude the trial court's dismissal for want of prosecution was not a final and appealable order and dismiss this appeal for lack of jurisdiction.

¶ 5 I. BACKGROUND

¶ 6 A. Procedural History

¶ 7 In September 1995, defendant pleaded guilty to first degree murder (720 ILCS 5/9-1(a)(1) (West 1994)) and armed robbery (720 ILCS 5/18-2 (West 1994)) in connection with the shooting death of Susan Gilmore. On the same day defendant pleaded guilty, the State added, by information, the charge of armed robbery. The trial court informed defendant he had the right to have a grand jury return an indictment on the armed robbery charge or he could have a preliminary hearing to determine probable cause for the filing. Defendant waived these rights.

¶ 8 The court later found defendant eligible for the death penalty and sentenced him to death. On direct appeal, the Illinois Supreme Court determined that defendant had not been properly admonished in accordance with Illinois Supreme Court Rule 605(b) (eff. Aug. 1, 1992) and remanded the matter with leave for defendant to move to withdraw his guilty plea after receiving the proper admonishments. *People v. Jamison*, 181 Ill. 2d 24, 30, 690 N.E.2d 995, 998 (1998) (*Jamison I*).

¶ 9 On remand, defendant filed a motion to withdraw his guilty plea, which the trial court denied. The supreme court affirmed the denial and defendant's conviction and sentence.

People v. Jamison, 197 Ill. 2d 135, 139, 756 N.E.2d 788, 790 (2001) (*Jamison II*).

¶ 10 In February 1997, defendant filed a *pro se* petition for postconviction relief. The trial court stayed the proceedings during the pendency of the direct appeal. In April 2006, the court vacated the stay and permitted appointed counsel to file any amendments to the *pro se* petition. In May 2006, counsel filed a motion for leave to withdraw because the petition lacked merit. In October 2006, the court allowed counsel to withdraw and granted the State's motion to dismiss the postconviction petition. In July 2007, this court granted appellate counsel's motion to withdraw and affirmed the dismissal of defendant's petition. *People v. Jamison*, No. 4-06-0966 (2007) (unpublished order under Illinois Supreme Court Rule 23(c)).

¶ 11 B. The Section 2-1401 Petition

¶ 12 In March 2016, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)), alleging that the failure of the trial court to hold a preliminary hearing on the armed robbery charge that was added by information just prior to his guilty plea rendered his plea void. Defendant's certificate of service indicated he sent a copy of the petition to the McLean County State's Attorney via regular United States mail.

¶ 13 In April 2016, the trial court wrote defendant a letter informing him that Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985) and Rule 105 (eff. Jan. 1, 1989) required defendant to serve the State by personal service, certified or registered mail, or by publication. Because defendant had failed to properly serve the State, the court stated it would dismiss defendant's petition for want of prosecution if proper service was not obtained within 30 days.

¶ 14 Later in April 2016, defendant refiled his petition. Defendant's certificate of service again indicated that defendant mailed the petition to the State via regular United States mail.

Nearly 30 days later, in May 2016, the trial court entered an order stating defendant's petition was "dismissed for want of prosecution as there ha[d] been no service pursuant to Supreme Court Rule 105."

¶ 15 In June 2016, defendant filed a motion to reconsider, explaining he was blind and dependent on others to assist him in filing court documents. Defendant claimed he had intended to send the April 2016 petition via certified mail but the prison and the person assisting him mistakenly sent the petition by regular mail. Defendant alleged he had later served the State by certified mail and therefore argued that the court should therefore reverse its ruling. Later that month, the trial court denied defendant's motion to reconsider because "Supreme Court Rule 105 *** ha[d] not been complied with."

¶ 16 C. The Current Appeal and OSAD's Motion To Withdraw

¶ 17 In July 2016, defendant filed a notice of appeal. OSAD was appointed to represent defendant on appeal. In April 2018, OSAD filed a motion to withdraw and served a copy on defendant. Defendant has not filed a response.

¶ 18 In its brief, OSAD contends that appeal of this case presents no potentially meritorious issues for review. We conclude the trial court's dismissal for want of prosecution was not a final and appealable order and dismiss this appeal for lack of jurisdiction.

¶ 19 II. ANALYSIS

¶ 20 A. The Standard of Review and Applicable Law

¶ 21 "[A] reviewing court has an independent duty to *sua sponte* consider questions of jurisdiction." *People v. Vari*, 2016 IL App (3d) 140278, ¶ 7, 48 N.E.3d 265; see also *People v. Young*, 2018 IL 122598, ¶ 14. In the absence of an applicable exception, "[i]t is a well-settled axiom that an appellate court's jurisdiction is limited to appeals from final judgments." *Vari*,

2016 IL App (3d) 140278, ¶ 8. An order dismissing a case for want of prosecution is not an adjudication on the merits and does not constitute a final and appealable order. *People v. Kruger*, 2015 IL App (4th) 131080, ¶ 12, 45 N.E.3d 1103 (citing *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 507, 693 N.E.2d 338, 346 (1998)).

¶ 22 This court has examined the difference between a trial court’s dismissal for lack of diligence in serving a party pursuant to Illinois Supreme Court Rule 103(b) (eff. July 1, 2007) and dismissal for want of prosecution for failure to properly serve. See *Kruger*, 2015 IL App (4th) 131080, ¶¶ 5-12. We explained that a dismissal for want of prosecution did not result in a final and appealable order, while a dismissal with prejudice pursuant to Rule 103(b) was a final decision on the merits. *Id.* ¶¶ 9, 12. The decision to dismiss a case under either method rests within the sound discretion of the trial court. *Id.* ¶¶ 8, 11.

¶ 23 In *Kruger*, the trial court had dismissed the defendant’s 2-1401 petition “for want of prosecution,” without mentioning Rule 103(b). *Id.* ¶ 14. However, the court also expressly stated it was denying the petition on the merits. *Id.* ¶ 15. Accordingly, this court concluded that it had jurisdiction to consider the petition. *Id.*

¶ 24 B. This Case

¶ 25 In this case, the trial court’s sole basis for dismissing defendant’s petition was lack of proper service. The court did not mention Rule 103(b), did not indicate that the dismissal was with prejudice, and did not indicate it was addressing the merits of the petition in any way. Further, the State never appeared or moved to dismiss the petition either for lack of personal jurisdiction or on the merits. Because the trial court dismissed defendant’s petition for want of prosecution, no final and appealable order exists, and this court is without jurisdiction to hear this appeal.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we conclude that this court lacks jurisdiction to review the trial court's order dismissing defendant's section 2-1401 petition for want of prosecution because it is not a final and appealable order. Accordingly, we deny OSAD's motion and dismiss the appeal.

¶ 28 Appeal dismissed.