

No. 1-10-0912

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 00 CR 24953
	)	
JOSEPH EASTLING,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* When the circuit court failed to rule on a postconviction petition within 90 days, the cause must be remanded for second-stage proceedings under the Post-Conviction Hearing Act.
- ¶ 2 Defendant Joseph Eastling appeals from the circuit court's denial of leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). On appeal, he contends that the court erred when it treated his *pro se* postconviction petition as a successive petition. He further contends that because the court failed

to rule upon the petition within 90 days of its docketing, this cause must be remanded for second-stage proceedings under the Act. We vacate and remand.

¶ 3 Following a jury trial in case 00 CR 24953, defendant was convicted of first degree murder in the shooting death of the victim Dwayne Cobbins. He was subsequently sentenced to natural life imprisonment without parole. This judgment was affirmed on appeal. See *People v. Eastling*, 386 Ill. App. 3d 884 (2008).

¶ 4 In an unrelated matter, defendant was convicted, after a bench trial, of first degree murder and attempted murder in case 00 CR 24954. He was subsequently sentenced to consecutive prison terms of 47 years for the murder conviction and to 6 years for the attempted murder. This judgment was affirmed on appeal. See *People v. Eastling*, No. 1-04-2692 (2006) (Unpublished order under Supreme Court Rule 23). In 2007, defendant filed a collateral attack upon his convictions. Although the content of this petition related to the convictions arising from the shooting which resulted in the death of the victim Charles Fowler, *i.e.*, case 00 CR 24954, the petition was labeled as relating to case 00 CR 24953. Defendant was subsequently denied relief. The record does not reflect whether defendant filed an appeal from that denial.

¶ 5 In November 2009, defendant filed the instant *pro se* petition for postconviction relief attacking his conviction in case 00 CR 24953, *i.e.*, the shooting death of Cobbins. This petition was docketed by the circuit court on November 12, 2009.

¶ 6 At a subsequent hearing, the State informed the court that defendant had already filed a postconviction petition which had been summarily dismissed, that the instant petition was a successive petition, and that the court needed to determine if it would permit defendant to file a successive petition. The court replied that it had not realized that the instant petition was a successive petition. The State responded that because the instant petition was a successive petition, the court was not bound by a 90-day deadline. The court again indicated that it was not

aware that defendant had filed a prior petition. On February 25, 2010, the trial court denied defendant leave to file a successive postconviction petition based upon a failure to satisfy the cause-and-prejudice test. The court's order referenced the postconviction petition filed in 2007.

¶ 7 Defendant then filed a *pro se* motion to reconsider alleging that the court erred when it determined that the instant petition was successive because it was not; rather, it was the first postconviction petition filed in case 00 CR 24953. The motion further argued that the petition that the court relied upon to find the instant petition to be successive had been filed in case 00 CR 24954. The motion also argued that the order denying defendant relief discussed facts relating to the Fowler shooting when the instant petition addressed the conviction arising from the Cobbins shooting. The trial court denied this motion.

¶ 8 On appeal, the parties agree that the instant postconviction petition is the first petition filed in Case 00 CR 24953, and that the circuit court did not rule upon this petition within 90 days of its docketing. See 725 ILCS 5/122-2.1 (West 2008). The parties also agree that the 2007 petition that the court relied upon in characterizing the instant petition as successive was mislabeled and related to defendant's convictions in case 00 CR 24954. However, the parties disagree as to what error, if any, occurred when the circuit court characterized the instant petition as successive and entered an order after 90 days had passed.

¶ 9 Defendant contends, relying on *People v. Porter*, 122 Ill. 2d 64, 85-86 (1988), that a dismissal outside the time frame provided by section 122-2.1 of the Act is void and requires that a cause be remanded for second-stage proceedings. The State responds that remand is unnecessary because defendant was responsible for the mistaken belief that this was a successive petition, that defendant should bear the burden of his error, and that remand would only reward defendant for his error. The State further argues that because defendant's action, that is, the mislabeling of his *pro se* postconviction petition in an unrelated action was a "component" of the

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circuit court's failure to rule on the instant petition within 90 days, remand would essentially reward defendant for his "wrong doing" and encourage other defendants to commit similar mistakes in the hopes of benefitting from the ensuing confusion. Although there may certainly be occasions when a defendant purposefully mislabels a filing in an attempt to mislead the court, we do not believe that defendant deliberately mislabeled the *pro se* postconviction petition filed several years prior to the instant petition in an attempt to deceive the court, and it is unclear what possible goal would have been supported by such an action. The State finally argues, relying upon *People v. Watson*, 187 Ill. 2d 448 (1999), that a defendant's actions can affect the circuit court's obligation to comply with the 90-day rule.

¶ 10 This court is unpersuaded by the State's reliance on *People v. Watson*, 187 Ill. 2d 448 (1999). In that case, our supreme court determined that the filing of an amended postconviction petition before the expiration of the initial 90 days and before the circuit court had entered an order dismissing the petition served to restart the 90-day period in which the court may dismiss a petition as frivolous and patently without merit. *Watson*, 187 Ill. 2d at 451. Our supreme court determined that it would be unreasonable to permit the filing of amended petitions, but still require the circuit court to rule on a defendant's submissions within 90 days of the filing of the original petition. *Watson*, 187 Ill. 2d at 451. The court then highlighted this unreasonableness by examining the facts of that case. *Watson*, 187 Ill. 2d at 451. There, defendant mailed the amended petition on the 88th day of the 90-day period during which the circuit court could summarily dismiss the petition. Consequently, our supreme court determined that it would be unfair to hold the circuit court to the "original" 90-day filing date as the court would only have had two days to consider the claims raised in the amended petition. *Watson*, 187 Ill. 2d at 451. However, in the case at bar, defendant did not file an amended petition.

¶ 11 We similarly reject the State's claim that remanding this cause for further proceedings under the Act would reward defendant for his error. Initially, this court notes that remand does not accord defendant postconviction relief, it merely advances this cause to second-stage proceedings, there is no guarantee that defendant will be afforded a third-stage evidentiary hearing or the ultimate relief that he seeks. Although a defendant in a criminal proceeding may not benefit from his wrong doing (see *People v. Garcia*, 241 Ill. 2d 416, 424-25 (2011)), the State highlights no wrong doing in the instant case. Here, defendant captioned the *pro se* postconviction petition correctly, that is, case 00 CR 24953 and referred to the facts surrounding the shooting death of the victim Cobbins. See 725 ILCS 5/122-2 (West 2008) (a party seeking postconviction relief shall identify the proceeding in which he was convicted).

¶ 12 The State further argues that remand is not warranted because the circuit court considered the merits of defendant's *pro se* petition and found the claims therein to be frivolous and patently without merit. We disagree.

¶ 13 Although the circuit court considered the claims raised in the instant petition, it did so within the context of the cause-and-prejudice test, rather than the test used to evaluate petitions at the first stage of review under the Act. In *People v. Tate*, 2012 IL 112214, our supreme court stated that first-stage review permits the circuit court "to act strictly in an administrative capacity by screening out those petitions which are without legal substance or are obviously without merit." *Tate*, 2012 IL 112214, ¶ 9, quoting *People v. Rivera*, 198 Ill. 2d 364, 373 (2001). Leave to file a successive petition, however, is only granted when a defendant either demonstrates "actual innocence" or satisfies the cause-and-prejudice test codified in section 122-1(f) of the Act because successive petitions are disfavored. *People v. Edwards*, 2012 IL 111711, ¶¶ 22-24, 29. See also 725 ILCS 5/122-1(f) (West 2008) (leave of court to file a successive petition is granted only when a defendant shows cause by identifying an objective factor that

impeded his ability to raise a specific claim during his initial postconviction proceeding and shows prejudice by demonstrating that the unraised claim so infected the trial that the resulting conviction or sentence violated due process).

¶ 14 Here defendant filed a collateral attack upon his conviction in case 00 CR 24953, and his *pro se* postconviction petition was docketed on November 12, 2009. Pursuant to section 122-2.1(a) of the Act (725 ILCS 5/122-2.1(a) (West 2008)), the circuit court then had 90 days to determine whether the petition was frivolous and patently without merit. Our supreme court has determined that the statutorily allotted time frame for the summary dismissal of a postconviction petition is mandatory and noncompliance renders the dismissal order void. See *Porter*, 122 Ill. 2d at 85-86. Accordingly, because the circuit court did not deny defendant relief until February 25, 2010, more than 90 days later, that order is void and this cause must be remanded for second-stage proceedings under the Act. See *People v. Adams*, 338 Ill. App. 3d 471, 473 (2003) (the 90-day period set forth in section 122-2.1(a) of the Act is mandatory).

¶ 15 Because this cause is remanded for second-stage proceedings under the Act, this court need not address defendant's other contentions on appeal.

¶ 16 Accordingly, we vacate the judgment of the circuit court of Cook County and remand for further proceedings pursuant to the Act.

¶ 17 Judgment vacated.