

No. 1-12-1815

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. 03 CR 23756
)	
JAIME GUZMAN,)	Honorable
)	John Joseph Hynes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Where defendant failed to show that his untimeliness in filing his postconviction petition was not due to his culpable negligence, the circuit court's dismissal of the petition was proper.

¶ 2 Defendant Jaime Guzman appeals from the dismissal, on motion of the State, of his petition for postconviction relief. On appeal, defendant contends that postconviction counsel provided unreasonable assistance in failing to amend his *pro se* petition to include a claim that prejudice must be presumed where, at the time of trial, trial counsel was suffering from

psychological illnesses and substance abuse issues which caused him to neglect cases. Because we find that the petition was untimely and that defendant has not shown his delay in filing was not due to his culpable negligence, we affirm.

¶ 3 Following a bench trial, defendant was convicted of eight counts of aggravated driving under the influence of alcohol, three counts of reckless homicide, and one count of aggravated reckless driving. He was sentenced to 24 years in prison for six of the aggravated driving under the influence of alcohol convictions, 10 years in prison for the other two aggravated driving under the influence of alcohol convictions, 5 years in prison for each count of reckless homicide, and 3 years in prison for the reckless driving conviction, with all sentences to run concurrently. On appeal, this court vacated defendant's convictions and sentences on seven of the eight counts of aggravated driving under the influence of alcohol, as violative of the one-act, one-crime rule; vacated one assessed fine and amended the fines, fees, and costs order to reflect the correct amount of presentence custody credit; and affirmed the remainder of the trial court's judgment. *People v. Guzman*, No. 1-06-2570 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 Defendant filed a petition for leave to appeal with the Illinois Supreme Court, which was denied on September 24, 2008. The mandate issued on October 29, 2008. Defendant placed a *pro se* postconviction petition in the mail on July 7, 2009. The petition was file-stamped by the clerk of the court on August 31, 2009.

¶ 5 The trial court appointed counsel and docketed the petition for second-stage proceedings. Postconviction counsel filed a certificate pursuant to Supreme Court Rule 651(c). Thereafter, the State filed a motion to dismiss, arguing, among other things, that the petition was untimely filed. Postconviction counsel filed a response to the motion, acknowledging that the petition was

untimely, but asserting that defendant lacked culpable negligence in his late filing, as defendant had mistakenly and not unreasonably believed that he had 90 days plus 6 months from the issuance of the mandate to file a petition, not 90 days plus 6 months from the denial of leave to appeal. Attached to the response was an affidavit executed by defendant in which he averred that he "reasonably believed that the date of the mandate, October 29, 2008, was the date I was to count 90 days from, and then file my petition within 6 months of that date." The trial court granted the State's motion to dismiss. Defendant appeals.

¶ 6 We review the dismissal of a postconviction petition without an evidentiary hearing *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 389 (1998).

¶ 7 As an initial matter, we note the State's assertion that because defendant failed to include any argument regarding lack of culpable negligence in his opening brief, the issue is waived for appellate review. Defendant has responded to the State in his reply brief, arguing at length that he was not culpably negligent in missing the filing deadline. Because the issue has been fully briefed, we will not consider it to be waived and will address the issue of culpable negligence on its merits.

¶ 8 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) provides a mechanism for criminal defendants to assert that their state or federal constitutional rights were substantially violated in the proceedings that resulted in their convictions or sentences. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). A defendant commences a postconviction proceeding by filing a verified petition in the circuit court. 725 ILCS 5/122-1(b) (West 2008). Time limitations for filing apply. 725 ILCS 5/122-1(c) (West 2008). With regard to those time limitations, when defendant filed the petition at issue in this case, the Act provided in relevant part as follows:

"When a defendant has a sentence other than death, no proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a petition for *certiorari* is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a *certiorari* petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence." 725 ILCS 5/122-1(c) (West 2008).

Under the United States Supreme Court Rules, a defendant has 90 days from the denial of a petition for leave to appeal to file a writ of *certiorari*. U.S. S. Ct. R. 16.3.

¶ 9 Here, there is no doubt or dispute that defendant did not file a writ of *certiorari*, that the applicable deadline for filing a postconviction petition was therefore 90 days plus 6 months from the denial of the petition for leave to appeal June 23, 2009, and that defendant missed this deadline by two weeks. Thus, the relevant question is whether defendant has shown that his delay was not due to his culpable negligence.

¶ 10 The term "culpable negligence," for purposes of the Act, "contemplates something greater than ordinary negligence and is akin to recklessness." *People v. Boclair*, 202 Ill. 2d 89, 108 (2002). The term encompasses unintentional, negligent conduct that demonstrates a disregard of consequences that are likely to follow from an individual's actions. *Boclair*, 202 Ill.

2d at 106. Determining whether a defendant was culpably negligent is a fact specific determination made on a case-by-case basis. *People v. Lander*, 215 Ill. 2d 577, 589 (2005).

¶ 11 Defendant maintains that his untimely filing was not due to his culpable negligence because he believed that he had 90 days plus 6 months from the issuance of the mandate denying leave to appeal to file his petition, rather than 90 days from the date of the actual order denying leave to appeal. However, it is well-settled that all citizens are charged with knowledge of the law, and that defendants are charged with knowing the time requirements for filing a postconviction petition. *Lander*, 215 Ill. 2d at 588-89. Unfamiliarity with the Act's requirements does not show a lack of culpable negligence, and ignorance of the Act's time constraints does not excuse a defendant's failure to adhere to them. *People v. Hampton*, 349 Ill. App. 3d 824, 829 (2004). As this court has observed, "to hold otherwise would vitiate the Act's time constraints because defendants could routinely escape them by 'pleading ignorance.'" *Hampton*, 349 Ill. App. 3d at 829. In this case, defendant has done essentially that: plead ignorance. As such, we find that he has not alleged facts that show his untimeliness did not result from his culpable negligence, and we affirm the trial court's judgment granting the State's motion to dismiss.

¶ 12 Because we affirm dismissal of the defendant's petition based on untimeliness, we need not consider the remainder of the claims alleged in his postconviction petition.

¶ 13 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.