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2014 IL App (3d) 120097-U

Order filed June 3, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Warren County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0097
	)	Circuit No. 06-CF-100
DERRICK D. WILLIAMS,	)	Honorable
Defendant-Appellant.	)	David L. Vancil, Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices McDade and Carter concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Section 3-6-3(d) of the Unified Code of Corrections authorized a sanctions hearing in response to defendant's frivolous motion. Defendant filed a "lawsuit" under the statute by attaching a postconviction petition to his motion for leave to file a successive postconviction petition. The motion for leave was frivolous, justifying the sanctions hearing.

¶ 2 A jury found defendant guilty of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2006)), home invasion (720 ILCS 5/12-11(a)(2) (West 2006)), residential burglary (720 ILCS 5/19-3 (West 2006)), and armed robbery (720 ILCS 5/18-2(a)(2) (West 2006)). His

convictions were upheld on direct appeal. *People v. Williams*, No. 3-06-0838 (2008) (unpublished order under Supreme Court Rule 23). Defendant filed two petitions for postconviction relief, which were both summarily dismissed. Thereafter defendant filed a motion for leave to file a successive postconviction petition. Attached to the motion was his proposed successive petition. The court denied the motion for leave. In addition, the court ordered a hearing before the Prisoner Review Board under section 3-6-3(d) of the Unified Code of Corrections (Code) (730 ILCS 5/3-6-3(d) (West 2012)) to determine whether defendant should lose up to 180 days of good conduct credit. The court ordered the hearing because it found defendant's motion for leave frivolous. Defendant appeals the court's order authorizing the hearing. We affirm.

¶ 3

#### FACTS

¶ 4

A jury found defendant guilty of attempted first degree murder, home invasion, residential burglary, and armed robbery. The trial court sentenced him to concurrent terms of 35 years, 15 years, 12 years, and 30 years, respectively. On direct appeal, this court reduced defendant's armed robbery sentence but otherwise affirmed his convictions. *Williams*, No. 3-06-0838. Defendant filed two petitions for postconviction relief, both of which were summarily dismissed.

¶ 5

Hoping to pursue a third postconviction petition, defendant filed a motion for leave to file a successive petition. See 725 ILCS 5/122-1(f) (West 2012). He attached to the motion a copy of his proposed petition. The petition raised three constitutional claims, each of which argued that defendant's appellate counsel provided ineffective assistance for failing to argue on appeal that defendant's trial counsel was ineffective. The motion for leave argued that each of the three claims satisfied the cause-and-prejudice test. See *Id.*

¶ 6 The trial court considered the motion for leave and denied it in a written order. In addition, the court found the motion frivolous based on four of the criteria listed in section 3-6-3(d)(1) of the Code (730 ILCS 5/3-6-3(d)(1) (West 2012)). As a result, the court ordered the Department of Corrections (DOC) to conduct a hearing before the Prisoner Review Board to determine whether to revoke up to 180 days of defendant's good conduct credit. See 730 ILCS 5/3-6-3(d) (West 2012). Defendant appeals the court's decision ordering the hearing, arguing that section 3-6-3(d) was not triggered because no "lawsuit" was "filed" under the statute. *Id.*

¶ 7 ANALYSIS

¶ 8 Section 3-6-3(d) of the Code authorizes a sanctions hearing for prisoners who make frivolous filings: "if a lawsuit is filed by a prisoner \*\*\* and the court makes a specific finding that a pleading, motion, or other paper filed by the prisoner is frivolous, the [DOC] shall conduct a hearing" before the Prisoner Review Board to revoke up to 180 days of the prisoner's good conduct credit. 730 ILCS 5/3-6-3(d) (West 2010). Defendant argues that the statute does not apply to him because no "lawsuit" was "filed" and, alternatively, because his motion for leave was not frivolous.

¶ 9 A. Filing of a Lawsuit Under Section 3-6-3(d) of the Code

¶ 10 The resolution of this issue requires the interpretation of section 3-6-3(d) of the Code. Our primary objective when construing a statute is to give effect to the intention of the legislature. *People v. Hommerson*, 2014 IL 115638. The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning. *In re S.L.*, 2014 IL 115424. We will not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent of the legislature. *Id.* We review questions of statutory construction *de novo*. *Id.*

¶ 11 Section 3-6-3(d) applies "if a lawsuit is filed by a prisoner." 730 ILCS 5/3-6-3(d) (West 2012). The statute defines "lawsuit" as, among other things, "a second or subsequent petition for post-conviction relief \*\*\* whether filed with or without leave of court." 730 ILCS 5/3-6-3(d)(2) (West 2012). Defendant acknowledges that his successive postconviction petition meets the definition of "lawsuit" under the statute. However, defendant argues that the successive petition attached to his motion for leave was not "filed." He claims that a successive petition cannot be considered "filed" until the circuit court has granted the prisoner leave to file it.

¶ 12 In support of his argument about the meaning of the word "filed," defendant cites *People v. LaPointe*, 227 Ill. 2d 39 (2007). In *LaPointe* our supreme court interpreted the meaning of "filing" in section 122-2.1 of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-2.1 (West 2004)). In reaching its decision, the court looked to section 122-1(f) of the Act, which stated, "Only one petition may be filed by a petitioner under this Article without leave of the court." 725 ILCS 5/122-1(f) (West 2012). The *LaPointe* court held that a successive postconviction petition cannot be considered filed without the court having granted the prisoner leave to file it, despite the petition having been mailed to the court and accepted by the clerk's office. *LaPointe*, 227 Ill. 2d 39. Defendant urges us to apply *LaPointe's* interpretation to the present case.

¶ 13 Defendant's argument has superficial appeal but does not hold up in the face of the statutory language. "Lawsuit" as defined by section 3-6-3(d)(2) of the Code includes a successive postconviction petition, "whether filed with or without leave of court." 730 ILCS 5/3-6-3(d)(2) (West 2012). That language evidences the legislature's intent that the statute apply in situations where a prisoner mails a successive petition to the clerk's office without having been granted leave to file it as required by section 122-1(f) of the Act. Holding otherwise would make that language surplusage. We therefore hold that, for purposes of section 3-6-3(d) of the Code, a

lawsuit is filed when a prisoner mails a successive petition to the clerk's office, whether or not the court granted leave to file it.

¶ 14 Our conclusion does not contradict the holding of *LaPointe*. *LaPointe* interpreted the meaning of "filing" as used in the Act, not the Code. *LaPointe*, 227 Ill. 2d at 44. For purposes of the present case, we must abide by the meaning provided by the plain language of the Code.

¶ 15 For the foregoing reasons, we find that under the plain language of section 3-6-3(d) of the Code, defendant "filed" a "lawsuit" by attaching a successive postconviction petition to his motion for leave to file a successive postconviction petition.

¶ 16 B. Finding that the Motion for Leave Was Frivolous

¶ 17 Having determined that the statute applies because defendant filed a lawsuit according to the Code, we must now determine whether "a pleading, motion, or other paper filed by the prisoner [was] frivolous[.]" 730 ILCS 5/3-6-3(d) (West 2012). The circuit court found that defendant's motion for leave to file a successive petition was frivolous. We agree.

¶ 18 Under the statute, "frivolous" means that "a pleading, motion, or other filing which purports to be a legal document filed by a prisoner in his or her lawsuit" meets at least one of the following criteria:

(A) it lacks an arguable basis either in law or in fact;

(B) it is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(C) the claims, defenses, and other legal contentions therein are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(D) the allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; or

(E) the denials of factual contentions are not warranted on the evidence, or if specifically so identified, are not reasonably based on a lack of information or belief."

730 ILCS 5/3-6-3(d)(1) (West 2012).

In the present case, the circuit court found that the first four of the above criteria applied to defendant's motion for leave to file a successive petition.

¶ 19 The parties agree that the court's finding of frivolity should be reviewed for an abuse of discretion, as analogous to a court's decision to impose sanctions. See, e.g., *Sterdjevich v. RMK Management Corp.*, 343 Ill. App. 3d 1 (2003).

¶ 20 The circuit court's finding that defendant's motion for leave to file a successive petition was frivolous was not an abuse of discretion. Specifically, the court did not abuse its discretion in finding that the petition lacked an arguable basis in law or fact (730 ILCS 5/3-6-3(d)(1)(A) (West 2012)). The three claims listed in defendant's motion were all raised under the rubric that appellate counsel was ineffective for failing to argue that trial counsel was ineffective for failing to raise an issue at the trial level. The three issues that defendant claimed should have been raised at trial were: (1) a police officer's hearsay testimony violated the confrontation clause; (2) the prosecutor allowed a witness to present perjured testimony; and (3) the court erred in allowing an accountability instruction where the theory at trial was that defendant was the principal actor. All three of those issues had no basis in law or fact.

¶ 21 As to defendant's first argument, he raised the same argument in his initial petition for postconviction relief; the circuit court dismissed that argument, finding it frivolous or patently

without merit. There was no basis in law or fact for defendant to raise that argument again in a successive petition.

¶ 22 Defendant's second claim is that trial counsel should have objected when the victim testified that he knew a co-defendant had attempted to shoot him because he heard the gun click, although it failed to discharge. Defendant claims he has an expert witness who would have testified that the gun could not have made the clicking sound testified to by the victim. We hold that the circuit court did not abuse its discretion in finding that this claim had no arguable basis in fact.

¶ 23 Defendant's third claim is that the court erred in allowing an accountability instruction, because the State pursued a theory that defendant was the principal actor, and the instruction confused the jury. The circuit court did not abuse its discretion in finding that this argument lacked a basis in fact. It appears from the record that the State did pursue an accountability theory.

¶ 24 The circuit court did not abuse its discretion in finding defendant's motion for leave frivolous and ordering the sanctions hearing under section 3-6-3(d) of the Code.

¶ 25 We note that our decision does not inhibit prisoners from utilizing the Act to raise constitutional challenges. A prisoner's initial petition for postconviction relief does not qualify as a "lawsuit" under section 3-6-3(d). 730 ILCS 5/3-6-3(d)(2) (West 2012). Nor does a petition for leave to file a successive petition. In the present case, defendant triggered section 3-6-3(d) by attaching a successive postconviction petition to his motion for leave.

¶ 26 **CONCLUSION**

¶ 27 The judgment of the circuit court of Warren County is affirmed.

¶ 28 Affirmed.