

**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).

2014 IL App (4th) 120813-U

NO. 4-12-0813

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 19, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RANDOLPH A. MULLEN,	)	No. 91CF2295
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey B. Ford,
	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Appleton and Justice Turner concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed as modified and remanded with directions, concluding the trial court erred by imposing a \$250 sanction because defendant had not previously filed a petition for relief from judgment.
- ¶ 2 In March 1992, a jury found defendant, Randolph A. Mullen, guilty of armed robbery (Ill. Rev. Stat. 1991, ch. 38, ¶ 18-2). The following month, the trial court sentenced defendant as a habitual offender to life in prison without parole based on its finding that defendant had two prior armed robbery convictions.
- ¶ 3 Following a direct appeal and series of collateral attacks, in June 2012, defendant filed a *pro se* petition for relief from judgment. (735 ILCS 5/2-1401 (West 2012)). The trial court dismissed the petition as frivolous and imposed a \$250 sanction pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994).
- ¶ 4 Defendant appeals, arguing the trial court erred by imposing sanctions pursuant to

Supreme Court Rule 137. We affirm the dismissal of defendant's petition, vacate the \$250 sanction, and remand with directions.

¶ 5

## I. BACKGROUND

¶ 6

Following a March 1992 trial, a jury found defendant guilty of armed robbery. Ill. Rev. Stat. 1991, ch. 38, ¶ 18-2. At defendant's April 1992 sentencing hearing, the trial court found defendant had two prior convictions for armed robbery (case Nos. 73-X-1357 and 86-CF-871); accordingly, the court sentenced defendant as a habitual offender to life in prison without parole. Ill. Rev. Stat. 1991, ch. 38, ¶¶ 33B-1(a), 1005-5-3(c)(7)). This court affirmed defendant's conviction and sentence on direct appeal. *People v. Mullen*, No. 4-92-0354 (Feb. 25, 1993) (unpublished order under Supreme Court Rule 23). In May 1994, defendant filed a postconviction petition, which the trial court dismissed as frivolous and patently without merit. This court affirmed the trial court's dismissal and granted appointed counsel's motion to withdraw. *People v. Mullen*, No. 4-94-0572 (July 11, 1995) (unpublished summary order under Supreme Court Rules 23(c)(2), (c)(4)). In January 1998, defendant filed a successive petition for postconviction relief. The following month, the trial court dismissed the petition, and in May 1999, we affirmed the trial court's judgment and allowed appointed counsel's motion to withdraw. *People v. Mullen*, No. 4-98-0196 (May 7, 1999) (unpublished order under Supreme Court Rule 23).

¶ 7

In June 2001, defendant filed a third petition for postconviction relief, which the trial court dismissed. In September 2002, this court affirmed the trial court's dismissal. *People v. Mullen*, No. 4-01-0655 (Sept. 17, 2002) (unpublished summary order under Supreme Court Rule 23(c)(2)). In February 2003, defendant filed a petition for *habeas corpus*. The trial court initially dismissed the petition with prejudice in September 2003, and defendant filed a notice of

appeal. However, upon defendant's motion for reconsideration, the court vacated its order and considered defendant's claims anew based on a scrivener's error. In January 2004, the court entered a new order, again denying the relief sought by defendant and dismissing his petition with prejudice. Later that month, defendant filed a petition for leave to amend his *habeas corpus* petition. Thereafter, the court entered an order explaining that it had already denied defendant's petition for writ of *habeas corpus*. In March 2004, the court denied defendant's motion to reconsider, and defendant filed a notice of appeal. In July 2005, upon defendant's *pro se* motion, this court dismissed defendant's appeal. *People v. Mullen*, No. 4-04-0696 (July 29, 2005) (unpublished dispositional order). In June 2012, defendant filed the instant *pro se* petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)), asserting that because his 1973 armed robbery conviction predated the enactment of the habitual offender statute, and because armed robbery was not considered a Class X felony until 1978, the conviction could not be considered for purposes of the habitual offender statute. Accordingly, defendant asserted, his sentence was void.

¶ 8 The following month, the trial court dismissed defendant's petition, finding that Illinois courts had rejected such claims more than 15 years ago. The court then imposed a \$250 sanction pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Specifically, the court found that defendant had raised claims that were "not warranted by existing law." The court estimated that it spent three hours reading, researching, and writing an opinion to address defendant's claims and, based on Champaign County typically paying appointed attorneys \$110/hour, a \$250 sanction was appropriate. The court also ordered defendant to pay all filing fees and court costs.

¶ 9 In August 2012, defendant filed a *pro se* motion for rehearing, modification of the

judgment, stay of enforcement of the order, or for other relief. Defendant asserted that section 22-105 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/22-105 (West 2012)) was inapplicable to his section 2-1401 petition because the trial court did not make a finding that defendant's petition was a "second or subsequent" petition for relief from judgment.

¶ 10 Later that month, the trial court entered an order explaining that when it referred to defendant's arguments in its July 2012 order as "not warranted by existing law," it meant those arguments were frivolous and without merit. The court went on to note that defendant had not previously filed a section 2-1401 petition and, under the language of section 22-105, the court could not order defendant to pay costs and filing fees unless the petition was defendant's second or subsequent section 2-1401 petition. Accordingly, the court vacated the portion of its July 2012 order requiring defendant to pay costs and fees pursuant to section 22-105. However, the court stated that the \$250 sanction continued to stand. This appeal followed.

¶ 11 **II. ANALYSIS**

¶ 12 On appeal, defendant asserts the trial court erred by imposing sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Specifically, defendant contends section 22-105 of the Civil Code governs *pro se* petitioner filings, not Rule 137. The State agrees that section 22-105 of the Civil Code applies and thus the \$250 sanction must be vacated.

¶ 13 Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) requires a party that is not represented by an attorney to "sign his pleading, motion, or other document and state his address." The party's signature

"constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well

grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." *Id.*

If a pleading or motion is "signed in violation" of Rule 137(a), "the court, upon motion or upon its own initiative, may impose upon the person who signed it \*\*\* an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." *Id.*

¶ 14 Section 22-105 of the Civil Code, entitled "Frivolous lawsuits filed by prisoners," provides, in relevant part, as follows:

"If a prisoner confined in an Illinois Department of Corrections facility files a pleading, motion, or other filing which purports to be \*\*\* a second or subsequent petition for relief from judgment under Section 2-1401 of this Code \*\*\* and the Court makes a specific finding that the pleading, motion, or other filing which purports to be a legal document filed by the prisoner is frivolous, the prisoner is responsible for the full payment of filing fees and actual court costs." 735 ILCS 5/22-105(a) (West 2012).

¶ 15 In *People v. Chambers*, 2013 IL App (1st) 100575, ¶¶ 15-16, 995 N.E.2d 364, the trial court denied the defendant leave to file a successive postconviction petition until the defendant paid an imposed sanction. On appeal, the defendant asserted that section 22-105 of

the Civil Code barred the court from prohibiting the defendant from filing a successive petition. *Id.* ¶ 23, 995 N.E.2d 364. The First District agreed, pointing out that the plain language of section 22-105 of the Civil Code specified " [n]othing in this Section prohibits an applicant from filing an action or proceeding if the applicant is unable to pay the court costs.' " (Emphasis omitted.) *Id.* ¶ 26, 995 N.E.2d 364 (quoting 735 ILCS 5/22-105 (West 2010)). In so concluding, the appellate court rejected the State's contention that the trial court's prohibition was allowed under Supreme Court Rule 137. *Id.* ¶ 30, 995 N.E.2d 364. The court reasoned that section 22-105 of the Civil Code was the more specific provision addressing frivolous filings made by prisoners, and under the rules of statutory construction, "a specific provision prevails over a general provision." *Id.* (citing *People v. Latona*, 184 Ill. 2d 260, 269-70, 703 N.E.2d 901, 906 (1998) and *People v. Villarreal*, 152 Ill. 2d 368, 379, 604 N.E.2d 923, 928 (1992)). Accordingly, the *Chambers* court concluded that section 22-105 applied to the defendant's case rather than Supreme Court Rule 137. *Id.*

¶ 16 In this case, the trial court imposed sanctions pursuant to Supreme Court Rule 137. Under the reasoning in *Chambers*, however, section 22-105 of the Civil Code, as the more specific provision addressing prisoners' filings, governs defendant's case. Section 22-105 of the Civil Code specifies a trial court may impose sanctions when a defendant confined in the Department of Corrections files "a second or subsequent petition for relief from judgment under Section 2-1401 of this Code" that is frivolous. 735 ILCS 5/22-105(a) (West 2012). Our review of the record indicates that, although defendant has filed numerous *pro se* postconviction petitions, defendant has filed only one section 2-1401 petition for relief from judgment. Accordingly, the court lacked the authority under section 22-105 of the Civil Code to impose the sanctions in this case. Thus, we vacate the \$250 assessment and remand the cause to the trial

court with directions to order the circuit clerk to remove the fee.

¶ 17

### III. CONCLUSION

¶ 18 For the reasons stated, we vacate the \$250 sanction and affirm the trial court's judgment as modified and remand the cause to the trial court to order the circuit clerk to remove the \$250 sanction.

¶ 19 Affirmed as modified; cause remanded with directions.