

NOTICE
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2014 IL App (4th) 121081-U

NO. 4-12-1081

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 30, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
HENRY E. BROOMFIELD,)	No. 99CF907
Defendant-Appellant.)	
)	Honorable
)	Esteban F. Sanchez,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the motion of the office of the State Appellate Defender to withdraw as counsel pursuant to *Pennsylvania v. Finley* 481 U.S. 551 (1987).

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel for defendant, Henry E. Broomfield, pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). For the reasons that follow, we grant OSAD's motion and affirm the trial court's judgment, which dismissed defendant's petition for relief from judgment.

¶ 3 I. BACKGROUND

¶ 4 In December 2000, a jury found defendant guilty of first degree murder (720 ILCS 5/9-1(a) (West 1998)). In February 2001, the trial court sentenced defendant to 28 years in prison. This court affirmed defendant's conviction on direct appeal. *People v. Broomfield*, No.

4-03-0409 (Jan. 21, 2005) (unpublished order under Supreme Court Rule 23).

¶ 5 In November 2005, defendant *pro se* filed a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2006)), which the trial court denied in April 2007. This court affirmed. *People v. Broomfield*, No. 4-07-0382 (Apr. 13, 2009) (unpublished order under Supreme Court Rule 23).

¶ 6 In October 2007, while defendant's appeal from the trial court's denial of his first postconviction petition was pending, defendant *pro se* filed a successive postconviction petition. In November 2007, the trial court denied defendant leave to file the successive postconviction petition. On appeal from that denial of leave, this court granted OSAD's motion to withdraw as counsel, and affirmed. *People v. Broomfield*, No. 4-08-0057 (Nov. 20, 2008) (unpublished order under Supreme Court Rule 23).

¶ 7 In July 2011, defendant *pro se* filed a 112-page document titled, "In the Matter of: Conditional Acceptance for Value for Proof of Claim." (The remaining 70 words of the title are omitted.) This document contained 517 "proofs of claim," which can only be described as random statements regarding such varying topics as criminal law, corporate finance, existential philosophy, the Code of Justinian, the rule against perpetuities, and myriad other topics. In August 2011, defendant sent a letter to the trial court, proclaiming that (1) the court had "failed to perform the terms and conditions after receiving this presentment," and (2) if the court did not "cure its fault and perform according to said terms," within three days, defendant's proofs of claim would be established by default pursuant to the Uniform Commercial Code and the Maxims of Law and Equity. The court ignored defendant's filings.

¶ 8 In April 2012, defendant *pro se* filed a "Motion for Emergency Hearing for Writ of Habeas Corpus." In May 2012, the trial court granted the State's motion to dismiss defend-

ant's motion. Defendant did not appeal.

¶ 9 In July 2012, defendant *pro se* filed the instant petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), asserting that his conviction is void for the following reasons: (1) defendant was denied a probable cause hearing within 48 hours of his arrest; (2) the trial court lacked personal jurisdiction over defendant because no arrest warrant was issued; (3) the General Assembly violated the separation-of-powers provision of the Illinois Constitution of 1970 (Ill. Const. 1970, art. II, § 1) by enacting the (a) Truth-In-Sentencing law (730 ILCS 5/3-6-3(a)(2)(i) (West 1998)) and (b) Mandatory Supervised Release (MSR) law (730 ILCS 5/5-8-1(d) (West 1998)), both of which are applicable to defendant; and (4) the first degree murder statute violates the single-subject clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. IV, § 8(d)).

¶ 10 The State filed a motion to dismiss defendant's petition, arguing that (1) defendant's conviction was not void and (2) the petition was barred by the two-year statute of limitations. In November 2012, following an October 2012 hearing at which defendant appeared and argued *pro se*, the trial court granted the State's motion to dismiss.

¶ 11 Defendant filed a notice of appeal, and the trial court appointed OSAD as counsel.

¶ 12 In March 2014, OSAD filed a motion to withdraw pursuant to *Pennsylvania v. Finely*, 481 U.S. 551, along with a brief in support, asserting that defendant's appeal presented no meritorious issues. On its own motion, this court granted defendant leave to file additional points and authorities in response to OSAD's motion to withdraw, which defendant did. The State has responded.

¶ 13 For the reasons that follow, we (1) grant OSAD's motion to withdraw as counsel on appeal, and (2) affirm the trial court's judgment.

¶ 14

II. DEFENDANT'S PETITION IS FRIVOLOUS

¶ 15 OSAD asserts that defendant's appeal presents no meritorious issues because all the claims in his petition are frivolous. We agree.

¶ 16

A. Probable Cause Hearing

¶ 17 Defendant argues in his petition that his conviction is void because he was denied a prompt probable cause hearing, as required under *Gerstein v. Pugh*, 420 U.S. 103 (1975). However, even if defendant is correct that he was denied a prompt probable cause hearing, this error would not render his conviction void. See *Id.* at 119 ("[I]llegal arrest or detention does not void a subsequent conviction.") Accordingly, we agree with OSAD that this claim is without merit.

¶ 18

B. Personal Jurisdiction

¶ 19 Defendant next argues in his petition that his conviction was void because the trial court did not issue an arrest warrant for defendant, which defendant contends was a requirement for the court to obtain personal jurisdiction over defendant. Contrary to defendant's claim, the court obtains personal jurisdiction over a criminal defendant when the defendant appears before the court. *In re Luis R.*, 239 Ill. 2d 295, 305, 941 N.E.2d 136, 142 (2010). Defendant's claim that an arrest warrant is necessary to vest the trial court with personal jurisdiction over a criminal defendant is simply groundless and without any merit.

¶ 20

C. Separation of Powers

¶ 21 Defendant next argues in his petition that his conviction is void because the General Assembly violated the separation of powers (Ill. Const. 1970, art. II, § 1) by enacting the (1) truth-in-sentencing law (730 ILCS 5/3-6-3(a)(2)(i) (West 1998)) and (2) MSR law (730 ILCS 5/5-8-1(d) (West 1998)).

¶ 22 Under the Illinois Constitution, "[t]he legislative, executive and judicial branches are separate. No Branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1.

¶ 23 *1. Truth In Sentencing*

¶ 24 Defendant apparently bases his claim that the truth-in-sentencing law violates the separation of powers on the fact that the General Assembly enacted the pertinent truth-in-sentencing law while *People v. Reedy*, 186 Ill. 2d 1, 708 N.E.2d 1114 (1999)—a case involving the previous version of the truth-in-sentencing law—was pending before the supreme court. However, although it is true that the General Assembly enacted the truth-in-sentencing law applicable to defendant (730 ILCS 5/3-6-3(a)(2)(i) (West 1998)) while *Reedy* was pending, the supreme court in *Reedy* approvingly noted that legislative development. *Reedy*, 186 Ill. 2d at 15, 708 N.E.2d at 1120 ("[T]he Illinois legislature has the power to enact curative legislation."). Even if the court in *Reedy* had not made such a clear statement, it would still be entirely frivolous to argue that the General Assembly violates the separation of powers whenever it passes legislation concerning an issue pending before the judicial branch. We agree with OSAD that this claim is without merit.

¶ 25 *2. MSR*

¶ 26 Defendant argues that the MSR statute violates the separation of powers because sentencing is a purely judicial function and, therefore, essentially untouchable by the General Assembly. This argument has been directly rejected by the supreme court. *People v. McChriston*, 2014 IL 115310, ¶ 13, 4 N.E.3d 29 ("[I]t is within the General Assembly's authority to enact legislation that includes a mandatory parole term in a sentence by operation of law."). Accordingly, we agree with OSAD that this claim is without merit.

¶ 27

D. Defendant's Single-Subject-Clause Claims

¶ 28 Finally, defendant argues in his petition that his conviction for first degree murder is void because Public Act 83-1067 (eff. July 1, 1984) and Public Act 84-1450 (eff. July 1, 1987) violated the single-subject clause of the Illinois Constitution.

¶ 29 The single-subject clause of the Illinois Constitution provides, in pertinent part, that "[b]ills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." Ill. Const. 1970, art. IV, § 8(d). "In determining whether a particular enactment violates the single subject requirement, the term 'subject' is to be liberally construed in favor of upholding the legislation, and the subject may be as comprehensive as the legislature chooses." *People v. Cervantes*, 189 Ill. 2d 80, 84, 723 N.E.2d 265, 267 (1999).

"Therefore, in order to satisfy the single subject requirement, the matters included within the enactment must have a 'natural and logical connection' to a single subject." *Id.* (quoting *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 352, 718 N.E.2d 191, 197 (1999)).

¶ 30

1. *Public Act 83-1067*

¶ 31 Public Act 83-1067, commonly known as the Criminal Sexual Assault Act, repealed eight statutes that had defined sex offenses in sections 11-1 through 11-11.1 of the Criminal Code of 1961, including the offense of rape. *In re Detention of Lieberman*, 201 Ill. 2d 300, 313, 776 N.E.2d 218, 226 (2002). Defendant seems to argue that (1) Public Act 83-1067 violated the single-subject clause and (2) because Public Act 83-1067 amended a section of the Criminal Code relating to murders occurring during certain sexual offenses (720 ILCS 5/9-1(b) (West 1998)), its violation of the single-subject clause rendered all of section 9-1 of the Criminal Code void. In other words, defendant argues that since Public Act 83-1067 went into effect 30 years

ago, the Criminal Code's prohibition on first degree murder has been void. We agree with OSAD that this claim is without merit.

¶ 32 Public Act 83-1067 did not violate the single-subject clause because the matters included within the enactment had a natural and logical connection to the subject of sexual offenses. Even if Public Act 83-1067 had violated the single-subject clause—which it did not—the constitutional violation would have only implicated the provisions of the first degree murder statute that were amended by that act. Section 9-1(a) of the Criminal Code—the statute under which defendant was convicted—was not amended by Public Act 83-1067.

¶ 33 *2. Public Act 84-1450*

¶ 34 Defendant also argues in his petition that Public Act 84-1450 violated the single-subject clause. Public Act 84-1450 renamed the offense of murder to first degree murder and abolished the offense of voluntary manslaughter, substituting the offense of second degree murder. *People v. Jeffries*, 164 Ill. 2d 104, 111, 646 N.E.2d 587, 590 (1995). This act necessarily amended all provisions of the compiled statutes that referred to "murder" or "voluntary manslaughter." "The intent of the legislature in enacting Public Act 84-1450 was to remedy the confusion and inconsistency that had developed in regard to the murder and voluntary manslaughter statutes." *Id.*

¶ 35 Defendant seems to argue that because Public Act 84-1450 amended the definition of murder and voluntary manslaughter in a large number of statutory provisions, it must have violated the single-subject clause. Similar to his previous argument, defendant essentially contends that since the Act went into effect in 1987, every first degree murder conviction in this state has been void. We agree with OSAD that Public Act 84-1450 did not violate the single-subject clause, and defendant's claim is without merit.

¶ 36

III. AVAILABLE SANCTIONS

¶ 37 We note that defendant's past three filings in the trial court—his 112-page "Conditional Acceptance for Value for Proof of Claim," his "Motion for Emergency Hearing for Writ of Habeas Corpus," and the instant petition under section 2-1401 of the Code—have all been entirely frivolous. Defendant's frivolous petition in this case resulted in (1) the Sangamon County State's Attorney filing a motion to dismiss at the trial court level, (2) a hearing on that motion to dismiss (for which correctional personnel made a 350-mile roundtrip to transport defendant from the Dixon Correctional Center in Dixon, Illinois, to the Sangamon County courthouse), (3) a *Finley* brief from OSAD on appeal, (4) an appellate brief from the State's Attorney Appellate Prosecutor in response to defendant's points and authorities, and (5) this written order from the Appellate Court. Thus far, all of this has been at absolutely no cost to defendant.

¶ 38 We remind the trial court that section 22-105(a) of the Code provides that "[i]f a prisoner confined in an Illinois Department of Corrections facility files a pleading, motion, or other filing which purports to be a legal document" in certain collateral proceedings, including proceedings under section 2-1401 of the 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). As the source of payment of these filing fees and actual court costs, section 22-105(a) of the Code provides, as follows:

"[T]he court shall assess and, when funds exist, collect as a partial payment of any court costs required by law a first time payment of 50% of the average monthly balance of the prisoner's trust fund account for the past 6 months. Thereafter 50% of all deposits into

the prisoner's individual account under Sections 3-4-3 and 3-12-5 of the Unified Code of Corrections [(730 ILCS 5/3-4-3, 3-12-5 (West 2012))] administered by the Illinois Department of Corrections shall be withheld until the actual court costs are collected in full." 735 ILCS 5/22-105(a) (West 2012).

¶ 39 Further, the trial court need not appoint OSAD as counsel on appeal following the denial of a petition under section 2-1401 of the Code, especially when the petition is clearly frivolous. See *People v. Kane*, 2013 IL App (2d) 110594, ¶ 21, 5 N.E.3d 737 ("There is no statutory basis for the appointment of counsel in a section 2-1401 proceeding. *** However, neither is the appointment of counsel expressly prohibited.").

¶ 40 Finally, we note that Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) allows this court to *sua sponte* respond to a frivolous appeal with the imposition of sanctions, which "may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994).

¶ 41 If defendant continues to waste precious state resources by filing frivolous claims in the trial court and frivolous appeals in this court, he should expect to do so at a cost.

¶ 42 IV. CONCLUSION

¶ 43 For the reasons stated, we grant OSAD's motion to withdraw as counsel and affirm the trial court's dismissal of defendant's section 2-1401 petition. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 44 Affirmed.