

No. 1-13-0925

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. 85 C 8448
)	
DONZELL HARRIS,)	Honorable
)	Thomas Joseph Hennelly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

O R D E R

¶ 1 **Held:** The circuit court's *sua sponte* dismissal of defendant's section 2-1401 motion to vacate judgment is vacated and remanded for further proceedings where the dismissal was premature.

¶ 2 Defendant Donzell Harris appeals the *sua sponte* dismissal of his *pro se* motion to vacate judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West

2012)) by the circuit court of Cook County. He contends that the dismissal must be reversed because his petition was not ripe for adjudication.

¶ 3 Following a 1986 jury trial, defendant was convicted of first degree murder for shooting his wife twice in the head shortly after she left court, where she had appeared to testify against him. The trial court sentenced defendant to natural life imprisonment, and this court affirmed that judgment on direct appeal. *People v. Harris*, No. 1-86-1595 (1988) (unpublished order under Supreme Court Rule 23).

¶ 4 Since 1992, defendant has filed numerous unsuccessful collateral pleadings, a detailed history of which is set forth in this court's previous orders. See, e.g., *People v. Harris*, 2014 IL App (1st) 123260-U; *People v. Harris*, Nos. 1-06-1765, 1-06-0910 (cons.) (2008) (unpublished orders under Supreme Court Rule 23).

¶ 5 On December 12, 2012, defendant mailed the instant *pro se* section 2-1401 petition to the clerk of the circuit court and the State's Attorney's Office alleging that his sentence was unconstitutional and void. Defendant's notice of filing/certificate of service indicates that he mailed his petition to both entities at the same address by placing his documents in the prison mail system for mailing through the United States Postal Service. Defendant's petition was stamped "RECEIVED" by the criminal division of the clerk of the circuit court on December 16, 2012, and subsequently stamped "FILED" by the clerk's office on January 15, 2013.

¶ 6 The clerk's office completed a Notification of Motion form indicating that defendant's petition was received on December 16, 2012, that the file was ordered on January 10, 2013, that the petition was entered in the computer on January 15, 2013, and that it was docketed to be heard by the trial court on January 23, 2013. On that date, defendant's case was called and the circuit court stated, "[t]his is a motion to vacate judgment alleging judgment was void. He was

sentenced to natural life in violation of the Illinois Constitution. Court finds that the motion is frivolous, without merit. The motion is denied. Off call." The cover sheet for the report of proceedings indicates that only the trial judge and the court reporter were present when this ruling was entered.

¶ 7 On appeal, defendant solely contends that this court must vacate the *sua sponte* dismissal and remand his case to the circuit court for further proceedings because his petition was not ripe for adjudication since only eight days had passed since it was filed on January 15, 2013. Relying on *People v. Laugharn*, 233 Ill. 2d 318 (2009), defendant asserts that the circuit court was required to wait 30 days before dismissing his section 2-1401 petition *sua sponte* to allow the State an opportunity to answer or otherwise plead.

¶ 8 The State responds that defendant's petition was filed on the date it was stamped "RECEIVED" by the clerk's office, and therefore, the court's dismissal more than 30 days later was proper. Alternatively, the State argues that the dismissal was proper because defendant's petition was insufficient as a matter of law and his allegation was without merit.

¶ 9 In reply, defendant maintains that the 30-day period begins when the petition is filed, not received. Alternatively, defendant argues that the dismissal was premature because he failed to properly serve the State, and there is no indication in the record of when the State received his petition, or if it had actual notice that he had filed the petition. Defendant also asserts that we cannot yet consider the merits of his petition because it is not ripe for adjudication.

¶ 10 We review the circuit court's dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). Section 2-1401 provides for relief from final judgments more than 30 days after they are entered. 735 ILCS 5/2-1401(a) (West 2012). The circuit court may dismiss a section 2-1401 petition *sua sponte*; however, it is precluded from doing so prior to the

expiration of the 30-day period for the respondent to answer or appear. *Laugharn*, 233 Ill. 2d at 323. When the circuit court dismisses a petition *sua sponte* within 30 days of the date it was filed, the dismissal is premature and must be vacated. *Id.*

¶ 11 Here, the record indicates that defendant's petition was filed on January 15, 2013. The circuit court dismissed defendant's petition *sua sponte* on January 23, 2013, only eight days after it was filed. Accordingly, the circuit court's dismissal was premature, and we must vacate that judgment and remand this case to the circuit court for further proceedings. *Id.*

¶ 12 We reject the State's argument that the operative date should be the date the petition was "received" by the clerk's office rather than the date it was stamped "filed." The State posits that "the actual filing date of a section 2-1401 petition is the date when it is received and stamped by the circuit clerk's office," citing *Gruszczyka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212, ¶ 20, quoting *Kelly v. Mazzie*, 207 Ill. App. 3d 251, 253 (1990), discussing *Wilkins v. Dellenback*, 149 Ill. App. 3d 549 (1986). However, we find that all of these cases are distinguishable as there were only two dates at issue in each case: (1) the date of mailing, and (2) the date the document was received and file-stamped by the clerk's office. Unlike the case at bar, none of these cases involved a third date, *i.e.*, a date on which the petition was "received" but not stamped "filed." Consequently, in the cases relied on by the State, the courts had no reason to differentiate between "received" and "filed" in their discussions because, when read in context, it appears that both of those actions occurred on the same date.

¶ 13 We note that in *Laugharn*, our supreme court specifically referred to the date the petition was "filed" when determining the 30-day period, and therefore, we find that the date the petition was stamped "filed" by the clerk's office is the proper date to use. In addition, the purpose behind *Laugharn* was to insure that the State was given the requisite 30 days to respond and was not

deprived of "the time it was entitled to answer or otherwise plead." *Laugharn*, 233 Ill. 2d at 323. The State has not asserted that it had notice of defendant's petition on the date it was stamped "received" and, as defendant notes, there is no indication in the record that the State was properly served on that date, or that it had actual notice of defendant's petition more than 30 days prior to its dismissal. Accordingly, we find that the circuit court's *sua sponte* dismissal was premature as defendant's petition was not yet ripe for adjudication.

¶ 14 For these reasons, we vacate the dismissal and remand this case to the circuit court for further proceedings on defendant's petition. We express no opinion on the merits of the allegation raised in defendant's petition.

¶ 15 Vacated and remanded.