

No. 1-14-1661

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. 99 CR 5180 |
| |) | |
| JAMES DOLIS, |) | Honorable |
| |) | Joseph G. Kazmierski, Jr., |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court's *sua sponte* dismissal of defendant's *pro se* section 2-1401 petition is affirmed where defendant did not affirmatively establish improper service on the State.

¶ 2 Defendant James Dolis appeals from the *sua sponte* dismissal of his *pro se* petition for relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) and the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). On appeal, defendant contends that because he did not properly serve his section 2-1401 petition on the State, the trial court's dismissal was premature. Defendant makes no arguments regarding his

postconviction petition. For the reasons that follow, we affirm the trial court's judgment dismissing defendant's combined petition.

¶ 3 Following a 2000 jury trial, defendant was convicted of two counts of home invasion, for which he was sentenced to concurrent 30-year prison terms, and one count of aggravated battery, for which he received a concurrent 5-year prison term. The trial court also entered an order of protection with respect to the victim and two of her children. We affirmed the judgment on direct appeal. *People v. Dolis*, No. 1-00-0759 (2002) (unpublished order under Supreme Court Rule 23). In 2002, defendant filed a combined petition for relief under the Act and under section 2-1401. The trial court granted the State's motion to dismiss the combined petition, and we affirmed. *People v. Dolis*, No. 1-05-0988 (2006) (unpublished order under Supreme Court Rule 23). In 2010, defendant filed a second section 2-1401 petition, which ultimately led to the vacatur of one home invasion conviction. *People v. Dolis*, No. 1-10-1632 (2012) (unpublished order under Supreme Court Rule 23). Also in 2010, defendant filed a petition seeking a declaratory judgment that the legislature lacked power to impose a term of mandatory supervised release. The trial court dismissed the petition and this court affirmed. *People v. Dolis*, 2012 IL App (1st) 110407-U. In 2012, defendant filed a section 2-1401 petition, a supplemental section 2-1401 petition, and a successive postconviction petition. The trial court granted the State's motion to dismiss defendant's section 2-1401 petition and denied defendant leave to file a successive postconviction petition. Again, we affirmed. *People v. Dolis*, 2015 IL App (1st) 131139-U.

¶ 4 On September 25, 2013, defendant, in the presence of defense counsel and an assistant State's Attorney, tendered to the trial court the initial version of the *pro se* pleading at issue,

which he titled "Successive Combination 735 ILCS 5/2-1401(f) & 725 ILCS 5/122-1(d) Actual Innocence Post Conviction Petition Relief." The trial court accepted the pleading from defendant and stated that it would examine it and determine whether defendant would be granted leave to file. When defendant asked, "Should I give a copy to the State or you need to?" the court responded, "You can give a copy if you want. I'll determine whether or not it's filed." The transcript of the proceedings does not reveal whether the State took possession of a copy of the document. The case was continued.

¶ 5 On December 23, 2013, defendant mailed a *pro se* pleading titled "Supplement to 2-1401(f) – Actual Innocence Post Conviction Petition" to the clerk of the circuit court of Cook County and the Cook County State's Attorney, both at 2650 South California Avenue, Chicago. Specifically, the attached "Proof of Service / Notice of Filing" indicated that defendant served copies of the pleading by "placing them in sealed envelopes postage paid and depositing them in the U.S. mail at Stateville C.C. on Dec. 23, 2013 for delivery by the U.S. Postal Service." The clerk of the circuit court received the petition on January 10, 2014, and stamped it "filed" on January 23, 2014.

¶ 6 On March 14, 2014, in the presence of an assistant State's Attorney, the trial court stated that it was entering an order denying leave to file the successive petition and denying his request for relief under section 2-1401. A motion to reconsider was subsequently denied.

¶ 7 On appeal, defendant contends that remand for further proceedings is necessary because the trial court dismissed his section 2-1401 petition before it was properly served on the State. He admits that an assistant State's Attorney was present in court when he tendered the petition to the trial court, but asserts that this does not constitute evidence that the State was personally

served. Defendant also acknowledges that the proof of service for the supplement to the petition indicates that it was mailed to the State's Attorney, but argues that the service was inadequate because the proof only shows service by regular, not certified or registered mail.

¶ 8 Section 2-1401 establishes a comprehensive procedure for allowing the vacatur of final judgments more than 30 days after their entry. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). Section 2-1401(b) provides that "[a]ll parties to the petition shall be notified as provided by rule." 735 ILCS 5/2-1401(b) (West 2012). Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985) provides that service of a section 2-1401 petition must comply with Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989), which in turn mandates service either by summons, prepaid certified or registered mail, or publication. Under Rule 105(a) (eff. Jan. 1, 1989), a party responding to a section 2-1401 petition has 30 days after notice has been served in which to file an answer or otherwise appear. In *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009), our supreme court determined that a petition is not ripe for adjudication before the 30-day period for a response expires. Where the State fails to answer the petition within the 30-day period, it is deemed to admit all well-pleaded facts, and the petition is ripe for adjudication. *Laugharn*, 233 Ill. 2d at 323; *Vincent*, 266 Ill. 2d at 9-10. Our review of the denial of a section 2-1401 petition is *de novo*. *Laugharn*, 233 Ill. 2d at 322.

¶ 9 In the instant case, we find dispositive our supreme court's recent decision in *People v. Carter*, 2015 IL 117709. In *Carter*, the defendant filed a "Motion to Vacate Judgment" and attached a certificate of service indicating that he had placed it in the "institutional mail" at the correctional center where he was incarcerated. *Id.* ¶ 5. The circuit court dismissed the pleading *sua sponte*. *Id.* ¶ 6. On appeal, the defendant claimed that the circuit court's dismissal of his

section 2-1401 petition was premature given that the petition was not properly served on the State. *Id.* ¶ 7. This court vacated the circuit court's judgment and remanded for further proceedings. *Id.* ¶ 11.

¶ 10 On further review, our supreme court held that there was no meaningful record from the circuit court to be reviewed regarding the defendant's claimed error of defective service. *Id.* ¶ 20. The "scant record" from the circuit court consisted solely of the defendant's statement in the proof of service that he "placed the documents listed below in the institutional mail at Menard Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service." *Id.* The *Carter* court found that this statement did not serve as a basis for the defendant's contention of error because it only showed where the defendant mailed his petition -- the institutional mail -- and the medium through which it was to be transmitted -- the United States Postal Service. *Id.* The language in the proof of service did not, however, affirmatively establish transmittal by regular mail, and thus deficient service. *Id.* ¶¶ 20, 23. Because the defendant failed to affirmatively establish through the record that the State was not given proper service or that the circuit court's *sua sponte* dismissal was premature, which was the defendant's burden as the appellant, the *Carter* court presumed the circuit court's order was rendered in accordance with applicable law. *Carter*, 2015 IL 117709, ¶¶ 19, 24-26. Accordingly, the *Carter* court affirmed the circuit court's judgment dismissing the defendant's petition. *Id.* ¶ 26.

¶ 11 As in *Carter*, we cannot say in the instant case that the record affirmatively establishes that defendant's service upon the State was deficient. Here, as in *Carter*, there is a scant record with which to review defendant's claim of deficient service. First, an assistant State's Attorney

was present in court both when the trial court accepted defendant's initial petition and when it eventually denied relief under section 2-1401. These circumstances would support a conclusion that the State had actual notice of the petition. The only other evidence of service is the "Proof of Service / Notice of Filing" attached to defendant's supplemental petition, which alleges that defendant placed the petition in the "U.S. mail at Stateville C.C. on Dec. 23, 2013 for delivery by the U.S. Postal Service." The only information we are able to ascertain from this document is where defendant mailed his petition -- Stateville Correctional Center -- and the medium through which it was to be transmitted -- the United States Postal Service. However, nothing in defendant's petition or the proof of service indicates whether his petition was mailed via regular, certified, or registered mail. Absent an affirmative showing that defendant did not properly serve the State, we must presume the circuit court rendered its order dismissing defendant's section 2-1401 petition in conformance with the law. See *id.* ¶ 24; see also *People v. Jones*, 2015 IL App (1st) 133123, ¶ 36 (affirming the dismissal of section 2-1401 petition where the defendant failed to satisfy his burden to present a sufficient record showing that his means of service was improper); *People v. Needham*, 2015 IL App (2d) 130473, ¶ 17 (affirming dismissal of section 2-1401 petition where the defendant never affirmatively demonstrated deficient service). Defendant's contention fails.

¶ 12 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 13 Affirmed.