2017 IL App (1st) 130043-UB

SIXTH DIVISION
Order filed: March 17, 2017

No. 1-13-0043

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	Nos. 04 CR 21178
	)	04 CR 23300-02
RONALD HILLOCK,	)	05 CR 7844
	)	05 CR 9720
Defendant-Appellant.	)	05 CR 19721-23
	)	
	)	Honorable
	)	Matthew E. Coghlan,
	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's *sua sponte* dismissal of the defendant's section 2-1401 petition is affirmed where the defendant (1) is estopped from challenging the validity of the dismissal order, and (2) lacks standing to challenge the dismissal order based upon lack of personal jurisdiction over the State.

¶ 2 The defendant, Ronald Hillock, appeals from the circuit court's order dismissing his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735

ILCS 5/2-1401 (West 2012)). On appeal, the defendant argues that the court's *sua sponte* dismissal was premature because he did not properly serve the State with the petition as required by Illinois Supreme Court Rule 105(b) (eff. Jan. 1, 1989). On June 23, 2014, we issued an order vacating the circuit court's judgment and remanding for further proceedings. *People v. Hillock*, 2014 IL App (1st) 130043-U. We have since vacated that decision pursuant to the supreme court's supervisory order directing us to reconsider in light of *People v. Matthews*, 2016 IL 118114. *People v. Hillock*, No. 118029 (Jan. 25, 2017) (supervisory order). After considering the instant case in light of *Matthews*, we now affirm the circuit court's *sua sponte* dismissal of the defendant's section 2-1401 petition.

¶ 3 On January 31, 2006, the defendant entered non-negotiated guilty pleas to nine counts of theft and one count of identity theft from several small businesses that had employed him as their accountant. For the first eight convictions, the circuit court sentenced him to concurrent terms of 14 years' imprisonment for each of four Class 1 thefts and to 6 years' imprisonment for each of four Class 2 thefts. For the two remaining offenses, which were committed while the defendant was free on bond for the previous crimes, the court sentenced him to concurrent prison terms of 15 years for the Class 1 theft and 3 years for the Class 4 identity theft, which ran consecutive to the sentences for the eight prior crimes, for an aggregate sentence of 29 years' imprisonment.

¶ 4 The defendant filed a direct appeal challenging the validity of his sentencing hearing. This court rejected his arguments, and affirmed his conviction and sentence. See *People v. Hillock*, No. 1-06-1951 (2008) (unpublished order under Supreme Court Rule 23). He then filed a post-conviction petition asserting claims related to the voluntariness of his plea and the alleged ineffectiveness of his counsel. The circuit court dismissed the petition, and this court affirmed that dismissal. See *People v. Hillock*, 2012 IL App (1st) 102281-U. Next, the defendant filed his

first petition for relief from judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010), followed by a motion under section 2-617 of the Code (735 ILCS 5/2-617 (West 2010)), again alleging issues arising from his guilty plea. The circuit court denied the section 2-1401 petition and 2-617 motion; the defendant did not file an appeal from these orders.

¶ 5 Finally, on August 29, 2012, the defendant filed a section 2-1401 petition for relief from judgment at issue in this appeal, asserting that the Department of Corrections unconstitutionally usurped the province of the circuit court by adding a term of mandatory supervised release to his sentence. The defendant attached the following proof of service, addressed to the clerk of the Cook County circuit court and the Cook County State's Attorney's office, averring as follows:

> "Please take notice that on 15 of Aug, 2012, I placed the attached or enclosed documents in the institutional mail at _____ Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service."

¶ 6 The transcript of proceedings indicates that, on September 6, 2012, apparently with neither of the parties appearing, the court docketed the defendant's petition and continued the matter until October 12, 2012, "for the Court to review his pleadings." On October 12, 2012, with an Assistant State's Attorney present, the court continued the matter to October 26, 2012. At the hearing of October 26, 2012, with neither party in attendance, the court ruled that the petition would be dismissed for failure to show the existence of a meritorious claim, and entered a written order to this effect. This appeal followed.

¶ 7 On appeal, the defendant concedes that the substantive arguments raised in his section 2-1401 petition were recently addressed and rejected by the supreme court in *People v. McChriston*, 2014 IL 115310, ¶¶ 23-31 (holding that the DOC neither infringes on the judiciary's

sentencing power nor violates due process by enforcing a term of MSR since MSR is automatically part of a sentence). He argues, however, that the circuit court's *sua sponte* dismissal of his section 2-1401 petition should be vacated because it was not ripe for adjudication as he did not properly serve the State as required by Rule 105.

¶ 8 Pursuant to Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985), service of a section 2-1401 petition must be made by the means set out in Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989). Rule 105 provides that a section 2-1401 petitioner must provide the opposing party with notice that the petition has been filed. Notice may be served in person, by prepaid certified or registered mail, or by publication. Ill. S. Ct. R. 105 (eff. Jan. 1, 1989). The notice must inform the respondent that "a judgment by default may be taken against him *** unless he files an answer or otherwise files an appearance *** within 30 days after service, receipt by certified or registered mail, or the first publication of the notice." *Id*. If the responding party fails to answer the petition within the 30-day period, any question as to the petition's sufficiency is deemed waived, and the petition is treated as properly stating a cause of action. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). The court can dismiss a petition despite a lack of responsive pleading if the petition is deficient as a matter of law. *Id.* at 8-9. However, the court cannot *sua sponte* dismiss a petition before the 30-day response period expires. *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009). We review the dismissal of a section 2-1401 petition *de novo*. *People v. Carter*, 2015 IL 117709, ¶ 13.

¶ 9 In this case, the defendant admits he failed to serve the Sate with notice by one of the means allowed by Rule 105—*i.e.*, he sent the petition via regular mail. Given his failure, the defendant posits that the 30-day period for the State to answer or otherwise plead did not begin and, from that premise, he claims the court's *sua sponte* dismissal was premature because his

petition was not yet ripe for adjudication. The State responds by arguing that the record on appeal does not affirmatively demonstrate that the defendant in fact failed to comply with Rule 105(b). Alternatively, the State maintains that it was present on the second court date after the petition was docketed and voiced no objections to the improper service, thereby waiving any challenge to service upon it.

¶ 10 In *People v. Matthews*, 2016 IL 118114, the defendant attached to his section 2-1401 petition a proof of service, which stated that the petition was mailed via the prison mail system at Menard Correctional Center to the clerk of the Cook County circuit court and the Cook County State's Attorney's office. *Id.* ¶ 4. The circuit clerk received and docketed the defendant's pleading and the circuit court *sua sponte* dismissed the petition on the merits. *Id.* The defendant appealed, arguing that the dismissal was premature because he never properly served the State and, thus, the 30-day period for filing a response had not yet expired. *Id.* ¶ 5.

¶ 11 On appeal, our supreme court held that the defendant was estopped from challenging the validity of the order dismissing his petition based upon his claim that service to the State failed to comply with the requirements of Rule 105. The supreme court reasoned that "[n]otions of fair play dictate that a litigant should not be allowed to relitigate a matter resolved against him based on his own error." *Id.* ¶ 23. The court further stated that:

> "if [the] defendant were allowed to invalidate the circuit court's order based on his own failure to properly serve the State, future litigants may have an incentive to improperly serve respondents or provide incomplete certificates of service to create a second opportunity to litigate their claims. [Citation]. This would effectively revoke the State's power to waive service in these cases. Such a result would be inconsistent with the purpose of Supreme Court Rule 105 and of notice

> requirements generally. * * * None of the notice requirements at issue were designed to allow a petitioner to object to lack of service on behalf of the opposing party." *Id.* ¶ 15.

¶ 12 The supreme court in *Matthews* also rejected the defendant's alternative contention that the dismissal order should be dismissed as void based upon a lack of personal jurisdiction over the parties, holding that the defendant lacked standing to raise such a challenge. *Id.* ¶ 23. The supreme court explained that, "[b]ecause service and personal jurisdiction can be waived, only the party to whom service is owed can object to improper service." *Id.* In sum, the supreme court held that the defendant (1) was estopped from challenging the circuit court's order based upon his own failure to properly serve the State, and (2) lacked standing to challenge the validity of the dismissal order based upon lack of personal jurisdiction over the State. *Id.*

¶ 13 In this case, we adhere to the supreme court's holding in *Matthews* and conclude that the defendant should not be able to serve a party incorrectly and then rely upon the incorrect service to seek reversal of the circuit court's decision. As such, the defendant is estopped from challenging the dismissal order based upon his own failure to comply with the service requirements of Rule 105. Moreover, the defendant does not have standing to challenge the validity of the circuit court's dismissal order based upon lack of personal jurisdiction since only the State may object to improper service. Accordingly, the defendant may not challenge the circuit court's dismissal order on these grounds.

¶ 14 Since we have concluded that the defendant cannot object to improper service or lack of personal jurisdiction on behalf of the State, we need not consider whether the record is sufficient to support the defendant's claim that service was improper. Nor do we consider the substantive

arguments originally raised in his petition since he waived the issue by conceding it lacks merit. See *McChriston*, 2014 IL 115310, ¶¶ 23-31.

¶ 15 For all of these reasons, we affirm the circuit court's summary dismissal of the defendant's section 2-1401 petition.

¶ 16 Affirmed.