2012 IL App (2d) 100787
Nos. 2-10-0787 & 2-11-1219 cons.
Order November 30, 2012

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

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 88-CF-392
RONNIE W. CARROLL,	)	Honorable Victoria A. Rossetti,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court did not err in dismissing defendant's two freestanding motions for lack of jurisdiction where motions were filed over 20 years after entry of judgment; (2) denial of defendant's motion to file a successive postconviction petition and the refusal to allow defendant's attorneys to testify was not error; (3) request to award costs and fees against defendant pursuant to 735 ILCS 5/22-105 (West 2008) for alleged frivolous pleadings would be denied where request was not presented to the trial court.

¶ 2 Defendant, Ronnie W. Carroll, appearing *pro se*, appeals the trial court's dismissal of two freestanding motions and its denial of a motion for leave to file a successive postconviction petition related to his 1988 convictions of two counts of armed robbery (Ill. Rev. Stat. 1987, ch. 38, ¶ 18-2)

and two counts of armed violence (Ill. Rev. Stat. 1987, ch 38, ¶ 33A-2). He alleges that the trial court had authority to decide his motions and that the court erred by excluding testimony from his previous attorneys under the special witness doctrine. The State disagrees and asks that we impose sanctions under section 22-105 of the Code of Civil Procedure (Code) (735 ILCS 5/22-105 (West 2008)). We affirm. We also deny the State's request for sanctions.

¶ 3 I. BACKGROUND

¶ 4 In May 1988, defendant pleaded guilty to two counts each of armed robbery and armed violence. On July 22, 1988, he was sentenced to 55 years' incarceration. That same day, he moved to withdraw his guilty plea. The motion was denied, and defendant appealed, raising only an issue with his sentence. We affirmed. *People v. Carroll*, 195 Ill. App. 3d 445, 447 (1990). Since then, defendant has filed numerous collateral attacks on his conviction, including various motions and multiple postconviction petitions. In some of those, defendant raised the issue of ineffective assistance of counsel and his counsel's failure to file a certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). See *People v. Carroll*, 375 Ill. App. 3d 162, 163 (2007) (providing procedural background and holding that the failure of defendant's counsel to file a certificate under Rule 604(d) did not render the trial court's judgment void). In others, he raised arguments that the indictment was defective. The petitions and motions were all rejected.

¶ 5 In March and April 2009, defendant filed multiple freestanding motions, alleging in part that his indictment was defective and that his conviction was void because his counsel failed to file a Rule 604(d) certificate. He later filed a document alleging in part that the court could decide the motions under Illinois Supreme Court Rule 133 (eff. Jan. 1, 1967). On May 17, 2010, defendant

filed a motion for leave to file a sixth postconviction petition. In the motion, he alleged that he was actually innocent. In his accompanying affidavit, he again noted his Rule 604(d) argument.

¶ 6 On October 20, 2011, a hearing was held on the motion for leave to file the successive postconviction petition, and defendant sought to have his previous attorneys testify. The State moved to quash the subpoenas under the special witness doctrine. In a rambling statement, defendant essentially said that his previous appellate counsel and his first postconviction counsel would testify about issues that should have been raised in his direct appeal. The court stated that the issue of effective assistance of counsel had already been litigated and that defendant had not explained anything new that the testimony would provide. Thus, the court did not allow the attorneys to testify.

¶ 7 On July 7, 2010, the trial court denied leave to file the successive petition, finding that the issues raised had previously been litigated and did not nullify defendant's plea or sentencing. The court also dismissed the freestanding motions for lack of jurisdiction because they were untimely filed. The court noted that the motions were not categorized as postconviction petitions or petitions for relief from judgment.

¶ 8 On July 21, 2010, defendant filed a *pro se* notice of appeal in case No. 2-10-0787. However, on July 30, 2010, he moved to vacate and for a rehearing. The trial court found that it lacked jurisdiction over the motion, and it also entered a notice of appeal that same day. On March 31, 2011, we remanded for a hearing on the motion, but retained jurisdiction over the appeal. A hearing was held and, on October 20, 2011, the motion was denied. Defendant filed a notice of appeal, but then he withdrew it and moved to vacate the October 20, 2011, order. That motion was denied, and

a new notice of appeal was filed, in case No. 2-11-1219. The two cases have been consolidated on appeal.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues that the trial court erred in dismissing his freestanding motions, asserting that his indictment was defective and his trial counsel failed to properly comply with Rule 604(d). He also argues that he should have been allowed to call his previous attorneys as witnesses at the hearing on the motion for leave to file a successive postconviction petition so that they could testify about the Rule 604(d) issue.

¶ 11 In regard to the issues related to the freestanding motions, the trial court correctly dismissed those for lack of jurisdiction because the motions, filed over 20 years after the entry of judgment, were untimely.

¶ 12 The trial court loses jurisdiction in the original action after 30 days have passed from the entry of judgment. See *People v. Flowers*, 208 Ill. 2d 291, 303 (2003). However, the trial court has the ability to address statutory collateral actions, such as through postconviction petitions (725 ILCS 5/122-1 (West 2008)) or petitions for relief from judgment under section 2-1401of the Code (735 ILCS 5/2-1401 (West 2008)). See *People v. Mingo*, 403 Ill. App. 3d 968, 970-71 (2010).

¶ 13 Here, defendant's motions were filed well after 30 days from the entry of judgment. The motions were not presented as postconviction petitions, and the trial court was not required to construe them as such. See 725 ILCS 5/122-1(d) (West 2008); *People v. Helgesen*, 347 Ill. App. 3d 672, 676 (2004). Further, to the extent the court could construe them as petitions for relief from

judgment, they were also untimely, as section 2-1401 of the Code would have required defendant to bring his claims within two years. 735 ILCS 5/2-1401(c) (West 2008).[1]

¶ 14 In his materials, defendant referred to Rule 133, which is a civil rule pertaining to pleading requirements in cases involving breach of a statutory duty. That rule does not provide jurisdiction for a court to hear a freestanding motion over 20 years after the judgment was rendered in a criminal case. Thus, it is inapplicable. Accordingly, the trial court correctly dismissed the freestanding motions.

¶ 15 Defendant next argues that, in denying his motion for leave to file a successive postconviction petition, the court erred when it did not allow his previous attorneys to testify under the special witness doctrine. "The special witness doctrine is applicable to prosecutors, judges, and, in certain circumstances, criminal defense attorneys and reporters." *People v. Paris*, 295 Ill. App. 3d 372, 377 (1998). "The doctrine provides that when a defendant in a criminal case subpoenas the prosecutor or judge (or presumably a criminal defense attorney), the trial court should conduct a hearing to determine whether it will permit those subpoenas to stand." *Id.* "A defendant must make a plausible showing that the testimony sought is material and favorable to his defense." *Id.* "At the hearing, the defendant must (1) state the testimony he expects to elicit from the subpoenaed witness, (2) [explain] why that testimony is relevant and necessary to his case, and (3) [identify] the efforts he has made to secure the same evidence through alternative means." *Id.* at 377-78. "A court of

[1]Although defendant's voidness claim was not subject to the limitations period (735 ILCS 5/2-1401(f) (West 2010); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)) , it was barred by *res judicata (*see *Carroll*, 375 Ill. App. 3d at 163).

review will not overturn a trial court's determination on whether to quash such a subpoena absent an abuse of discretion." *Id*. at 378.

¶ 16 The special witness rule is based on the premise that "there is an understandable reluctance to permit an attorney to appear in the same cause as both an advocate and a witness." *People v. Gendron*, 41 Ill. 2d 351, 358 (1968). Here, the State does not address whether attorneys who were acting as advocates over 20 years ago, but who are no longer representing the defendant, fall under the special witness doctrine, and it has not directed us to any on-point authority on the matter. Defendant argues that the rule does not apply to him, so the attorneys could testify.

¶ 17 We need not determine the issue, because defendant did not show that his previous attorneys would testify to anything that had not been previously litigated. Thus, if the rule applied, the trial court correctly determined that the testimony was not relevant to show anything entitling defendant to leave to file a successive postconviction petition, because the issues were *res judicata*. See *People v. Jarrett*, 399 Ill. App. 3d 715, 720 (2010) (*res judicata* prohibits a postconviction petitioner from raising issues previously adjudicated). Further, even if the rule was not applicable here, any error, if there was error at all, was harmless, as defendant has not shown that there was anything to be gained by allowing the attorneys to testify. See *People v. Rodriguez*, 402 Ill. App. 3d 932, 944 (2010) (applying harmless error to the special witness doctrine).

¶ 18 Finally, the State asks us to award costs and fees against defendant based on his filing of a frivolous pleading, under *People v. Johnson*, 2012 IL App (1st) 111378. That case affirmed a trial court's award of sanctions under section 22-105 of the Code. *Id*. ¶¶ 10, 14.

¶ 19 Section 22-105 allows the trial court to award filing fees and court costs to the State when a prisoner files a frivolous pleading. In order to do so, the trial court must make a specific finding

that the pleading is frivolous. 735 ILCS 5/22-105 (West 2008). Here, the issue of costs and fees under section 22-105 was not presented to the trial court. As a corollary, the trial court did not make any findings that the defendant's pleading were frivolous. Nothing in section 22-105 gives this court authority to award sanctions in the first instance, and we decline to enter such an award when the matter was not raised first in the trial court. See *CBS Outdoor, Inc. v. Village of Itasca*, 2011 IL App (2d) 101117, ¶ 26. Accordingly, we deny the State's request to award sanctions.

¶ 20 III. CONCLUSION

¶ 21 The trial court correctly dismissed the freestanding motions, and any error, if there was error at all, in denying testimony from defendant's previous attorneys was harmless. Accordingly, the judgment of the circuit court of Lake County is affirmed. We also deny the State's request for sanctions pursuant to section 22-105 of the Code.

¶ 22 Affirmed.