

2012 IL App (2d) 100913-U
No. 2-10-0913
Order filed March 23, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lee County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 92-CF-120
)	
SHAKA ALI FIKARA, a/k/a)	
Eddie Robinson,)	Honorable
)	Jacquelyn D. Ackert,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: Because defendant had already filed a postconviction petition, the proper characterization of his motion to vacate a void judgment was as a section 2-1401 petition, and, because it was defendant's first such petition, the trial court erred in deeming it frivolous for purposes of section 3-6-3(d) of the Unified Code of Corrections. Accordingly, the grounds for revoking any good-conduct credit based on the trial court's section 3-6-3(d) finding of frivolity no longer exist.

¶ 1 Seven years after this court affirmed the trial court's order disposing of defendant's postconviction petition, defendant filed a "Motion to Vacate Void Judgment." The motion did not indicate whether it was being filed pursuant to section 2-1401 of the Code of Civil Procedure (the

Civil Code) (735 ILCS 5/2-1401 (West 2010)), the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)), or on some other basis. The trial court ultimately denied the motion, finding that it was a motion to vacate a void judgment that may be brought at any time and in any proceeding and that the motion was frivolous for purposes of section 3-6-3(d) of the Code of Corrections (the Corrections Code) (730 ILCS 5/3-6-3(d) (West 2010)). Defendant moved to reconsider, the trial court denied the motion, and this timely appeal followed. At issue in this appeal is (1) what type of action is defendant's "Motion to Vacate Void Judgment" and (2) whether defendant's "Motion to Vacate Void Judgment" is one of the types of "lawsuits" delineated in section 3-6-3(d) of the Corrections Code that a trial court may find frivolous. We determine that defendant's "Motion to Vacate Void Judgment" is a section 2-1401 petition and that, because defendant has not filed any other section 2-1401 petition, his "Motion to Vacate Void Judgment" is not a "lawsuit" that the trial court could have found frivolous. Accordingly, we reverse the trial court's frivolous finding, but we affirm the denial of defendant's "Motion to Vacate Void Judgment" in all other respects.

¶ 2 The facts relevant to resolving this appeal may be simply stated. In 1994, a jury convicted defendant of three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2), (b)(1) (West 1994)), and he was sentenced to 2 consecutive terms of 40 years' imprisonment. This court affirmed defendant's convictions and sentences on direct appeal (*People v. Fikara*, No. 2-95-1463 (1997) (unpublished order under Supreme Court Rule 23)), and defendant filed a postconviction petition. Although the trial court dismissed three of the four issues defendant raised, the court found that, pursuant to the fourth issue, defendant was entitled to a new sentencing hearing. Following a new sentencing hearing, defendant was again sentenced to 2 consecutive terms of 40 years' imprisonment. Defendant filed motions to reconsider his sentence and the four issues he raised in

his postconviction petition. The trial court denied the motions, defendant appealed, and this court affirmed. *People v. Fikara*, 345 Ill. App. 3d 144 (2003).

¶ 3 Seven years later, defendant filed a “Motion to Vacate Void Judgment.” The trial court denied the motion, and, in doing so, the court attempted to identify what type of filing the “Motion to Vacate Void Judgment” was. Specifically, the court stated:

“The petition is not entitled a post-conviction petition, however, this court points out that [defendant] has already filed a post-conviction petition and if he intended the instant motion to be a post-conviction petition it would be dismissed pursuant to 725 ILCS 5/122-1(f) [(West 2010)] as [defendant] did not obtain leave of court to file a second post-conviction petition. Even if this court chose to characterize the motion as a post-conviction petition and addressed the merits of the motion this court would summarily dismiss the petition on the basis of *res judicata* and waiver as all issues have been previously addressed by the trial court and the appellate courts or could have been addressed and [defendant] failed to raise the issues.

The court then evaluates the motion as an attempt to file a [section] 2-1401 motion for relief from judgment. 735 ILCS 5/2-1401 [(West 2010)]. Any motion filed pursuant to 735 ILCS 5/2-1401 [(West 2010)] must be filed within 2 years after the entry of the order or judgment. The judgment being challenged by [defendant] was entered on October 24, 2001, and affirmed on appeal on October 10, 2003. It is evident that 2 years has elapsed since the time of the entry of the judgment; therefore, the [section] 2-1401 petition is not timely filed.

Finally, the court evaluates the [defendant's] claim that void judgments may be attacked at any time. After a thorough review of the trial court files (6 in total) and the appellate court opinions the court finds that petitioner's motion lacks merit."

The court then detailed in the order how the issues defendant raised in his "Motion to Vacate Void Judgment" were forfeited or barred by the doctrine of *res judicata* or collateral estoppel. At the end of the order, the court asserted that "[t]he Motion to Vacate Void Judgment is denied." The court further found "[defendant's] motion to be frivolous pursuant to 730 ILCS 5/3-6-3(d) [(West 2010)]."

¶ 4 On the same day that the trial court denied defendant's motion, the court sent a letter to the director of the legal department at Menard Correctional Center, which is where defendant is serving his sentence. In that letter, the court advised the director that defendant's "Motion to Vacate Void Order" was "dismiss[ed]" and that the court found the motion "frivolous pursuant to 730 ILCS 5/3-6-3(d) [(West 2010)]." The court indicated in the letter that "this information is being forwarded for [the director's] determination as to such further action as may be deemed appropriate."

¶ 5 On appeal, defendant does not challenge the trial court's denial of his "Motion to Vacate Void Judgment." Rather, defendant takes issue only with the trial court's finding that his motion was frivolous for purposes of section 3-6-3(d) of the Corrections Code. Thus, we limit our review to that issue.

¶ 6 We begin by deciding whether defendant's "Motion to Vacate Void Judgment" is a section 2-1401 petition or a postconviction petition. Because classifying the type of action that defendant filed does not require us to defer to the trial court's reasoning, our review is *de novo*. See *People v. McCreary*, 393 Ill. App. 3d 402, 406 (2009).

¶ 7 As noted, the trial court found that defendant’s “Motion to Vacate Void Judgment” was just that, *i.e.*, a motion to vacate a void judgment that may be brought at any time and in any proceeding. The problem with that approach is that a freestanding motion to vacate a void judgment does not initiate a cognizable action. See *People v. Flowers*, 208 Ill. 2d 291, 308 (2003). “Thus, to consider it at all, the court had to construe defendant’s motion as a pleading initiating some type of statutory collateral proceeding.” *People v. Helgesen*, 347 Ill. App. 3d 672, 675 (2004).

¶ 8 Here, it seems clear which construction should have applied. Because the action was not viable as a postconviction petition, as defendant had already filed one, the motion could have been only a section 2-1401 petition. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 105 (2002) (where a postconviction petition is not an option, “petitions seeking relief from void judgments *are* section 2-1401 petitions” (emphasis added)).

¶ 9 The trial court stated that the “Motion to Vacate Void Judgment” could not be a viable section 2-1401 petition because the limitations period had passed. But, to the extent that the action was directed at an allegedly void judgment (regardless of whether the judgment was void), the limitations period did not apply. *People v. Muniz*, 386 Ill. App. 3d 890, 893 (2008). Thus, defendant’s “Motion to Vacate Void Judgment” was a section 2-1401 petition, and we may apply that classification to his motion on appeal. See *People v. McNett*, 361 Ill. App. 3d 444, 447 (2005).

¶ 10 That said, the issue next becomes whether it was proper for the trial court to find that defendant’s section 2-1401 petition was frivolous for purposes of section 3-6-3(d) of the Corrections Code. Because resolving that issue requires us to interpret section 3-6-3(d) of the Corrections Code, our review is *de novo*. See *People v. Lewis*, 223 Ill. 2d 393, 402 (2006).

¶ 11 In interpreting section 3-6-3(d) of the Corrections Code, our primary objective is to ascertain the legislature's intent. *People v. Rinehart*, 2012 IL 111719, ¶ 24. "The plain language of the statute is the best indication of that intent, and if that language is clear and unambiguous, it must be given effect." *Id.* "To discern the plain meaning of statutory terms, it is appropriate for the reviewing court to consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it." *People v. Young*, 2011 IL 111886, ¶ 11. "Unless the language of the statute is ambiguous, this court should not resort to further aids of statutory construction and must apply the language as written." *Id.* Because section 3-6-3(d) of the Corrections Code is a penal statute, it must be strictly construed in defendant's favor. *Helm v. Washington*, 308 Ill. App. 3d 255, 258 (1999).

¶ 12 Section 3-6-3(d) of the Corrections Code provides that the Department of Corrections may revoke up to 180 days of good-conduct credit based on the trial court's specific finding that a prisoner's lawsuit is frivolous. In so providing, the legislature defined what "lawsuits" could be found frivolous. Specifically, a "lawsuit" is defined as:

"a motion pursuant to Section 116-3 of the Code of Criminal Procedure of 1963, a habeas corpus action under Article X of the Code of Civil Procedure or under federal law (28 U.S.C. 2254), a petition for claim under the Court of Claims Act, an action under the federal Civil Rights Act (42 U.S.C. 1983), or a second or subsequent petition for post-conviction relief under Article 122 of the Code of Criminal Procedure of 1963 whether filed with or without leave of court or a second or subsequent petition for relief from judgment under Section 2-1401 of the Code of Civil Procedure." 730 ILCS 5/3-6-3(d)(2) (West 2010).

¶ 13 Given that the director of the Illinois Department of Corrections is vested with authority to award meritorious good time credit (*People ex rel. Braver v. Washington*, 311 Ill. App. 3d 179, 186 (1999)), section 3-6-3(d) of the Corrections Code should deter defendants from inundating courts with filings that lack merit. The plain language of section 3-6-3(d) provides that defendants who file certain types of actions subject themselves to having up to 180 days of earned good-conduct credit revoked. The plain language of section 3-6-3(d) of the Corrections Code further provides that, among other filings, a defendant who files a *second* or *subsequent* section 2-1401 petition may have his or her good-conduct credit revoked if the court finds the petition frivolous. 730 ILCS 5/3-6-3(d) (West 2010).

¶ 14 Here, the trial court found defendant's section 2-1401 petition frivolous under section 3-6-3(d) of the Corrections Code. This finding was erroneous, as the section 2-1401 petition defendant filed was his first. Because this petition was not defendant's "second" or "subsequent" section 2-1401 petition, the trial court could not, pursuant to section 3-6-3(d) of the Corrections Code, find the petition frivolous. Accordingly, we reverse that finding. See *Helm*, 308 Ill. App. 3d at 259. Therefore, the grounds for revoking any of defendant's good-conduct credit based on the trial court's section 3-6-3(d) finding of frivolity no longer exist.

¶ 15 For these reasons, the judgment of the circuit court of Lee County is affirmed in part and reversed in part.

¶ 16 Affirmed in part and reversed in part.