

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).

2011 IL App (3d) 091022-U

Order filed November 3, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Appellee,

v.

JOHN D. WOODS,

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
) Will County, Illinois,
)
) Appeal No. 3-09-1022
) Circuit No. 00-CF-17
)
) Honorable
) Daniel J. Rozak,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in treating defendant's petition as a motion for leave to file a successive postconviction petition.

¶ 2 Defendant, John D. Woods, was found guilty of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 1998)). His conviction was affirmed on appeal. *People v. Woods*, No. 3-02-0975 (2004) (unpublished order under Supreme Court Rule 23). Subsequently, defendant filed a postconviction petition and two petitions for relief from judgment, all of which were dismissed. Defendant then filed three documents, one entitled

"Petition for Post-Conviction Relief," which the trial court treated as a motion for leave to file a successive postconviction petition, and denied the motion. Defendant appeals, arguing that the trial court erred by treating his petition as a motion for leave to file a successive postconviction petition instead of a petition for relief from judgment. We affirm.

¶ 3

FACTS

¶ 4 Following a jury trial, defendant was convicted of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 1998)), and was sentenced to a term of 21 years' imprisonment. Defendant's conviction was affirmed on appeal.

¶ 5 Following the appeal, defendant filed a *pro se* postconviction petition pursuant to section 122-1 of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2004)). Defendant argued that his trial counsel was ineffective and that the evidence at trial was insufficient to prove that he had the requisite intent to deliver the controlled substance. The trial court dismissed defendant's petition as frivolous and without merit.

¶ 6 Defendant then filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)). That petition was dismissed without prejudice by the trial court because defendant had failed to properly serve notice on the State. Thereafter, defendant filed another petition attempting to resubmit his section 2-1401 petition. Again, the petition was dismissed without prejudice, this time voluntarily by defendant.

¶ 7 Finally, defendant submitted three documents to the trial court. The first was entitled "Motion for Leave of Notice of Filling [sic]," in which defendant gave notice that he would be filing "the attached, []motion for my successive post conviction 725 ILCS 5/122-1." The second was a certificate of service. The third was entitled, "Petition for Post-Conviction Relief," and argued that

defendant's constitutional rights were violated by: (1) the prosecution and police officers singling out defendant for prosecution; (2) ineffective assistance of counsel because his trial counsel (a) failed to ask certain questions during trial, (b) did not request a lesser included offense instruction, and (c) conspired with the prosecution when she leaked information that defendant would argue that he possessed the drugs for personal use; and (3) denial of a fair trial.

¶ 8 The trial court treated these three documents as an attempt by defendant to file a motion for leave to file a successive postconviction petition. The court denied defendant's request because it found that the only issues raised were already addressed in defendant's appeal and/or initial postconviction petition, or were issues which could have been raised therein. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant claims that the trial court erred in treating his petition as a motion for leave to file a successive postconviction petition instead of a section 2-1401 petition for relief from judgment. A postconviction petition requires that the trial court decide whether defendant's constitutional rights were violated at trial, whereas a section 2-1401 petition involves errors of fact, not law. *People v. Pinkonsly*, 207 Ill. 2d 555 (2003). Ineffective assistance of counsel is an error of law, and thus properly addressed by a postconviction petition. *Id.* A *pro se* pleading may be recharacterized by a trial court if mislabeled; therefore, where the pleading alleges a deprivation of constitutional rights cognizable under the Act, a trial court may treat the pleading as a postconviction petition. *People v. Shellstrom*, 216 Ill. 2d 45 (2005). When the trial court characterizes a pleading, we apply a *de novo* standard of review. See *People v. Williams*, 394 Ill. App. 3d 236 (2009).

¶ 11 Here, the trial court did not err when it treated defendant's petition as a postconviction petition. The petition cites the Act in support of its claims rather than section 2-1401, and it is

entitled a "Petition for Post-Conviction Relief." Further, the pleadings allege a deprivation of constitutional rights, not errors of fact. While defendant does claim that his attorney conspired with the prosecution by leaking a possible defense, the actual claim, as stated in the petition, is not one of collusion but one of ineffective assistance of counsel. In the petition, defendant states that he is arguing ineffective assistance of counsel, in that his counsel was ineffective for failing to keep a possible defense secret. This claim is properly made in a postconviction petition, and thus it was not an error for the trial court to treat the document as a postconviction petition.

¶ 12 Further, the trial court did not err in dismissing the petition. The Act contemplates the filing of only one postconviction petition; therefore, it is necessary for a defendant to obtain leave of court in order to file a successive postconviction petition. *People v. Anderson*, 402 Ill. App. 3d 1017 (2010). Pursuant to section 122-1(f) of the Act, leave of court may be granted only if defendant demonstrates cause for his failure to bring the claim in his initial postconviction proceeding and prejudice which resulted from that failure. 725 ILCS 5/122-1(f) (West 2008). Here, the trial court acted within its discretion when it denied defendant's motion for leave because the only issues raised were already addressed in defendant's appeal and/or initial postconviction petition, or were issues which could have been raised.

¶ 13 Therefore, the trial court did not abuse its discretion in treating defendant's motion as a motion for leave to file a successive postconviction petition, or in its denial of defendant's motion.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed