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2013 IL App (3d) 120067-U

Order filed July 18, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
Plaintiff-Appellee,) Will County, Illinois,
)
v.) Appeal No. 3-12-0067
) Circuit No. 00-CF-1415
)
JOHN P. COFFEY,) Honorable
) Edward A. Burmila, Jr.,
Defendant-Appellant.) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Wright and Justice Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court failed to comply with the notice and admonishment requirements of *People v. Pearson*, 216 Ill. 2d 58 (2005), when it recharacterized defendant's pleading as a successive postconviction petition.
- ¶ 2 Defendant pled guilty to first degree murder (720 ILCS 5/9-1(a)(2) (West 2000)) and concealment of a homicidal death (720 ILCS 5/9-3.1(a) (West 2000)) and was sentenced to 40 years' imprisonment. After filing multiple postconviction petitions, defendant filed in state court a federal form for habeas corpus relief. The trial court recharacterized that pleading as a petition

for postconviction relief (725 ILCS 5/122-1 (West 2008)) and dismissed the petition. On appeal, this court remanded with directions that the trial court comply with the notice and admonishment requirements of *People v. Pearson*, 216 Ill. 2d 58 (2005). On remand the court again recharacterized defendant's pleading as a petition for postconviction relief and reinstated its order striking the petition. Defendant appeals, claiming that the trial court again failed to comply with the notice and admonishment requirements of *Pearson*. We vacate the trial court's order and remand with directions.

¶ 3

FACTS

¶ 4 Defendant pled guilty to first degree murder (720 ILCS 5/9-1(a)(2) (West 2000)) and concealment of a homicidal death (720 ILCS 5/9-3.1(a) (West 2000)). In compliance with the negotiated plea agreement, the trial court sentenced defendant to consecutive terms of 35 and 5 years' imprisonment, respectively. Additionally, the trial court sentenced defendant to a concurrent term of 5 years' imprisonment following the State's petition to revoke defendant's preexisting probation. Defendant did not file a motion to withdraw his guilty plea, and this court dismissed his subsequent direct appeal.

¶ 5 Defendant filed three petitions for postconviction relief, all of which were summarily dismissed by the trial court. Defendant later filed the pleading at issue in the present appeal: a federal court form for a "PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY." At a hearing the trial court recharacterized the pleading as an Illinois petition for postconviction relief (725 ILCS 5/122-1 (West 2008)). The trial court questioned defendant about his knowledge of postconviction proceedings. The trial court summarily dismissed the petition.

¶ 6 On appeal, this court issued a summary order remanding the cause because the trial court failed to properly notify and admonish defendant that it was characterizing his pleading as a petition for postconviction relief. *People v. Coffey*, No. 3-10-0252 (2011) (unpublished order under Supreme Court Rule 23); see *People v. Shellstrom*, 216 Ill. 2d 45 (2005); *Pearson*, 216 Ill. 2d 58. The order included directions that the trial court "follow the mandates of *Shellstrom* and *Pearson* with regard to the defendant's *pro se* pleading." *Coffey*, slip order at 3.

¶ 7 On remand the trial court held a hearing to comply with our order. The following exchange occurred:

"THE COURT: Mr. Coffey, you filed a document in this courtroom on a Federal habeas corpus form, which to my mind appeared to be a successive petition for post-conviction relief and I construed it as such.

The Appellate Court has sent the matter down, back to me, that I should not have construed it as such without asking you if that was your intention when you filed that document.

So the question that I have for you is: When you filed that document on the Federal form, which of course is not recognized in state court, what was your intention?

THE DEFENDANT: Time reduction.

THE COURT: Okay. So it was not a petition for post-conviction relief, correct?

THE DEFENDANT: I didn't have any—I don't have no lawyer. I need post-conviction relief.

THE COURT: Now, you just went in a circle here now. Was that document that you filed an attempt on your part to file another petition for post-conviction relief?

THE DEFENDANT: Correct.

THE COURT: It was, okay. Show that on the record that the Court correctly construed this as a request for post-conviction relief and the order that was previously entered striking it is reaffirmed and the matter is stricken. Do you wish to appeal again?

THE DEFENDANT: Yes."

Defendant appeals.

¶ 8

ANALYSIS

¶ 9 On appeal, defendant argues that the trial court again failed to follow the requirements outlined in *Pearson*, 216 Ill. 2d 58, and *Shellstrom*, 216 Ill. 2d 45, when it construed defendant's pleading as a petition for postconviction relief. The State argues that *Pearson* and *Shellstrom* are inapplicable to the present case because those cases involved an initial petition for postconviction relief, whereas defendant's pleading was characterized as a *successive* petition for postconviction relief. According to the State, because defendant's petition was successive, the considerations at issue in *Pearson* and *Shellstrom* do not exist in the present case, and defendant received adequate notice and admonishments from the trial court. Defendant replies by arguing that even assuming, *arguendo*, that *Pearson* and *Shellstrom* do not apply to the present case, the trial court was bound to follow them as directed by this court's order.

¶ 10 *Pearson* held that when a trial court chooses to recharacterize a *pro se* litigant's pleading as a *successive* postconviction petition, the court must first:

"(1) notify the *pro se* litigant that the court intends to recharacterize the pleading, (2) warn the litigant that this recharacterization means that the petition will be subject to the restrictions on successive postconviction petitions, and (3) provide the litigant an

opportunity to withdraw the pleading or to amend it so that it contains all the factors and arguments appropriate to a successive postconviction petition that the litigant believes he or she has." *Pearson*, 216 Ill. 2d at 68.

¶ 11 In the present case, our order remanded defendant's cause with directions to the trial court to comply with the three notice and admonishment requirements of *Pearson*. *Coffey*, No. 3-10-0252. On remand, the trial court complied with only the first requirement of *Pearson*, that is, the trial court notified defendant that it intended to recharacterize the pleading as a postconviction petition. The trial court did not comply with the final two requirements of *Pearson*.

Accordingly, we vacate the trial court's order and remand the cause with directions to the trial court to comply with our previous remand directions and provide defendant all three parts of *Pearson*'s notice and admonishment requirements.

¶ 12 CONCLUSION

¶ 13 The decision of the circuit court of Will County is vacated. The cause is remanded with directions.

¶ 14 Order vacated and remanded with directions.