

2012 IL App (2d) 100710-U  
No. 2-10-0710  
Order filed April 10, 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE | ) | Appeal from the Circuit Court |
| OF ILLINOIS,            | ) | of Winnebago County.          |
|                         | ) |                               |
| Plaintiff-Appellee,     | ) |                               |
|                         | ) |                               |
| v.                      | ) | No. 01-CF-3338                |
|                         | ) |                               |
| TIMOTHY C. CHATMAN,     | ) | Honorable                     |
|                         | ) | Joseph G. McGraw,             |
| Defendant-Appellant.    | ) | Judge, Presiding.             |

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Burke concurred in the judgment.

**ORDER**

*Held:* Because the record suggested that defendant's postconviction petition might have been filed on his behalf by his father, a nonattorney, and thus might have been a nullity, we remanded for the trial court to resolve that issue and, if necessary, to vacate its dismissal and to strike the petition.

¶ 1 Defendant, Timothy C. Chatman, appeals from an order granting the State's motion to dismiss a postconviction petition seeking relief from defendant's convictions of two counts of aggravated battery with a firearm and one count of armed robbery. Because our examination of the

record leads us to suspect that the petition was improperly filed by a third party, not defendant, we remand for further proceedings to determine the validity of the petition.

¶ 2 Defendant was convicted following a jury trial at which the State's evidence included a written statement signed by defendant following his arrest. On October 15, 2003, a petition was filed under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2002)) seeking to vacate the judgment of conviction. The trial court incorrectly dismissed the petition on the basis that, because defendant's direct appeal was pending, the court had been divested of jurisdiction (a section 2-1401 petition, of course, initiates a new collateral proceeding). On May 18, 2005, this court affirmed defendant's conviction. *People v. Chatman*, No. 2-03-1072 (2005) (unpublished order under Supreme Court Rule 23) (*Chatman I*). On June 6, 2005, a petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/art. 122 (West 2004)) was filed. On August 10, 2005, the trial court entered a written order in which it indicated that it had "begun its 90-day review of the Defendant's pro-se Petition for Post Conviction Relief \*\*\* filed June 6, 2005." The court found that it should not have dismissed the October 15, 2003, section 2-1401 petition. The court reinstated the petition and notified defendant of its intent to recharacterize the petition as a postconviction petition. The court gave defendant 70 days to amend the section 2-1401 petition to include any claims set forth in the June 6, 2005, petition. The order further stated that "[u]pon the Defendant's filing of any amended Petition, the Court will begin the 90[-]day review period of the Defendant's Amended Petition for Post Conviction Relief anew."

¶ 3 On October 26, 2005, the trial court entered an order stating, "The Court not having received any amended pleading \*\*\*, the Court will now begin its review of the pleading deemed a post conviction petition of Oct[.] 15, 2003 within 90 days." On January 11, 2006, the trial court entered

an order summarily dismissing the petitions filed on October 15, 2003, and June 6, 2005. A notice of appeal was filed on January 27, 2006. This court held that the trial court erred in summarily dismissing the June 6, 2005, postconviction petition more than 90 days after it was filed. Accordingly, this court reversed the dismissal and remanded for the petition to be advanced to the second stage. *People v. Chatman*, No. 2-06-0102 (2007) (unpublished order under Supreme Court Rule 23) (*Chatman II*). On remand, counsel was appointed to represent defendant, but defendant's attorney moved to withdraw on the basis that there were no meritorious issues to raise in the proceeding. The State moved to dismiss the postconviction petition. On April 24, 2009, the trial court granted counsel's motion to withdraw. On June 25, 2010, the trial court granted the motion to dismiss. On July 12, 2010, defendant filed a notice of appeal.

¶ 4 The Office of the State Appellate Defender was appointed to represent defendant on appeal, but counsel moved to withdraw on the basis that the appeal presented no meritorious issue. See generally *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. Lee*, 251 Ill. App. 3d 63 (1993). A written objection to the motion was filed, but not by defendant. Rather, the objection was purportedly filed by defendant's father, Timothy Chatman, Sr. According to an affidavit attached to the objection, defendant's father has resided in Garland, Texas, since 2001. The affidavit further stated, "I filed a Petition under section 2-1401 Relief From Judgment and the trial court failed to timely hear the Petition."

¶ 5 In reviewing the record in connection with counsel's motion to withdraw, we noted irregularities in the signatures on various documents purportedly executed by defendant. The signatures on the section 2-1401 petition, an accompanying affidavit, the postconviction petition, documents attached to that petition, and the notice of appeal in *Chatman II* all appear to more or less

match one another. Curiously, however, those signatures bear little resemblance to the signature on defendant's written statement to police, though that signature closely resembles the one on the July 12, 2010, notice of appeal. The postconviction petition states that defendant had been incarcerated since 2001 and was currently residing at the Big Muddy Correctional Center. An affidavit of service indicates that the petition was mailed from the Big Muddy Correctional Center. However, a separate "proof of service" states that copies of the petition were "deposit[ed] \*\*\* in a U.S. Post office Mail Box in Garland, TX." The next document in the common-law record is a photocopy of an envelope addressed to "Clerk Winnebago County" and bearing defendant's return address in the Big Muddy Correctional Center. However, the postage meter strip (which is only partly legible) contains the letters "GARLA," suggesting, perhaps, that postage was affixed at defendant's father's place of residence, Garland, Texas.<sup>1</sup>

¶ 6 Concluding that defendant's attorney should examine and consider these irregularities, this court denied, without prejudice, the motion to withdraw. Counsel has now filed a brief on the merits, arguing that the case should be remanded to the trial court for a determination of whether the postconviction petition was actually filed by defendant.

¶ 7 Based on the facts discussed above, it appears quite likely that the signature appearing on the postconviction petition belongs not to defendant, but rather was placed on the petition by defendant's father, who then mailed the petition to the trial court from his home in Texas. Whether defendant was even aware that his father had done so is by no means clear. In order "to protect

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<sup>1</sup>Additionally, a photocopy of an envelope appears in the common-law record immediately after the notice of appeal in *Chatman II*. The return address is given as the Big Muddy Correctional Center, but the cancellation mark on the envelope says "North Texas P&DC."

litigants against the mistakes of those ignorant of the law and the schemes of the unscrupulous, and to protect the court itself in the administration of its proceedings from those lacking requisite legal skills,” a nonattorney’s actions in representing another in a legal proceeding are usually considered a nullity. *Pratt-Holdampf v. Trinity Medical Center*, 338 Ill. App. 3d 1079, 1083 (2003). The rule will be relaxed when application would defeat its purpose. *Id.* However, assuming for the moment that our suspicions are correct—that filing the petition was the unilateral act of defendant’s father and cannot meaningfully be ascribed to defendant himself—we see no reason to relax the rule. Ordinarily a criminal defendant is afforded only one opportunity to seek relief under the Act (*People v. Guerrero*, 2012 IL 112020, ¶ 15), so however well-intentioned defendant’s father may have been, he did defendant no favor by usurping and squandering that opportunity by filing a petition that may fairly be said to have had no real chance of securing any relief for defendant.

¶ 8 Defendant does not ask us to definitively rule that the petition was a nullity. Rather, he contends that factual issues are involved and that the matter should be resolved by the trial court. We agree that the trial court is the appropriate forum for resolution of the factual questions arising from the irregularities in signatures and postal markings.

¶ 9 Noting that the section 122-3 of the Act provides that “[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived” (725 ILCS 5/122-3 (West 2004)), the State contends that defendant waived the argument that the petition is a nullity because he did not raise it in the postconviction petition. The contention is meritless. To accept the State’s reasoning would utterly defeat the nullity rule’s purpose. In any event, section 122-3 simply does not apply. Section 122-1(a)(1) of the Act provides:

“(a) Any person imprisoned in the penitentiary may institute a proceeding under this Article if the person asserts that:

(1) in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both[.]” 725 ILCS 5/122-1(a)(1) (West 2004).

The phrase “claim of substantial denial of constitutional rights” in section 122-3 refers to the constitutional claims described in section 122-1(a)(1), to wit, those arising in the proceedings that resulted in the defendant’s conviction. 725 ILCS 5/122-3 (West 2004). A challenge to the legitimacy of the postconviction petition itself does not fit this description and is not within the ambit of section 122-3.

¶ 10 For the foregoing reasons the case is remanded to the circuit court of Winnebago County for further proceedings to determine whether the petition was filed by defendant. If not, the court should vacate the dismissal of the petition and order it stricken.

¶ 11 Remanded with instructions.