

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).

2012 IL App (4th) 110086-U

Filed 8/29/12

NO. 4-11-0086

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JOSEPH T. HORTON,)	No. 04CF186
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* We grant the office of the State Appellate Defender's motion to withdraw and affirm the trial court's dismissal of petition for relief from judgment where defendant's petition pursuant to section 2-1401 (735 ILCS 5/2-1401 (West 2010)) did not present a meritorious claim in arguing the record did not contain a common law placita.
- ¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.
- ¶ 3 On August 20, 2004, a jury convicted defendant, Joseph T. Horton, of first degree murder (720 ILCS 5/9-1 (West 2002)), in that he stabbed and beat the victim to death in an incident on January 29, 2004. The jury found his conduct was exceptionally brutal and heinous, indicative of wanton cruelty.

¶ 4 In October 2004, the trial court sentenced defendant to life imprisonment. Defendant appealed, arguing multiple issues. This court affirmed the trial court's judgment. *People v. Horton*, No. 4-04-0917 (Mar. 8, 2007) (unpublished order under Supreme Court Rule 23).

¶ 5 On November 2, 2007, defendant filed a *pro se* postconviction petition arguing trial counsel was prejudiced against him and provided ineffective assistance of counsel. On June 27, 2008, defendant, with assistance of counsel, filed an amended postconviction petition adding additional claims of ineffective assistance of trial counsel and due process violations. On September 3, 2008, after a hearing on the State's motion to dismiss, the trial court dismissed defendant's postconviction petition. This court affirmed the trial court's judgment. *People v. Horton*, No. 4-08-0696 (Feb. 24, 2010) (unpublished order under Supreme Court Rule 23).

¶ 6 On August 19, 2010, defendant filed the instant petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). In November 2010, the State filed a motion to dismiss, and the trial court dismissed defendant's petition on January 12, 2011.

¶ 7 On January 26, 2011, defendant filed a notice of appeal and the trial court appointed OSAD to serve as his attorney. On February 2, 2012, OSAD moved to withdraw as appellate counsel, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by March 5, 2012. Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the court's

judgment.

¶ 8 OSAD argues this appeal presents no meritorious issues. Specifically, OSAD asserts defendant's contention "[t]he common[-]law record do[es] not contain a placita" fails to present a meritorious basis for a section 2-1401 petition. We agree.

¶ 9 Section 2-1401 allows for relief from final judgments more than 30 days after their entry. 735 ILCS 5/2-1401 (West 2010). A section 2-1401 petition "must be filed not later than 2 years after the entry of the order or judgment." 735 ILCS 5/2-1401(c) (West 2010). In a criminal proceeding, a section 2-1401 petition seeks to correct errors occurring in the prosecution of a case that were unknown to the petitioner and the trial court at the time of trial, which, if then known, would have prevented the judgment from being entered. *People v. Moore*, 2012 IL App (4th) 100939, ¶ 26, ___ N.E.2d ___, 2012 WL 525473 (quoting *People v. Thomas*, 364 Ill. App. 3d 91, 98, 845 N.E.2d 842, 850 (2006)). Claims that could have been made on direct appeal are barred under principles of *res judicata* and collateral estoppel. *People v. Burrows*, 172 Ill. 2d 169, 187, 665 N.E.2d 1319, 1327 (1996).

¶ 10 To be entitled to relief under section 2-1401, the petitioner must set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition. *People v. Bramlett*, 347 Ill. App. 3d 468, 473, 806 N.E.2d 1251, 1255 (2004) (quoting *In re Estate of Barth*, 339 Ill. App. 3d 651, 662, 792 N.E.2d 315, 324 (2003)).

¶ 11 OSAD correctly asserts a "placita" is no longer required for a record on appeal. When the Illinois Supreme Court revised Rule 608 in 1986 (Ill. S. Ct. R. 608(a)(1) (eff. July 3,

1986) (requiring "a cover sheet showing the title of the case")), it substituted the term "cover sheet" for the word "placita" (Ill. S. Ct. R. 608(a)(1) (eff. Apr. 1, 1982) ("a placita showing the title of the case")). The common-law purpose of a placita was to show the trial level proceedings were had before a regularly and properly constituted and convened court. *Allied Coal & Mining Co. v. Andrews*, 318 Ill. App. 415, 416, 48 N.E.2d 563, 564 (1943). Indeed, a "placita" generally contained information indicating in what court the matter was pending, the term time, the date on which the order was made, the convening of court, the presiding judge, and other proper officers of the court. *People v. McCurrie*, 337 Ill. 290, 295-96, 169 N.E. 214, 216 (1929). These requirements could be met through a showing in the record the court was duly convened. See *People v. Hughes*, 386 Ill. 414, 415-16, 54 N.E.2d 496, 497 (1944); *People v. Anderson*, 397 Ill. 583, 585, 74 N.E.2d 693, 694 (1947).

¶ 12 In the instant case, a placita is not required and the cover sheet on appeal, which is what was required at the time of the murder and since, is in conformity with Rule 608(a)(1) (Ill. S. Ct. R. 608(a)(1) (eff. Jan. 1, 1998) (requiring a cover sheet)). Rule 608(a)(1) supplants the common-law placita requirement. Further, as OSAD argues and our research confirms, no Illinois court has held the absence of a placita may serve as the basis for a petition for relief from judgment pursuant to section 2-1401.

¶ 13 Additionally, defendant's contentions are without merit, assuming *arguendo* a placita is still required, as the record cover sheets, charging instrument, orders, judgments, transcripts, and the certification of the circuit clerk all contain information required by the common-law placita requirement.

¶ 14 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial

court's judgment.

¶ 15 Affirmed.