

No. 1-14-3647

**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  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	90 C5 50049
	)	
PHILLIP MCDOWELL,	)	Honorable
	)	Joan M. O'Brien,
Petitioner-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

**ORDER**

*Held:* The trial court erred in failing to comply with the Illinois Supreme Court's mandate directing it to treat the petitioner's *habeas corpus* petition as a postconviction petition and to conduct an evidentiary hearing on the petitioner's claim of actual innocence pursuant to section 122-6 of the Post-Conviction Hearing Act (PostConviction Act) (725 ILCS 5/122-6 (West 2002)). As a result, we vacate the trial court's order denying petitioner's motion to reinstate his voluntarily withdrawn postconviction petition and remand the matter to the trial court to conduct

an evidentiary hearing on the petitioner's claim of actual innocence pursuant to section 122-6 of the PostConviction Act in compliance with the supreme court's mandate.

¶ 1

## BACKGROUND

¶ 2 In 1992, petitioner Phillip McDowell pled guilty to two counts of first-degree murder, one count of felony murder, one count of armed robbery, and one count of theft in the stabbing death of the victim. As part of his plea agreement, petitioner stipulated to facts that made him eligible for the death penalty. Petitioner waived a jury for the third phase of the death sentencing hearing. The matter was continued for sentencing.

¶ 3 Prior to sentencing, petitioner wrote a letter to the trial court stating he wanted to withdraw his guilty pleas. Petitioner subsequently filed a *pro se* motion to withdraw his guilty pleas based on his "physical and emotional condition on the date of his plea, ineffective assistance of trial counsel, and the lack of a factual basis to support the theft and armed robbery charges." Following a hearing on the motion, the court denied it.

¶ 4 Petitioner filed a *pro se* second amended motion to withdraw his guilty pleas, which the court also denied. The matter proceeded to sentencing, and after hearing arguments on the death sentencing issue, the trial court sentenced petitioner to 60 years' imprisonment on the felony murder count. The other counts petitioner pled guilty to were merged into the felony murder count.

¶ 5 The petitioner's convictions and sentence, and the denial of his motion to withdraw his guilty pleas, were affirmed on direct appeal. *People v. McDowell*, No. 1-93-4078 (June 29, 1995) (unpublished order under Supreme Court Rule 23).

¶ 6 In December 2000, petitioner filed a *pro se* petition for writ of *habeas corpus* in the circuit court of Brown County against the warden of the Western Illinois Correctional Center

where he was incarcerated. Petitioner argued he was being illegally detained. He alleged he had newly discovered evidence of his actual innocence. Specifically, petitioner alleged that at the time of the murder, he was in the Cook County jail. In support of this allegation, he attached to the petition an arrest report and other documents from the Chicago police department.

¶ 7 The Illinois Attorney General filed a motion to dismiss the petition. The attorney general argued that the petitioner's evidence was not newly discovered because the documents regarding his incarceration were discoverable at the time of trial and that the issues should have been raised in a postconviction petition rather than in a *habeas corpus* petition. Petitioner responded that he was precluded from raising his actual innocence argument because of timeliness and that the issue could properly be raised in a *habeas corpus* petition. The circuit court of Brown County dismissed the *habeas corpus* petition with leave to reinstate if petitioner was unsuccessful in raising his claims in a postconviction petition.

¶ 8 Instead of refiling the *habeas corpus* petition as a postconviction petition, petitioner appealed to the appellate court. The Fourth District Appellate Court, affirmed, finding that petitioner's claims should have been raised in a postconviction petition. *McDowell v. Boyd*, No. 4-01-0602 (Jan. 14, 2002) (unpublished order under Supreme Court Rule 23). Petitioner then appealed to the Illinois Supreme Court.

¶ 9 On July 10, 2002, the supreme court issued a supervisory order directing the Fourth District Appellate Court and the circuit court of Brown County to vacate their respective judgments in this matter and ordered that the matter be transferred to the circuit court of Cook County. The circuit court of Cook County was directed to treat the petitioner's *habeas corpus* petition as a postconviction petition and to conduct an evidentiary hearing on the petitioner's

claim of actual innocence pursuant to section 122-6 of the Post-Conviction Hearing Act (PostConviction Act) (725 ILCS 5/122-6 (West 2002)).

¶ 10 After the matter was transferred to the circuit court of Cook County, the trial court allowed petitioner to amend his petition to include any other claims in addition to his claim of actual innocence, so his assertions could be adjudicated in one proceeding. Over the course of the next several years, proceedings were conducted featuring three different defense attorneys, four different judges, and a number of collateral issues.

¶ 11 On November 5, 2010, the trial court issued a ruling dismissing all of petitioner's claims except for his claim of actual innocence. On June 24, 2011, petitioner filed a *pro se* motion to voluntarily withdraw his postconviction petition. The State objected, noting that the supreme court had issued a mandate directing the circuit court to proceed to a third-stage evidentiary hearing on the petitioner's claim of actual innocence. On July 1, 2011, the circuit court granted petitioner's motion.

¶ 12 On March 13, 2012, petitioner filed a *pro se* motion to reinstate his voluntarily withdrawn postconviction petition. In support of the motion, petitioner cited to the appellate court decision in *People v. English*, 381 Ill. App. 3d 906, 910 (2008) for the proposition that reinstatement of a voluntarily withdrawn postconviction petition is mandatory if the motion was filed within a year of the voluntary withdrawal.

¶ 13 After numerous court hearings spanning two years, the trial court ultimately denied the petitioner's motion and amended motion to reinstate his voluntarily withdrawn postconviction petition. The court determined that the following language in section 122-5 of the PostConviction Act gave it the discretion to decide whether or not to reinstate the petition: "The court may in its discretion make such order as to amendment of the petition or any other

pleading, or as to pleading over, or filing further pleadings, or extending the time of filing any pleading other than the original petition, as shall be appropriate, just and reasonable and as is generally provided in civil cases." 725 ILCS 5/122–5 (West 2014). The court then denied reinstatement of petitioner's petition. It is from this ruling that petitioner now appeals.

¶ 14

#### ANALYSIS

¶ 15 Petitioner argues on appeal that the trial court incorrectly determined that it possessed the discretion to deny his motion to reinstate his voluntarily withdrawn postconviction petition. Petitioner contends that pursuant to the holding in *People v. English*, 381 Ill. App. 3d 906, 910 (2008), the trial court was required to grant his motion to reinstate where the motion was filed within one year of the voluntary withdrawal of his postconviction petition. Petitioner further contends that even if the court possessed such discretion, it abused that discretion by denying his motion to reinstate where the Illinois Supreme Court issued a supervisory order instructing the trial court to conduct an evidentiary hearing on his postconviction petition alleging actual innocence.

¶ 16 The State agrees with both of these propositions and believes we should reverse the trial court's order denying reinstatement of the petitioner's postconviction petition and remand the matter for a third-stage evidentiary hearing on petitioner's claim of actual innocence as mandated by our supreme court.

¶ 17 In light of the supreme court's mandate, we need not decide at this time whether the circuit court acted within its discretion, or abused such discretion, in denying petitioner's motion to reinstate his postconviction petition. When a reviewing court issues a mandate, it vests a trial court with jurisdiction only to take action that conforms with the mandate. *People v. Abraham*, 324 Ill. App. 3d 26, 30 (2001). The question of whether a circuit court complied with a

reviewing court's mandate is a question of law subject to *de novo* review. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351-52 (2002).

¶ 18 It is well-settled that a trial court is required to obey the clear and unambiguous directions in a mandate issued by a reviewing court. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982). When, as in this case, the directions of the reviewing court are specific, a positive duty devolves upon the trial court to act in accordance with the directions contained in the mandate. *Id.*

¶ 19 Here, the supreme court's mandate was specific and unambiguous. The trial court was directed to treat the petitioner's *habeas corpus* petition as a postconviction petition and to conduct an evidentiary hearing on the petitioner's claim of actual innocence pursuant to section 122-6 of the PostConviction Act (725 ILCS 5/122-6 (West 2002)). When the trial court failed to conduct such a hearing, the court failed to obey the mandate of the supreme court. Therefore, we vacate the trial court's order denying petitioner's motion to reinstate his voluntarily withdrawn postconviction petition and remand the matter to the trial court to conduct an evidentiary hearing on the petitioner's claim of actual innocence pursuant to section 122-6 of the PostConviction Act in compliance with the supreme court's mandate.

¶ 20 Vacated and remanded with directions.