

2017 IL App (1st) 143799-U  
Nos. 1-14-3799 & 1-15-0451 (cons.)  
Order filed May 10, 2017

Third Division

**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 DISTRICT

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|----------------------------------|---|---------------------|
| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the     |
|                                  | ) | Circuit Court of    |
| Plaintiff-Appellee,              | ) | Cook County.        |
|                                  | ) |                     |
| v.                               | ) | No. 12 CR 9459      |
|                                  | ) |                     |
| SAMUEL WHITE,                    | ) | Honorable           |
|                                  | ) | Thaddeus L. Wilson, |
| Defendant-Appellant.             | ) | Judge, presiding.   |

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JUSTICE LAVIN delivered the judgment of the court.  
Justices Pucinski and Cobbs concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Trial court's dismissal of defendant's petition for relief from judgment affirmed as the doctrine of estoppel barred him from challenging the court's order based on his own failure to properly serve the State.
- ¶ 2 Defendant, Samuel White, appeals the trial court's order dismissing his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). On appeal, defendant argues that the court's *sua sponte* dismissal was premature

Nos. 1-14-3799 & 1-15-0451 (cons.)

because he did not properly serve the State with the petition as required by Illinois Supreme Court Rule 105(b) (eff. Jan. 1, 1989). We affirm.

¶ 3 After a bench trial, defendant was convicted of one count of armed habitual criminal, two counts of armed violence, one count of unlawful use of a weapon by a felon, and two counts of possession of a controlled substance. The trial court merged his convictions and sentenced him to three concurrent terms of 18 years' imprisonment for armed habitual criminal, armed violence, and unlawful use of a weapon by a felon. Defendant filed a direct appeal. See *People v. White*, 2015 IL App (1st) 131111. We vacated his armed habitual criminal and one of his armed violence convictions, affirmed the remainder of the court's judgment, and remanded the case for resentencing as to his conviction of possession of a controlled substance and his remaining armed violence conviction. *Id.* ¶ 28-54.

¶ 4 While defendant's direct appeal was pending, he sent a letter to the circuit clerk dated May 13, 2014, with his section 2-1401 petition for relief from judgment enclosed. In it, defendant alleged that, *inter alia*, there had been no probable cause for his arrest, evidence had been fabricated and omitted to his disadvantage, and his indictment was defective as to certain charges. Defendant did not include any proof of service showing that he had notified the State of the petition. On May 29, 2014, the circuit clerk filed the petition. On October 17, 2014, the trial court issued a written order denying the petition for relief on the merits. On November 18, 2014, defendant's notice of appeal was filed (No. 1-14-3799). Defendant also filed a motion for leave to file a late notice of appeal, which was granted by this court on March 5, 2015 (No. 1-15-0451). The two appeals were consolidated by this court on March 9, 2015.

¶ 5 On appeal, defendant admits he failed to serve the State with notice of his section 2-1401 petition as Rule 105 requires but argues that the trial court could not dismiss his petition until he had done so. Ill. S. Ct. R. 105 (eff. Jan. 1, 1989). Specifically, defendant argues that the 30-day period for the State to answer or otherwise plead did not begin because the State was not properly served and, as a result, the court's *sua sponte* dismissal was premature because his petition was not yet ripe for adjudication. The State responds that defendant is estopped from seeking relief based on his own failure to properly serve the State. We agree with the State.

¶ 6 Pursuant to Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985), service of a section 2-1401 petition must be made by the means set out in Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989). Rule 105 provides that a section 2-1401 petitioner must provide the opposing party with notice that the petition has been filed. Notice may be served in person, by prepaid certified or registered mail, or by publication. Ill. S. Ct. R. 105 (eff. Jan. 1, 1989). The notice must inform the respondent that “a judgment by default may be taken against him \*\*\* unless he files an answer or otherwise files an appearance \*\*\* within 30 days after service, receipt by certified or registered mail, or the first publication of the notice.” *Id.* If the responding party fails to answer the petition within 30 days, any question as to the petition's sufficiency is deemed waived, and the petition is treated as properly stating a cause of action. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). The court can dismiss a petition despite a lack of responsive pleading if the petition is deficient as a matter of law. *Id.* at 8-9. However, the court cannot *sua sponte* dismiss a petition before the 30-day response period expires. *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009). We review the dismissal of a section 2-1401 petition *de novo*. *People v. Carter*, 2015 IL 117709, ¶ 13.

¶ 7 As the State correctly notes, our supreme court's recent decision in *People v. Matthews*, 2016 IL 118114, controls in this case. In *Matthews*, the defendant mailed a section 2-1401 petition on March 25, 2012. *Matthews*, 2016 IL 118114, ¶ 4. On April 11, 2012, the circuit clerk file stamped the defendant's petition. *Id.* On May 24, 2012, the trial court dismissed the defendant's petition *sua sponte*. *Id.*

¶ 8 The defendant in *Matthews* argued his notice of filing his 2-1401 petition was not mailed in accordance with Supreme Court Rule 105 and, therefore, that "the court's order dismissing the petition was premature based on his own failure to comply with the applicable service requirements." *Id.* ¶ 7. Rule 105 requires a petitioner to provide service of section 2-1401 petitions in person, by certified or registered mail, or by publication. *Id.* ¶8 (citing Ill. S. Ct. R. 105(b) (eff. Jan. 1, 1989); Ill. S. Ct. R. 106 (eff. Aug. 1, 1985)). The court in *Matthews* rejected the defendant's contention that the 30-day period never started because he never properly served his petition on the State. *Id.* ¶ 15. In doing so, the court held that "a defendant cannot challenge the trial court order based on his own failure to properly serve the State." *Id.*

¶ 9 Like the defendant in *Matthews*, defendant seeks to use his own failure to comply with Supreme Court Rules as grounds to challenge the trial court's order. Defendant's only argument on appeal is that the trial court acted prematurely because he did not comply with the service requirements under Rule 105 and, therefore, the 30-day period should not have commenced until he had properly served the State. Because defendant cannot use his failure to comply with court rules as grounds for reversing the trial court's decision, we find him estopped from arguing that the court acted prematurely. Accordingly, following *Matthews*, we affirm the trial court's judgment dismissing defendant's section 2-1401 petition.

Nos. 1-14-3799 & 1-15-0451 (cons.)

¶ 10 For the reasons stated, we affirm the judgment of the circuit court of Cook County

¶ 11 Affirmed