

NOTICE

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FILED

July 14, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150575-U

NO. 4-15-0575

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Morgan County
NELSON A. YOUNG,)	No. 05CF136
Defendant-Appellant.)	
)	Honorable
)	David R. Cherry,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred by failing to sufficiently admonish defendant under *People v. Pearson*, 216 Ill. 2d 58, 833 N.E.2d 827 (2005), before recharacterizing his *pro se* petition as a successive petition for postconviction relief (725 ILCS 5/122-1(f) (West 2014)). The appellate court vacated the dismissal of that petition and remanded with directions. The court found it was without jurisdiction to address defendant's claim of entitlement to additional sentence credit first raised on appeal of the dismissal of the postconviction petition and directed the trial court to vacate fines imposed by the circuit clerk.

¶ 2 After a July 2006 trial, the jury found defendant, Nelson A. Young, guilty of first degree murder. The trial court sentenced him to 40 years in prison. We affirmed defendant's conviction on direct appeal. *People v. Young*, 381 Ill. App. 3d 595, 887 N.E.2d 649 (2008).

¶ 3 In April 2009, defendant *pro se* filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2008)), arguing ineffective assistance of trial counsel. The trial court summarily dismissed the petition, and we affirmed. *People v. Young*, No. 4-09-0486 (2011) (unpublished order under Supreme Court Rule

23).

¶ 4 In October 2014, defendant *pro se* filed a pleading labeled as a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)), arguing that (1) his conviction violated due process because he stood trial while unfit and (2) trial counsel provided ineffective assistance of counsel. The trial court treated defendant's petition as a successive petition for postconviction relief and eventually dismissed it.

¶ 5 Defendant appeals, arguing that the trial court recharacterized his petition as a successive petition for postconviction relief without first admonishing him under *People v. Pearson*, 216 Ill. 2d 58, 833 N.E.2d 827 (2005). We agree, and therefore, we vacate the dismissal of defendant's petition and remand for proper admonishments under *Pearson*. In addition, we conclude that we lack jurisdiction to address defendant's claim he is entitled to additional sentence credit, and we direct the trial court to vacate fines imposed by the circuit clerk.

¶ 6

I. BACKGROUND

¶ 7

A. Defendant's Murder Conviction

¶ 8 In July 2005, the State charged defendant with first degree murder (720 ILCS 5/9-1(a)(2) (West 2004)), alleging that he stabbed his victim with a knife. After a July 2006 trial, the jury found him guilty. The trial court later sentenced him to 40 years in prison. We affirmed defendant's conviction on direct appeal, rejecting his argument that the trial court abused its discretion by allowing the State to admit other-crimes evidence. *Young*, 381 Ill. App. 3d 595, 887 N.E.2d 649.

¶ 9

B. Defendant's April 2009 Postconviction Petition

¶ 10 In April 2009, defendant *pro se* filed a petition for postconviction relief under the Act. In it, defendant alleged that his trial counsel was ineffective for failing to raise various is-

sues. The trial court summarily dismissed the petition as frivolous and patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2008) (“If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition ***.”). On appeal, we affirmed the trial court’s judgment. *Young*, No. 4-09-0486.

¶ 11 C. The October 2014 Petition at Issue in This Case

¶ 12 1. *Defendant’s Petition*

¶ 13 In October 2014, defendant *pro se* filed a pleading titled “Petitioner’s Motion/Request for a Fitness Hearing Pursuant to 735 ILCS 5/2-1401(f), Namely, a Relief of Judgment Petition.” In it, defendant alleged that his trial counsel was ineffective for failing to inform the trial court of certain facts showing that defendant was unfit to stand trial. He also argued that trying him while unfit constituted a due process violation. As relief, defendant requested the court to order a psychological evaluation to retroactively determine whether he was fit at the time of his trial.

¶ 14 2. *The Trial Court’s February 2015 Order*

¶ 15 In February 2015, the trial court entered a written order addressing defendant’s petition, which was created from a template titled, “Docket Order on Petition for Post-Conviction Petition.” It included various sections with check-boxes for the court to make findings pursuant to sections of the Act.

¶ 16 Under a section titled, “The court finds as follows, pursuant to 725 ILCS 5/122-1,” the court found that defendant had filed a prior petition for postconviction relief. The court found further that defendant was not entitled to leave to file a successive postconviction petition because he had not shown cause and prejudice for failing to bring his claims in the original petition.

¶ 17 Under another section titled, “Pursuant to 725 ILCS 5/122-2.1,” the court found that more than 90 days had passed since the filing and docketing of defendant’s petition. Therefore, the court ordered the petition docketed for further consideration “in accordance with 725 ILCS 5/122-4 through 122-6.” The court ordered a hearing on the petition for March 24, 2015. “Pursuant to 725 ILCS 5/122-6,” the court found that defendant should not be brought to court for that hearing. The court did not appoint counsel to represent defendant. The court directed the State to answer the petition or move to dismiss within 30 days.

¶ 18 Later that month, the State filed a motion to dismiss defendant’s filing. The State addressed the petition, alternatively, as a petition for relief from judgment under section 2-1401 of the Code and as a postconviction petition under the Act.

¶ 19 *3. The Trial Court’s March 2015 Order*

¶ 20 On March 3, 2015, prior to the scheduled hearing date on defendant’s petition, the trial court entered a one-paragraph written order dismissing defendant’s “Motion for a Fitness Hearing” because “a fitness examination was conducted prior to trial and the defendant was found to be fit to stand trial.”

¶ 21 *4. Defendant’s Postjudgment Motions*

¶ 22 On March 23, 2015, defendant *pro se* filed two motions. One was titled, “Petitioner’s Motion To Oppose the State’s Motion To Dismiss,” and the other, “Petitioner’s Motion To Vacate Court’s Premature Order Entered.” In those motions, defendant argued that the trial court erred by recharacterizing his petition as a successive postconviction petition without notifying defendant. Defendant also argued that his petition should be considered a petition for relief from judgment under section 2-1401 of the Code and that defendant’s legal claim that he was unfit excepted his section 2-1401 petition from the general two-year statute of limitations (735

ILCS 5/2-1401(c) (West 2014)). Alternatively, defendant requested that the court vacate its March 2015 order and appoint counsel to represent defendant under the Act to determine whether to adopt defendant's *pro se* motions. Defendant attached an application for counsel, stating that he could not afford an attorney and wished to have one appointed.

¶ 23 *5. The Trial Court's June 2015 Order*

¶ 24 In June 2015, the trial court entered an order denying defendant's "Motion To Oppose the State's Motion To Dismiss." Although the court did not explicitly address defendant's "Motion To Vacate Court's Premature Order Entered," the court clarified that it stood by its order dismissing defendant's petition.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Defendant argues that the trial court erred by construing his *pro se* petition for relief from judgment as a postconviction petition without first admonishing defendant in accordance with *Pearson*. He requests that we vacate the trial court's judgment dismissing his petition and remand for the proper admonishments under *Pearson*. We agree with defendant's argument and therefore vacate the trial court's judgment.

¶ 28 Defendant also raises issues as to his sentencing credit and fines. In response, we vacate the imposition of certain fines.

¶ 29 A. The Act

¶ 30 The Act (725 ILCS 5/122-1 to 122-7 (West 2014)) provides a remedy for defendants whose convictions resulted from a substantial violation of their constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). The Act sets up a three-stage process for adjudicating postconviction petitions. *People v. Boclair*, 202 Ill. 2d 89, 99, 789

N.E.2d 734, 740 (2002). A defendant may file only one postconviction petition without obtaining leave of court. 725 ILCS 5/122-1(f) (West 2014). To obtain leave of court, the defendant must satisfy the cause-and-prejudice standard by showing “cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure.” *Id.*

¶ 31 A trial court may recharacterize an otherwise labeled *pro se* pleading and treat it as a postconviction petition. “[W]here a *pro se* pleading alleges a deprivation of constitutional rights cognizable in a postconviction proceeding, a trial court may treat the pleading as a postconviction petition, even where the pleading is labeled differently.” *People v. Shellstrom*, 216 Ill. 2d 45, 53, 833 N.E.2d 863, 868 (2005). However, when a court recharacterizes a *pro se* pleading as a postconviction petition, the court must first do the following:

“(1) notify the *pro se* litigant that the court intends to recharacterize the pleading, (2) warn the litigant that this recharacterization means that any subsequent postconviction 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 claims appropriate to a postconviction petition.” *Id.* at 57, 833 N.E.2d at 870.

The foregoing admonishments help ensure that defendants raise all applicable claims in their recharacterized postconviction petition, lest they lose the opportunity to raise them later because of the cause-and-prejudice test.

¶ 32 In *Pearson*, 216 Ill. 2d at 68, 833 N.E.2d at 832, the supreme court held that the rationale of *Shellstrom* applies when a circuit court recharacterizes a petition as a *successive* postconviction petition. The court held that prior to recharacterizing as a successive postconviction petition a *pro se* filing that is labeled otherwise, the circuit court must do the fol-

lowing:

“(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.” *Id.* at 68, 833 N.E.2d at 832.

The *Pearson* court held that the admonishments were necessary to warn defendants that their successive postconviction petitions should include arguments establishing cause and prejudice for failing to bring their claims in their initial postconviction petitions. *Id.*

¶ 33

B. This Case

¶ 34 The State argues that the trial court did not recharacterize defendant’s filing as a successive postconviction petition and, therefore, the *Pearson* admonishments were unnecessary. According to the State, the court treated the filing as a section 2-1401 petition, as it was labeled. We disagree.

¶ 35 The State does not contest that, if the trial court recharacterized his filing as a successive postconviction petition, it failed to properly admonish defendant pursuant to *Pearson*.

¶ 36 We conclude that the trial court recharacterized defendant’s petition as a successive postconviction petition. The court’s February 2015 order addressing the petition was titled, “Docket Order on Petition for Post-Conviction Petition [*sic*].” The court went on to make numerous findings that referenced various sections of the Act. For example, “Pursuant to 725 ILCS 5/122-2.1,” the court found that more than 90 days had passed since the docketing of defendant’s petition. The court, therefore, ordered the cause docketed “for further consideration in accord-

ance with sections 122-4 through 122-6.” Further, the court found that defendant had not alleged that he was unable to pay the costs of the proceedings and was therefore not entitled to proceed as a poor person under section 122-2.1 of the Act (725 ILCS 5/122-2.1 (West 2014)).

¶ 37 In further support of the claim that the trial court recharacterized the petition, we note that defendant raised the kind of arguments cognizable in a postconviction petition. Specifically, defendant raised claims of a due process violation and ineffective assistance of counsel, both of which are constitutional claims cognizable in a postconviction petition under the right circumstances. The record overwhelmingly supports defendant’s contention that the trial court recharacterized his pleading as a successive postconviction petition, despite the trial court’s referring to the petition as a “Motion for Fitness Hearing” in its March 2015 order.

¶ 38 Because the trial court recharacterized defendant’s petition as a successive postconviction petition, the court was required to admonish defendant in compliance with *Pearson*, 216 Ill. 2d at 68, 833 N.E.2d at 832. That is, the court was required to (1) notify defendant of the recharacterization, (2) warn defendant of the consequences of recharacterization, and (3) allow defendant to withdraw or amend his petition. *Id.* The court did not comply with *Pearson*. We therefore remand for proper compliance.

¶ 39 We note that although trial courts have the discretion to recharacterize a *pro se* petition as a postconviction petition, they are not required to do so. Section 122-1(d) of the Act addresses that point directly, as follows:

“A person seeking relief by filing a petition under this Section must specify in the petition or its heading that it is filed under this Section. A trial court that has received a petition complaining of a conviction or sentence that fails to specify in the petition or its heading that it is filed under this Section need not evaluate

the petition to determine whether it could otherwise have stated some grounds for relief under this Article.” 725 ILCS 5/122-1(d) (West 2014).

Because of the prickly admonishment requirements of *Shellstrom* and *Pearson* that accompany recharacterization, this court has written that “recharacterization should occur only in unusual and compelling circumstances.” *People v. Holliday*, 369 Ill. App. 3d 678, 682, 867 N.E.2d 1016, 1020 (2007).

¶ 40 C. New Issues: Sentence Credit and Fines Imposed by Circuit Clerk

¶ 41 1. *Sentencing Credit*

¶ 42 Defendant argues that the trial court denied him 183 additional days of presentencing custody credit for time he spent committed as unfit prior to his trial. 730 ILCS 5/5-8-7 (West 2004) (repealed by Pub. Act 95-1052, § 95 (eff. July 1, 2009)).

¶ 43 The State argues that under *People v. Nelson*, 2016 IL App (4th) 140168, 49 N.E.3d 1007, and *People v. Morrison*, 2016 IL App (4th) 140712, 64 N.E.3d 821, we lack jurisdiction and must dismiss defendant’s claim.

¶ 44 We agree with the State and abide by our decisions in *Nelson* and *Morrison*, which hold that a request for presentence custody credit under section 5-8-7 of the Unified Code of Corrections (730 ILCS 5/5-8-7 (West 2004)) cannot be raised for the first time on appeal from postconviction proceedings. Instead, as noted in those cases, “defendant may petition the trial court to correct the simple error in arithmetic, as trial courts retain jurisdiction to correct nonsubstantial matters of inadvertence or mistake.” *Morrison*, 2016 IL App (4th) 140712, ¶ 21, 64 N.E.3d 821; *Nelson*, 2016 IL App (4th) 140168 ¶¶ 36-38, 49 N.E.3d 1007.

¶ 45 2. *Fines Imposed by the Circuit Clerk*

¶ 46 Finally, defendant argues that we should vacate as void the following fines im-

properly imposed by the circuit clerk: (1) \$50 court-finance assessment; (2) \$10 arrestee's medical ("Medical Costs") assessment; and (3) \$25 violent-crime-victims-assistance assessment. The State concedes that these three assessments are fines that are void and should be vacated because they were imposed by the circuit clerk. See *People v. Hible*, 2016 IL App (4th) 131096, ¶¶ 11-12, 53 N.E.3d 319 (fines imposed by circuit clerk are void). We therefore order the trial court to vacate the three fines listed above.

¶ 47

III. CONCLUSION

¶ 48 For the foregoing reasons, we vacate and remand with directions. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016); see also *Hible*, 2016 IL App (4th) 131096, ¶ 28, 53 N.E.3d 319 ("The defendant must be successful in challenging every aspect of relief sought to prevent the State from assessing the statutory fee against him.").

¶ 49 Vacated and cause remanded with directions.