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2018 IL App (3d) 170093-U

Order filed May 3, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

<i>In re</i> COMMITMENT OF BRADLEY	)	Appeal from the Circuit Court
SIEVER,	)	of the 9th Judicial Circuit,
	)	Knox County, Illinois.
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-17-0093
v.	)	Circuit No. 08-MR-60
	)	
Bradley Siever,	)	
	)	The Honorable
Respondent-Appellant).	)	Scott Shippelt,
	)	Judge, presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The circuit court did not err when it refused to construe the respondent's postconviction petition as a section 2-1401 petition.
- ¶ 2 The respondent, Bradley Siever, was found to be a sexually violent person subject to institutional care in a secure facility. The State filed a motion for a finding of no probable cause,

alleging that Siever should remain institutionalized as a sexually violent person. The circuit court granted the State's motion, and Siever appealed. On appeal, Siever argues, *inter alia*, that the court erred when it dismissed his postconviction petition.

¶ 3

### FACTS

¶ 4

In 1998, then-22-year-old Siever pled guilty to aggravated criminal sexual abuse after fondling and kissing a 13-year-old girl. He was sentenced to two years of probation and 40 days in jail and was ordered to obtain a mental health evaluation and comply with any associated treatment. His probation was revoked after he was found to have married and moved in with a woman and her two small children; a sex offender therapist testified at the hearing that being in the presence of two children without proper supervision or a safety plan put Siever at serious risk for sexually reoffending. The therapist believed that Siever was a pedophile who had deviant fantasies of prepubescent children and had masturbated to those fantasies for years.

¶ 5

In 2004, Siever was charged with two counts of aggravated criminal sexual abuse after he allegedly had intercourse with a girl between the ages of 13 and 17. Siever pled guilty to one count and was sentenced to five years of incarceration. He was paroled in 2007.

¶ 6

Siever violated his parole twice in 2007 and was subsequently reincarcerated. He was paroled again in 2008 but was returned to prison once again after violating the terms of his parole by possessing large amounts of pornographic material.

¶ 7

While Siever was incarcerated in 2008, the State filed a petition to declare him a sexually violent person. A jury trial was held in 2011, and the jury in fact found Siever to be a sexually violent person. The circuit court then ordered Siever committed to institutional care in a secure facility.

¶ 8 In January 2016, the State filed a motion for a finding of no probable cause, alleging that Siever had not participated in sex offender treatment and was not entitled to the appointment of an evaluator. The petition further alleged that there was no probable cause to warrant an evidentiary hearing on the issue of whether Siever was no longer a sexually violent person and, accordingly, Siever was still subject to secure commitment as a sexually violent person. Appended to the petition was the report of a psychologist with whom Siever refused to meet. The psychologist concluded, based on review of the records, that Siever suffered from a paraphilic disorder and that it was substantially probable that he would engage in acts of sexual violence if released.

¶ 9 At the hearing on the petition, counsel for Siever presented no comments or argument. The circuit court granted the State's petition.

¶ 10 On December 12, 2016, Siever filed a *pro se* petition for postconviction relief. In the petition, he essentially alleged that his counsel rendered ineffective assistance by failing to put forth any defense to the State's motion for a finding of no probable cause.

¶ 11 On December 23, 2016, the circuit court issued an order in which it found that because Siever was not imprisoned in the penitentiary<sup>1</sup>, he was not entitled to file a postconviction petition. Accordingly, the court dismissed Siever's petition as frivolous and patently without merit.

¶ 12 Siever appealed.

¶ 13 ANALYSIS

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<sup>1</sup> Even though Siever was mandatorily held in a correctional facility, he was technically not imprisoned because he was detained as part of a civil treatment program and not as one convicted of a criminal offense.

¶ 14 Siever’s first argument on appeal is that the circuit court erred when it dismissed his postconviction petition. He contends that the court should have recharacterized it as a motion for relief from judgment brought under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)).

¶ 15 There is no question here that Siever lacked standing to bring a postconviction petition, as he was not imprisoned in the penitentiary. See 725 ILCS 5/122-1(a) (West 2016); *People v. Steward*, 406 Ill. App. 3d 82, 90 (2010). Thus, the only question is whether the circuit court should have recharacterized Siever’s pleading as a section 2-1401 motion. Importantly, however, Siever cites no law to indicate that a circuit court has any duty to do so. In fact, his argument is predicated simply on a claim that because our supreme court has acknowledged that an ineffective assistance of counsel claim *can* be brought under section 2-1401 (*People v. Lawton*, 212 Ill. 2d 285, 299 (2004)), the circuit court in this case *should* have recharacterized Siever’s petition as a section 2-1401 motion.

¶ 16 A circuit court has no obligation to recharacterize a *pro se* pleading; it cannot be error for the court to fail or refuse to do something that it has no duty to do. See *People v. Stoffel*, 239 Ill. 2d 314, 324 (2010) (citing *People v. Shellstrom*, 216 Ill. 2d 45 (2005) and holding that because a circuit court has no duty to recharacterize a *pro se* pleading as a postconviction petition, it is not error for the court to fail to recharacterize the pleading as such). Moreover, the circuit court’s “failure” to recharacterize Siever’s petition did not have the effect of foreclosing any potential avenue to relief, which is a primary concern when addressing the ability to raise claims of ineffective assistance of counsel (see *Lawton*, 212 Ill. 2d at 295-96). Under these circumstances, we hold that the circuit court did not err when it treated Siever’s pleading as a postconviction petition and dismissed that petition as frivolous and patently without merit.

¶ 17 Our ruling on Siever’s first argument obviates the need to address his remaining arguments.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Knox County is affirmed.

¶ 20 Affirmed.