

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).

FILED

October 16, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 160242-U

NO. 4-16-0242

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
CHARLES E. HARRIS,)	No. 99CF124
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant’s due process rights were violated when the circuit court granted the State’s motion to dismiss defendant’s petition without giving defendant an opportunity to respond, but the error was harmless.
- ¶ 2 In November 2015, defendant, Charles E. Harris, filed a *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2014)). In December 2015, the State filed a motion to toll the responsive pleading deadline, which the Champaign County circuit court granted. On February 18, 2016, the State filed a motion to dismiss defendant’s section 2-1401 petition. Seven days later, the court entered a written order dismissing defendant’s petition. On March 7, 2016, defendant filed a response to the State’s motion to dismiss. The court stated it considered the defendant’s response and found its previous order remained in effect.
- ¶ 3 Defendant appeals, asserting (1) his due process rights were violated because the

circuit court dismissed his section 2-1401 petition without giving him an opportunity to respond, (2) the court dismissed his petition before it was ripe for adjudication, and (3) the circuit clerk improperly imposed two fines against him. We affirm.

¶ 4

I. BACKGROUND

¶ 5 In February 1999, a grand jury indicted defendant with four counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 1998)) for the January 23, 1999, death of Barry Robinson. All four charges raised an accountability theory. The State also charged Edward Thompson for Robinson's death. *People v. Thompson*, No. 99-CF-245 (Cir. Ct. Champaign County). After the murder, both defendant and Thompson were interviewed by Champaign police detective John Schweighart at the police station. The State tried defendant and Thompson separately. At defendant's May 1999 trial, the State presented the testimony of 16 witnesses, including Detective Schweighart. Detective Schweighart testified defendant admitted bringing the gun into Robinson's residence, getting into a fight with Robinson, and handing Thompson the gun. Defendant stated it was Thompson who shot Robinson. The State did not present Thompson's recorded statements at defendant's trial.

¶ 6 At the conclusion of defendant's trial, the jury found defendant guilty of first degree murder. Defendant filed several posttrial motions. After an August 1999 hearing, the circuit court denied all of defendant's posttrial motions. In September 1999, the court sentenced defendant to 55 years' imprisonment for first degree murder. The court did not impose any fines on defendant as part of his sentence.

¶ 7 In July 1999, a jury found Thompson guilty of first degree murder. At Thompson's trial, the State presented Thompson's statements, in which he admitted picking the gun up from the back of a couch and then shooting Robinson.

¶ 8 Defendant appealed, and this court affirmed his conviction and sentence. *People v. Harris*, No. 4-99-0800 (Oct. 19, 2004) (unpublished order under Illinois Supreme Court Rule 23). In January 2005, the supreme court denied defendant's petition for leave to appeal. *People v. Harris*, 213 Ill. 2d 567, 829 N.E.2d 791 (2005) (table). While defendant's direct appeal was pending, he filed a *pro se* postconviction petition, which the circuit court summarily dismissed as frivolous and patently without merit. Defendant appealed the dismissal of his postconviction petition, and in November 2005, we affirmed the circuit court's summary dismissal of defendant's postconviction petition. *People v. Harris*, No. 4-02-1005 (Nov. 17, 2005) (unpublished order under Illinois Supreme Court Rule 23). Defendant filed a petition for leave to appeal, and the Illinois Supreme Court allowed the petition. *People v. Harris*, 218 Ill. 2d 548, 850 N.E.2d 810 (2006) (table). In January 2007, the supreme court affirmed our decision. *People v. Harris*, 224 Ill. 2d 115, 862 N.E.2d 960 (2007).

¶ 9 In March 2007, defendant filed a motion for leave to file a successive postconviction petition, which the circuit court denied. Defendant appealed, and this court affirmed the denial. *People v. Harris*, No. 4-07-0743 (June 10, 2009) (unpublished order under Illinois Supreme Court Rule 23). Defendant again sought leave to appeal to the supreme court, and his petition was denied in March 2010. *People v. Harris*, 236 Ill. 2d 522, 930 N.E.2d 412 (2010) (table).

¶ 10 In October 2010, defendant filed a second motion for leave to file a successive postconviction petition, asserting his rights to due process and a fair trial were violated by the State's knowing and intentional presentation of fundamentally inconsistent facts in his and Thompson's trials. The circuit court denied defendant's second motion for leave to file a successive postconviction petition in November 2010. In December 2010, defendant filed (1) a

motion to reconsider the court's November 2010 judgment, and (2) a motion for leave to file an amended motion for leave to file a successive postconviction petition with an amended successive postconviction petition. The court denied both motions and noted the proposed successive petition referenced and tried to allege matters from a petition the court had already denied leave to file. No appeal was taken from the denial of defendant's second motion for leave to file a successive postconviction petition.

¶ 11 In January 2011, defendant filed a third motion for leave to file a successive postconviction petition. In the third motion, defendant asserted error based on appellate counsel's failure to raise a due process claim based on the inconsistencies in his and Thompson's trials. The circuit court denied defendant's third motion for leave to file a successive postconviction petition in May 2011. Defendant filed a motion to reconsider and a motion for certification of trial transcripts, and the court denied both motions. Defendant appealed the denial of his third motion for leave to file a successive postconviction petition; and on November 19, 2012, this court affirmed the denial. *People v. Harris*, 2012 IL App (4th) 110582-U. On appeal, defendant focused on the inconsistency that, at his trial, the State asserted he handed Thompson the gun before the shooting, and at Thompson's trial, the State asserted Thompson picked the gun up from the couch. *Harris*, 2012 IL App (4th) 110582-U, ¶ 28. We noted the "record indicates defendant and defense counsel knew about Thompson's version of events, which would include the gun being on the couch, and decided not to present those statements to the jury at defendant's trial." *Harris*, 2012 IL App (4th) 110582-U, ¶ 29. Defendant filed a petition for leave to appeal to the supreme court, which was denied in March 2013. *People v. Harris*, No. 115460, 985 N.E.2d 308 (Ill. Mar. 27, 2013) (denying defendant's petition for leave to appeal).

¶ 12 In June 2015, defendant filed a motion for forensic testing pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2014)). That same month, the circuit court entered an order denying defendant's motion. Defendant again appealed. On appeal, defendant only asserted this court should vacate the \$50 "court finance fee" imposed on him by the circuit clerk because it is a void fine. This court agreed with defendant. We vacated the \$50 "court finance fee" and affirmed the circuit court's judgment in all other respects. *People v. Harris*, No. 4-15-0554 (June 8, 2017) (unpublished summary order under Illinois Supreme Court Rules 23(c)(2), (4)).

¶ 13 In November 2015, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2014)), which is at issue in this appeal. Defendant argued (1) the State fraudulently deceived two courts by manipulating material facts between defendant's trial and Thompson's, (2) the State fraudulently deceived two courts through the knowing use of false evidence, (3) the State's fraudulent acts denied defendant a proper defense, and (4) the State's fraud rendered the circuit court's order void. The claims in defendant's section 2-1401 petition again focused on the inconsistency between his trial and Thompson's trial as to how Thompson took possession of the gun that killed Robinson.

¶ 14 On December 4, 2015, the State filed a motion to toll the responsive pleading deadline because the State needed to examine the trial record, which was located in the State Appellate Defender's office. The circuit court granted the State's motion. On January 29, 2016, defendant filed a motion to reconsider the order granting the State's motion and a motion for judgment on the pleadings. The court denied defendant's motion and gave the State 30 days to file responsive pleadings.

¶ 15 On February 18, 2016, the State filed a motion to dismiss, asserting defendant’s petition was (1) substantially insufficient as a matter of law, (2) not timely filed, and (3) should be barred by *res judicata* because defendant had already raised his arguments in a former petition for leave to file a successive postconviction petition. The State’s affidavit of mailing, which is noted in the docket sheets, is not included in the record on appeal. On February 25, 2016, the circuit court denied defendant’s section 2-1401 petition based on the reasons asserted by the State. On March 7, 2016, defendant filed an “opposition to motion to dismiss,” which was mailed on March 1, 2016. Two days later, defendant filed a motion for substitution of judge for reconsideration of the denial of his petition. On March 14, 2016, the court made the following docket entry: “The defendant’s Motion in Opposition to Motion to Dismiss is considered by the Court. Order entered February 25, 2016, remains in full force and effect. Defendant’s motion for substitution of Judge is denied.”

¶ 16 On March 29, 2016, defendant filed a notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, we have jurisdiction of defendant’s appeal from the denial of his section 2-1401 petition under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 17 II. ANALYSIS

¶ 18 A. Due Process

¶ 19 Defendant first asserts his due process rights were violated when the circuit court granted the State’s motion to dismiss without giving him an opportunity to respond. The State concedes the circuit court’s dismissal was premature, but it asserts no due process violation occurred and any error is harmless.

¶ 20 1. *Due Process Violation*

¶ 21 In *People v. Bradley*, 2017 IL App (4th) 150527, ¶ 19, 85 N.E.3d 591, this court held due process prohibits a circuit court “from granting an opposing party’s motion to dismiss a section 2-1401 petition without allowing the petitioner notice and a meaningful opportunity to respond.” There, two days after the State filed its motion to dismiss the defendant’s section 2-1401 petition, the circuit court considered the State’s motion and dismissed the defendant’s petition based on the State’s arguments. *Bradley*, 2017 IL App (4th) 150527, ¶ 19. The record contained no indication the defendant was given a meaningful opportunity to respond to the State’s motion. *Bradley*, 2017 IL App (4th) 150527, ¶ 19. This court concluded the defendant’s due process rights were violated. *Bradley*, 2017 IL App (4th) 150527, ¶ 19. We continue to find a circuit court’s failure to give a defendant a meaningful opportunity to respond to the State’s motion to dismiss a section 2-1401 petition before ruling on the motion is a procedural due process violation.

¶ 22 Here, the facts are similar to those in *Bradley*, as the circuit court dismissed defendant’s section 2-1401 petition only seven days after the State’s motion to dismiss was filed and the record contains no indication defendant had an opportunity to respond before the dismissal. This case took place before electronic filing. The State mailed defendant, a prisoner, a copy of its motion, and thus it is likely defendant did not get the motion for several days. Accordingly, seven days were insufficient to allow defendant to receive the State’s motion, draft a response, and file the response via mail. Moreover, after the court had granted the State’s motion to dismiss, defendant filed a response to the motion to dismiss, indicating he wanted to respond to the State’s motion. The record is unclear how the circuit court handled the late response, as the court’s language in its ruling is vague. The order suggests the court treated it as a motion to reconsider, as the court did not vacate its prior dismissal and enter a new dismissal

order after considering defendant's response. Regardless, the circuit court should not have ruled on the motion until respondent had an opportunity to respond. Illinois Supreme Court Rule 182 (eff. Jan. 1, 1967), which requires replies to answers to be filed within 21 days after the last day allowed for the filing of the answer, indicates 21 days is an appropriate period of time for a response to a motion to dismiss. Thus, we agree with defendant his due process rights were violated by the circuit court's premature granting of the State's motion to dismiss.

¶ 23

2. Harmless Error

¶ 24 As to harmless error, in *Bradley*, the State argued this court should not remand the case because the circuit "court's 'procedural error' was not prejudicial." *Bradley*, 2017 IL App (4th) 150527, ¶ 20. We disagreed, finding the circuit court's failure to give the "defendant an opportunity to respond to the State's motion to dismiss was inherently prejudicial and undermined the integrity of the proceedings." *Bradley*, 2017 IL App (4th) 150527, ¶ 21 (citing *People v. Coleman*, 358 Ill. App. 3d 1063, 1071, 835 N.E.2d 387, 393 (2005) ("At times, 'it is important to stand on the side of due process, even at the cost of some inefficiency.'")). In *Bradley*, 2017 IL App (4th) 150527, ¶¶ 3-4, the defendant was appealing the dismissal of his only section 2-1401 petition after this court had affirmed his direct appeal and the summary dismissal of his postconviction petition.

¶ 25

Here, defendant is appealing the dismissal of his section 2-1401 petition after he had filed a direct appeal, an appeal from the dismissal of his postconviction, appeals from two of his three denials of leave to file a successive postconviction petition, and an appeal from the denial of his motion for forensic testing. Moreover, defendant raises arguments this court has already addressed in a prior appeal. See *Harris*, 2012 IL App (4th) 110582-U. Additionally, a court cannot consider a section 2-1401 petition filed beyond two years after the judgment was

entered unless the record shows the person seeking relief was under legal disability or duress, the grounds for relief were fraudulently concealed, or the judgment is void. *People v. Walker*, 2018 IL App (3d) 150527, ¶ 32, 93 N.E.3d 734. In his section 2-1401 petition, defendant argued he was raising a void claim. In *People v. Castleberry*, 2015 IL 116916, ¶¶ 11-12, 43 N.E.3d 932, our supreme court recognized a judgment is void only if the circuit court which entered the challenged judgment lacked jurisdiction over the parties or the subject matter. In his section 2-1401 petition, defendant does not challenge the circuit court's jurisdiction of his criminal proceedings. Thus, defendant's section 2-1401 petition, which was filed more than 15 years after his conviction, is also untimely.

¶ 26 Enough judicial resources have already been wasted on another meritless collateral pleading filed by defendant. Unlike in *Bradley*, this is not a situation where it is important to stand on the side of due process. Thus, we find the error was harmless.

¶ 27 However, our finding of harmless error does not condone the circuit court's procedure in this case. Seven days are insufficient for a defendant in prison to respond to a State's motion to dismiss. Last, we note defendant's ripeness argument is addressed by our finding of a due process violation, as the court should not have ruled on the motion to dismiss until defendant had an opportunity to respond.

¶ 28 **B. Fines and Fees**

¶ 29 Defendant next asserts the circuit court improperly imposed two fines. The State asserts defendant has forfeited this argument because he challenged a clerk-imposed fine in a prior appeal but agrees with defendant this court should vacate the fines. While defendant's appeal was pending, the supreme court handed down its decision in *People v. Vara*, 2018 IL 121823, ¶ 23, which held the appellate court lacks jurisdiction to review a circuit clerk's

recording of mandatory fines that were not included in the circuit court's final judgment. Thus, this court lacks jurisdiction to address defendant's challenge to his fines under *Vara*.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the Champaign County circuit court's dismissal of defendant's section 2-1401 petition. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 32

Affirmed.