

2019 IL App (4th) 160930-U

NO. 4-16-0930

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED

February 8, 2019
Carla Bender
4th District Appellate
Court, IL

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
RONALD R. BRAMLEY,)	No. 12CF641
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err by not admonishing defendant pursuant to *People v. Shellstrom*, 216 Ill. 2d 45, 833 N.E.2d 863 (2005), as the court did not *sua sponte* recharacterize defendant’s “Post Conviction Motion.”

¶ 2 On November 28, 2016, the trial court dismissed defendant Ronald R. Bramley’s petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2016)) and his petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)). Defendant appeals, arguing the court’s dismissal orders should be vacated because the court did not properly admonish him pursuant to our supreme court’s decision in *People v. Shellstrom*, 216 Ill. 2d 45, 833 N.E.2d 863 (2005). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant does not make any arguments on the merits of his postconviction

petition or his section 2-1401 petition. Instead, defendant's sole contention on appeal is the trial court failed to provide him admonishments required by *Shellstrom* before recharacterizing and then dismissing his *pro se* "Post-Conviction Motion" filed on June 17, 2016.

¶ 5 As previously stated, in June 2016, defendant filed a "Post Conviction Motion." On August 29, 2016, the trial court wrote to petitioner, stating the following:

"The court has reviewed your 'Post-Conviction Motion' filed June 17, 2016. The motion does not specify which statute you are proceeding under. If you want to proceed with your motion you must amend your motion to specify if you are proceeding under 725 ILCS 5/122-1 or 735 ILCS 5/2-1401 or a different statute. You must also comply with the specific requirements set out by the statute you are relying on."

Defendant responded to the court in September 2016, stating:

"My answer to that is I thought that normally the court automatically filed a [*pro se*] defendant's motion under the right statute, and then provided them with proper legal assistance and had their counsel to amend their Motion? But to be on the safe side I am filing my new Post Conviction motion under both statutes. If my understanding is correct one is civil and the other is criminal? I thank you for your quick Response to this letter."

¶ 6 On September 21, 2016, the trial court sent a copy of the defendant's motion to the State's Attorney's Office with directions to file any responsive pleading to defendant's motion for relief from judgment pursuant to section 2-1401 by October 31, 2016. Defendant was given until November 28, 2016, to reply. The court instructed the State it did not need to file a responsive pleading to defendant's motion when treated as a postconviction petition pursuant to

the Act (725 ILCS 5/122-1 to 122-7 (West 2016)).

¶ 7 On September 26, 2016, the State filed a motion to dismiss defendant’s section 2-1401 motion. On October 16, 2016, petitioner filed his response to the State’s motion.

¶ 8 On November 28, 2016, the trial court, in two separate orders, dismissed defendant’s postconviction petition and his motion pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2016)).

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues this court should vacate the trial court’s orders dismissing his motions because the court did not properly admonish him pursuant to *Shellstrom* before recharacterizing his *pro se* “Post Conviction Motion” as a postconviction petition. We disagree with defendant’s interpretation of the events in this case.

¶ 12 In *Shellstrom*, the defendant filed a pleading titled, “ ‘Motion to Reduce Sentence, Alternatively, Petition for Writ of Mandamus to Order Strict Compliance with Terms of Guilty Plea.’ ” *Shellstrom*, 216 Ill. 2d at 48, 833 N.E.2d at 866. The trial court treated the motion as a postconviction petition and summarily dismissed it. *Shellstrom*, 216 Ill. 2d at 49, 833 N.E.2d at 866. The defendant argued the trial court erred in doing this. The supreme court stated a trial court may treat a *pro se* pleading as a postconviction petition if it alleges a deprivation of constitutional rights cognizable under the Act. *Shellstrom*, 216 Ill. 2d at 51, 833 N.E.2d at 867. However, the supreme court held “when a circuit court is recharacterizing as a first postconviction petition a pleading that a *pro se* litigant has labeled as a different action cognizable under Illinois law,” it must notify the *pro se* litigant what the court intends to do, warn the litigant recharacterizing the petition as a postconviction petition would make any future

postconviction petition subject to the restrictions on successive postconviction petitions, and give the litigant a chance to withdraw or amend his or her pleading so it contains all the claims appropriate to a postconviction petition the litigant believes he or she has. *Shellstrom*, 216 Ill. 2d at 57, 833 N.E.2d at 870.

¶ 13. The State argues the trial court did not “recharacterize” defendant’s “Post Conviction Motion” and did not need to provide *Shellstrom* admonishments. The State cites this court’s decision in *People v. Bland*, 2011 IL App (4th) 100624, ¶ 24, 961 N.E.2d 953, to support its argument the trial court did not err. While factually distinguishable from the situation in this case, the following statement from *Bland* is instructive here: “Because the trial court did not *sua sponte* recharacterize defendant’s pleading, the court was not required to admonish defendant pursuant to *Shellstrom*.” *Bland*, 2011 IL App (4th) 100624, ¶ 24.

¶ 14 In this case, the trial court did not *sua sponte* recharacterize defendant’s “Post Conviction Motion.” As noted by the State, the trial court sought clarification from defendant whether his intent in filing his “Post Conviction Motion” was to proceed under the Act or Section 2-1401 of the Code of Civil Procedure. Generally, because defendant labeled his filing a “Post Conviction Motion,” the trial court could have treated the filing as a postconviction petition from the start and not asked defendant if this is what he intended. See *People v. McDonald*, 373 Ill. App. 3d 876, 880, 869 N.E.2d 945, 949 (2007) (“requiring a defendant to specifically cite section 122-1 of the Act by number in his petition in order to satisfy section 122-1(d)’s pleading requirements would undermine the intent of the legislature to provide a ‘low threshold’ during the first stage of a post-conviction proceeding”). Defendant would not have been entitled to *Shellstrom* admonishments in that situation. As a result, we see no reason why the court would suddenly be required to provide *Shellstrom* admonishments because it took the

extra step of asking defendant to clarify whether his intent was to file a motion under section 2-1401 or a postconviction petition. Defendant, not the court, chose to proceed under both the Act and section 2-1401. Based on the facts in this case, *Shellstrom* admonishments were not required.

¶ 15

III. CONCLUSION

¶ 16 For the reasons stated, we affirm the trial court's dismissal of defendant's motions as the court did not err by not admonishing defendant pursuant to *Shellstrom*.

¶ 17 Affirmed.