

**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).

2020 IL App (4th) 170563-U

NO. 4-17-0563

IN THE APPELLATE COURT

OF ILLINOIS

**FILED**

May 18, 2020

Carla Bender

4<sup>th</sup> District Appellate Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MICHAEL L. LIGHTFOOT,	)	No. 04CF176
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err by requiring defendant, who was *pro se*, to file an individual petition for each statutory provision under which he was seeking postjudgment relief.

¶ 1 On May 30, 2017, defendant, Michael L. Lightfoot, filed a *pro se* “Petition for Post-conviction Relief,” “pursuant to 725 ILCS 5/122-1 thru f ) OR ( Motion to Vacate Judgement [*sic*] and Void Sentence pursuant to 735 ILCS 5/2-1401(f).” In the petition, defendant challenged the charging instrument and various sentencing statutes. On June 2, 2017, the Champaign County circuit court dismissed defendant’s pleading, first citing section 122-1(f) of the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1(f) (West 2016)) and then stating the pleading was a “hybrid pleading which includes both 725 ILCS 5/122 and 735 ILCS 5/2-1401(f) [and] will not to be considered by this court.”

¶ 2 On June 19, 2017, defendant filed the same pleading as in May but referencing only section “122-1 thru F” of the Postconviction Act. On June 21, 2017, the trial court entered a written order dismissing defendant’s petition pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)).

¶ 3 Defendant appeals the trial court’s order entered on June 2, 2017, contending the circuit court erred by refusing to consider defendant’s hybrid pleading and thus having the effect of denying defendant’s petition for relief from judgment within the 30 days in which the State may respond. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On January 29, 2004, defendant was arrested and charged with unlawful possession of a controlled substance (1 gram or more but less than 15 grams of a substance containing cocaine) with intent to deliver (720 ILCS 570/401(c)(2) (West 2002)) within 1000 feet of a public park, a Class X felony (720 ILCS 570/407(b)(1) (West 2002)). Defendant had two prior Class X convictions, and was therefore subject to a mandatory natural life sentence, pursuant to section 33B-1(a)(e) of the Criminal Code of 1961 (720 ILCS 5/33B-1(a)(e) (West 2002)) and section 5/5-5-3(c)(7) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3(c)(7) (West 2002)).

¶ 6 Defendant’s first jury trial resulted in a hung jury. On December 8, 2004, defendant was found guilty at his second jury trial and sentenced to natural life imprisonment.

¶ 7 On direct appeal, defendant argued (1) the enhancing statute for possession with intent to deliver within 1000 feet of a public park (720 ILCS 570/407(b)(1) (West 2002)) was unconstitutional as applied in his case, as he was within a dwelling at the time of the possession; (2) the trial court erred by allowing improper expert testimony about the difference between a

drug user and a drug seller; (3) his sentence was too severe; and (4) the State failed to prove him guilty beyond a reasonable doubt. This court affirmed defendant's conviction and sentence.

*People v. Lightfoot*, 368 Ill. App. 3d 1239 (2006) (table) (unpublished order under Supreme Court Rule 23).

¶ 8 On September 12, 2007, defendant filed a petition for postconviction relief under the Postconviction Act (725 ILCS 5/122-1 to 122-7 (West 2006)). In his petition, defendant alleged (1) the trial court abused its discretion by issuing three jury instructions, (2) he received ineffective assistance of counsel where his trial counsel failed to object to improper expert testimony, and (3) he received ineffective assistance of counsel where his appellate counsel failed to raise all meritorious issues on his direct appeal. The trial court denied defendant's petition as frivolous and patently without merit. This court affirmed the trial court's judgment. *People v. Lightfoot*, 388 Ill. App. 3d 1152 (2009) (table) (unpublished order under Supreme Court Rule 23).

¶ 9 On May 30, 2017, defendant filed a "Petition for Post-Conviction Relief," "pursuant to 725 ILCS 5/122-1 thru f ) OR ( Motion to Vacate Judgement [*sic*] and Void Sentence pursuant to 735 ILCS 5/2-1401(f)." In the petition, defendant challenged the charging instrument and various sentencing statutes. On June 2, 2017, because defendant cited both the Postconviction Act and section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2016)), the trial court dismissed the petition, stating "[t]he defendant's petition for post-conviction relief, 725 ILCS 5/122, is dismissed pursuant to 725 ILCS 5/122-1(f). The defendant has filed a hybrid pleading which includes both 725 ILCS 5/122 and 735 ILCS 5/2-1401(f). Said pleading will not be considered by this court."

¶ 10 On June 19, 2017, defendant filed the same pleading as in May but referenced only section “122-1 thru F” of the Postconviction Act. On June 21, 2017, the trial court dismissed defendant’s postconviction petition as a successive petition pursuant to section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)).

¶ 11 On July 3, 2017, defendant filed a timely notice of appeal from the June 2, 2017, order and this court docketed the appeal as No. 4-17-0563. Also on July 3, 2017, defendant filed a timely notice of appeal from the June 21, 2017, order, and this court docketed the appeal as No. 4-17-0526. On July 11, 2017, the trial court appointed OSAD to represent defendant in his appeal from the order entered on June 2, 2017 (No. 4-17-0563). On August 2, 2017, this court consolidated defendant’s two appeals. On August 7, 2017, OSAD filed an amended notice with the clerk of the circuit court advising the clerk it had been appointed to represent defendant on appeal in case No. 4-17-0563 and case No. 4-17-0526, consolidated by this court on August 2, 2017.

¶ 12 In April 2019, OSAD filed a motion for leave to withdraw as counsel for defendant, asserting it had thoroughly reviewed the record and concluded no meritorious claim could be raised on appeal. We denied OSAD’s motion to withdraw without prejudice, where OSAD failed to address the trial court’s June 2, 2017, ruling. See *People v. Lightfoot*, 2019 IL App (4th) 170526-U (unpublished order under Supreme Court Rule 23).

¶ 13 In October 2019, defendant moved to separate the consolidated cases, which this court allowed. We address only defendant’s appeal from the trial court’s order entered on June 2, 2017, refusing to consider defendant’s “hybrid” pleading.

¶ 14 II. ANALYSIS

¶ 15 We first address whether the circuit court erred by not recognizing a “hybrid” pleading and instead, requiring defendant raise his claims under the Postconviction Act and section 2-1401 in separate petitions. We find no error.

¶ 16 Our supreme court has stressed the Postconviction Act provides a different form of statutory relief than does section 2-1401. *People v. Vincent*, 226 Ill. 2d 1, 11, 871 N.E.2d 17, 24 (2007). Section 2-1401 of the Civil Code (735 ILCS 5/2-1401 (West 2014)) provides a comprehensive, statutory procedure allowing for the vacatur of final judgments older than 30 days. *Vincent*, 226 Ill. 2d at 7. Proceedings under section 2-1401 are subject to the civil practice rules. *Id.* at 8. Section 2-1401 petitions “are essentially complaints inviting responsive pleadings.” *Id.* The State may answer the petition, move to dismiss it, or ignore it. See *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009).

¶ 17 On the other hand, the Postconviction Act provides collateral relief only in criminal cases for constitutional violations. *Vincent*, 226 Ill. 2d at 11. When an initial petition is filed under the Postconviction Act, our supreme court has held the proceedings are divided into three stages. *People v. Bailey*, 2017 IL 121450, ¶ 18, 102 N.E.3d 114. “At the first stage, the circuit court must review the petition within 90 days of its filing and determine whether the petition states the gist of a constitutional violation or is either frivolous or patently without merit.” *Id.* ¶ 18. At the first stage, the Postconviction Act “ ‘does not permit any further pleadings from the defendant or any motions or responsive pleadings from the State. Instead, the circuit court considers the petition independently, without any input from either side.’ ” *Id.* ¶ 19 (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996)). Moreover, when, as in this case, the defendant is seeking leave to file a successive postconviction under section 122-1(f) of the Postconviction Act (725 ILCS 5/122-1(f) (West 2016)), the State is not

permitted to participate in determining whether the defendant has established cause and prejudice for allowing the filing of the successive postconviction petition. *Bailey*, 2017 IL 121450, ¶ 24. Thus, unlike section 2-1401 proceedings, a postconviction petition does not initially invite a responsive pleading. Moreover, if a postconviction petition proceeds beyond the first stage, the defendant is entitled to the appointment of counsel. 725 ILCS 5/122-4 (West 2016).

¶ 18 Since the proceedings under the two acts are different, we find the circuit court has discretion to require a defendant to file two separate petitions, which would assist the court in efficiently managing the two different proceedings. See *Bank of America, N.A. v. Land*, 2013 IL App (5th) 120283, ¶ 24, 992 N.E.2d 1266 (recognizing “[t]he circuit court has the discretion to manage its docket to ensure that there is no undue delay in the resolution of the proceedings before it”). We note in *People v. Ford*, 2014 IL App (1st) 130147, 18 N.E.3d 88, cited by defendant, the reviewing court did not address the propriety of the circuit court considering the merits of the hybrid motion or declare the circuit court had to address the merits under the appropriate statute as defendant suggests. See *id.* ¶¶ 1-4.

¶ 19 Additionally, defendant cites to our decision in *People v. Bland*, 2011 IL App (4th) 100624, 961 N.E.2d 953, arguing the trial court should have inquired of defendant “as to his desire to have the court construe [his] pleading as a 2-1401 petition.” In *Bland*, the defendant filed *pro se* a “ ‘Motion to Vacate Judgment,’ ” which cited both section 2-1401 of the Civil Code and the Postconviction Act. *Id.* ¶ 6. At the circuit court’s urging, the State filed a motion to dismiss, noting it was unclear from the defendant’s pleading whether he wished to proceed under the Postconviction Act or section 2-1401 and dismissal was warranted under either provision because the defendant’s pleading was untimely and baseless. *Id.* Thereafter, the court held a hearing at which it asked the defendant to clarify whether he wished to proceed under the

Postconviction Act or section 2-1401. *Id.* ¶ 8. In doing so, the court noted the defendant made reference to the Postconviction Act in the body of his motion. *Id.* The defendant stated he was bringing his claim under the Postconviction Act. *Id.* ¶ 9. On appeal, the defendant argued the circuit court erred by failing to properly admonish him prior to recharacterizing his pleading as a postconviction petition. This court found the circuit court was not required to admonish the defendant because it did not *sua sponte* recharacterize the defendant's pleading. *Id.* ¶ 24.

¶ 20 While *Bland* is factually distinguishable from the case before us, we agree with defendant it demonstrates the importance of the circuit court's clarification of the statutory provisions under which the defendant is seeking relief. We reiterate the *Bland* case demonstrates one method a court may utilize in exercising its discretion to manage the cases before it. It is within the court's discretion "to manage its docket to ensure that there is no undue delay in the resolution of the proceedings before it." *Bank of America, N.A.*, 2013 IL App (5th) 120283, ¶ 24.

¶ 21 Here, if defendant truly wanted to proceed under section 2-1401 of the Civil Code, the circuit court was helpful to defendant in characterizing the petition as a hybrid because defendant was provided a new opportunity to raise his claims in two separate petitions, one under the Postconviction Act and a second pleading under section 2-1401 of the Civil Code. In fact, defendant chose to file one new pleading on June 19, 2017, clarifying his desire to raise his claims under the Postconviction Act. Moreover, we do not deem any alleged inconsistencies in the trial court's order significant as defendant clearly demonstrated his understanding of the order. The trial court advised defendant it would not consider his "hybrid" pleading. Defendant then filed a new pleading, indicating his desire to proceed under a single statutory provision for postjudgment relief, the Postconviction Act, and making no reference to section 2-1401 of the Civil Code. Defendant himself chose not to seek relief under section 2-1401 of the Civil Code.

¶ 22 We find the circuit court did not err by requiring defendant, who was *pro se*, to file separate petitions, one under each statutory provision. Defendant's May 2017 petition identified both acts as a basis for relief but did not make separate claims under each statutory provision in the body of the petition.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment.

¶ 25 Affirmed.