2024 IL App (3d) 230291-U

Order filed September 30, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-23-0291
v.	)	Circuit No. 13-CF-395
JAYSON L. CALDWELL, a/k/a JAYSON FELTON,	)	Honorable Kathy S. Bradshaw-Elliott,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Presiding Justice McDade and Justice Davenport concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant is estopped from challenging his failure to properly serve the State with his section 2-1401 petition. (2) Defendant forfeited his claim of error.

¶ 2 Defendant, Jayson L. Caldwell, a/k/a Jayson Felton, appeals the dismissal of his *pro se* petition for postjudgment relief. Specifically, defendant argues that (1) his improper service of the petition to the State requires reversal, and (2) the Kankakee County circuit court failed to "discern"

defendant's claim that his "mental state was not investigated by the circuit court despite his defense counsel's motion requesting a fitness evaluation." We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 20, 2013, the State charged defendant by indictment with first degree murder (720 ILCS 5/9-1(a)(3) (West 2012)), armed violence (*id.* § 33A-2(a)), possession of a stolen firearm (*id.* § 24-3.8(a)), and attempted residential burglary (*id.* §§ 8-4(a), 19-3).

¶ 5 Relevant to this appeal, on December 15, 2014, defense counsel filed a "Motion for Mental Evaluation." [1] On December 13, 2016, defendant entered a blind guilty plea to first degree murder and the State dismissed the remaining offenses. The court informed defendant of the applicable sentencing range for the amended offense and found that defendant entered his plea "knowingly and intelligently" and that a factual basis for the plea existed. Defendant was sentenced to 20 years' imprisonment. Defendant did not file a postplea motion, a direct appeal, or a postconviction petition.

¶ 6 On December 28, 2022, defendant filed a section 2-1401 petition, which is the subject of this appeal. The petition raised two claims: (1) that his confession was the result of deceptive police tactics and section 5-401.6 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-401.6(b) (West 2022)) should be applied retroactively, and (2) the court failed to consider defendant's mental health condition and rehabilitative potential at sentencing. The petition stated, "Prior to trial the defendants attorney filed a pre-trial motion for a mental health evaluation. [Defendant's] Attorney withdrew that motion prior to trial and it was never heard in court. In fact, [defendant's] mental health has never been addressed to this date." Defendant included a "Notice of Filing" indicating that one copy of the petition was sent to the state's attorney's office and one copy was

[1]Defendant did not include the report of proceedings covering defendant's preplea proceedings.

sent to the circuit clerk. Defendant also included a document titled "Thirty Days Notice," informing the State that defendant "hereby serve[s] notice" and the State "must answer or otherwise respond" within 30 days. The State did not file any pleadings.

¶ 7 On February 1, 2023, the court issued a decision *sua sponte* dismissing defendant's petition on its merits. Specifically, the court determined that defendant was not entitled to retroactive postjudgment relief under section 5-401.6(b) of the Act (*id.*), prohibiting deceptive interrogation techniques of minors. Additionally, the court reviewed the record related to defendant's motion to suppress claiming his confession was coerced and commented that it had considered the totality of the circumstances when determining that defendant's confession was voluntary and found "no coercion," "decep[tion,] or trickery" during defendant's interrogation. The court also found that defendant's sentencing claim under *Miller v. Alabama*, 567 U.S. 460, 477-78 (2012) was meritless where the record showed the sentencing court considered defendant's age, role in the crime, and theory of accountability when imposing defendant's sentence of 20 years' imprisonment, which was also less than a *de facto* life sentence. Defendant did not file a motion to reconsider or otherwise raise the issue of his improper service to the State. Defendant appealed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues the circuit court erred in dismissing his section 2-1401 petition, alleging (1) his improper service of the petition to the State and the State's omission of a waiver of proper service requires reversal, and (2) the court failed to address defendant's claim that his "mental state was not investigated by the circuit court despite his defense counsel's motion requesting a fitness evaluation."

¶ 10 A. Service

¶ 11 Illinois Supreme Court Rule 105(b) (eff. Jan. 1, 2018) provides that service of a section 2-1401 petition may be satisfied by summons, certified or registered mail, or by publication. The responding party has "within 30 days after service" to respond but is not required to respond. Ill. S. Ct. R. 105(a) (eff. Jan. 1, 2018); *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). "If the responding party fails to respond within the 30-day period, any question as to the petition's sufficiency is deemed waived, and the petition is treated as properly stating a cause of action." *People v. Matthews*, 2016 IL 118114, ¶ 8. "The court can [*sua sponte*] dismiss a petition despite a lack of responsive pleading if the petition is deficient as a matter of law" after the 30-day response period has passed. *Id.* "If the respondent is not properly served, the court lacks personal jurisdiction unless the respondent waives service or makes an appearance." *Id.* ¶ 23. However, a "defendant is estopped from claiming service was improper based on his own failure to comply with the requirements of Rule 105." *Id.* "Notions of fair play dictate that a litigant should not be allowed to relitigate a matter resolved against him based on his own error." *Id.*

¶ 12 Here, the record shows defendant sent the State notice of his section 2-1401 petition by regular mail, technically noncompliant with Rule 105. The record on appeal lacks relevant information regarding whether the State appeared in court on defendant's motion or otherwise received the notice of his motion. However, we need not determine whether the State waived service or appeared in court. The court issued its order dismissing defendant's section 2-1401 petition, on its merits, more than 30 days after filing. Therefore, the State was given the time to respond before the court ruled on the motion. See *id.* ¶ 15. Defendant cannot use his own error as a way to invalidate the court's decision. *Id.* ("if defendant were allowed to invalidate the circuit court's order based on his own failure to properly serve the State, future litigants may have an

incentive to improperly serve respondents or provide incomplete certificates of service to create a second opportunity to litigate their claims.").

¶ 13 B. Section 2-1401 Petition

¶ 14 The purpose of a section 2-1401 petition for relief from a final judgment is "to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition." *People v. Haynes*, 192 Ill. 2d 437, 461 (2000). To be entitled to relief under a section 2-1401 petition, "the petition must set forth specific factual allegations supporting ***: (1) the existence of a meritorious defense; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 37. "Due diligence requires the section 2-1401 petitioner to have a reasonable excuse for failing to act within the appropriate time." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 222 (1986).

¶ 15 Notably, a section 2-1401 petition "is 'not designed to provide a general review of all trial errors nor to substitute for direct appeal.' " *Haynes*, 192 Ill. 2d at 461 (quoting *People v. Berland*, 74 Ill. 2d 286, 314 (1978)). "[I]ssues that could have been raised on direct appeal, but were not, are forfeited." *People v. English*, 2013 IL 112890, ¶ 22. Forfeiture is "relaxed where fundamental fairness so requires, where the forfeiture stems from the ineffective assistance of appellate counsel, or where the facts relating to the issue do not appear on the face of the original appellate record." *Id.* However, a "section 2-1401 does not afford a litigant a remedy whereby he may be relieved of the consequences of his own mistake or negligence." *Smith*, 114 Ill. 2d at 222.

¶ 16 Initially, we must address the inadequacies of defendant's brief on appeal. Illinois Supreme Court Rule 341(h)(6) (eff. Oct. 1, 2020) requires that the statement of facts "shall contain the facts

necessary to an understanding of the case, stated accurately and fairly without argument or comment." Here, defendant contends that the court failed to address defendant's claim that his "mental state was not investigated by the circuit court despite his defense counsel's motion requesting a fitness evaluation." However, defendant failed to include in his statement of facts *any* facts related to his request for a mental health evaluation. While defendant provided a statement of law, he failed to state any law or standard of review related to a section 2-1401 petition. Defendant's entire analysis consists of the conclusion that "the trial court failed [defendant] by adequately ensuring his mental fitness and defense counsel failed [defendant] by failing to further pursue his motion for fitness with the trial court."

¶ 17 Here, defendant has forfeited review of this issue by failing to raise it on direct appeal. Defendant had not provided any reason to excuse this forfeiture. Importantly, defendant failed to allege any new facts to support a meritorious defense or error in the court's original action and did not provide any assertions of due diligence or explanation for his failure to raise his claims before the present section 2-1401 petition. See *Walters*, 2015 IL 117783, ¶ 37. We note that defendant's contention of error on appeal relates to two sentences included in his petition as part of his *Miller* claim. He did not raise the issue on its own. To the extent defendant contends the court failed to address this claim, the record shows the court properly found that his *Miller* claim failed.

¶ 18 Moreover, defendant's argument is wholly insufficient to establish error regarding his initial motion for a mental health evaluation. The record provided by defendant is insufficient to address the claim. Defendant has not included any transcripts from the preplea proceedings from which to determine what happened regarding his request for a mental health evaluation.

> "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record

> on appeal, it will be presumed that *** the trial court was in conformity with law ***. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

As a result, we must honor defendant's procedural default. See *English*, 2013 IL 112890, ¶ 22

¶ 19 III. CONCLUSION

¶ 20 The judgment of the circuit court of Kankakee County is affirmed.

¶ 21 Affirmed.