2022 IL App (1st) 200647-U
No. 1-20-0647

FIRST DIVISION
September 30, 2022

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 1-20-0674
	)	
JOVAN WILLIAMS,	)	
	)	The Honorable
Defendant-Appellee.	)	James B. Linn,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's summary dismissal of defendant's postconviction petition is affirmed when the court's order was properly entered within 90 days of the petition being filed.

¶ 2 Defendant Jovan Williams appeals from the summary dismissal of his *pro se* petition for relief filed pursuant to the Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et* seq. (West 2018)). On appeal, he contends this cause must be remanded for further proceedings under the Act

because the circuit court's order summarily dismissing the petition was not entered pursuant to a written order. For the following reasons, we affirm.[1]

¶ 3 BACKGROUND

¶ 4 Following a jury trial, defendant was found guilty of attempt first degree murder (720 ILCS 5/8/4(a) (West 2014)), aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)), and armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)). The trial court subsequently merged the aggravated battery with a firearm verdict into the attempt first degree murder verdict, and sentenced defendant to concurrent sentences of 55 years for attempt first degree murder and to 30 years for armed habitual criminal. The facts of this case were detailed in our order disposing of defendant's direct appeal. See *People v. Williams*, 2019 IL App (1st) 160463-U. We therefore relate only the facts relevant to the issues in the instant appeal.

¶ 5 Defendant's convictions arose from the January 30, 2014 shooting of Ebrima Jarju (Jarju), the owner of Sonia's Supermarket, located at 2441 West 63rd Street, Chicago, Illinois. At trial, the State introduced a surveillance video of the shooting which depicted, in part, a person confronting Jarju as Jarju was pulling the shutters on the store front. The video also showed that this person reached into his clothing with his right arm and extended his right arm toward Jarju, at which point a loud sound is heard. Chicago Police Officers Jeremy Sikorski and Tony Martin were nearby in an unmarked police vehicle when they heard a loud gunshot. Officer Sikorski looked behind him and saw a black male, dressed in all black, running across 63rd Street while holding his side.

[1] While this case was pending, defendant also appealed the denial of his *pro se* petition to vacate a void judgment filed under section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2018). *People v. Jovan Williams*, No. 1-19-2302. On September 20, 2021, in a summary order, we granted the motion of the State Appellate Defender for leave to withdraw as counsel pursuant to *Pennsylvania v. Finley,* 481 U.S. 551 (1987), and affirmed the judgment of the circuit court of Cook County. On January 10, 2022, our Supreme Court denied defendant's petition for leave to appeal.

Following a chase in their vehicle and on foot, Officer Sikorski caught up with this person and handcuffed him. Officer Sikorski identified this person as defendant. Officer Sikorski also identified defendant at trial as the person running in the surveillance video.

¶ 6 The surveillance video also showed that there was a man standing next to Jarju at the time of the shooting. Charles Tate testified at trial that he was this man in the surveillance video, but he never saw the face of the shooter because the shooter was wearing a black mask, all black clothing and gloves. Alfred Pipes testified that he was standing across the street from Sonia's Supermarket at a bus stop when the shooting occurred and described the shooter as wearing a face mask and dark clothing. He believed that the shooter had a gun tucked in his pants and ran across the street, followed by the unmarked police car. Chicago Police Officer John Clark found a handgun at 6250 South Campbell, which was along the path that Officer Sikorski pursued defendant. Nancy DeCook, a forensic investigator, recovered this handgun, as well as a black knit cap, a fired .380 cartridge casing and another black winter hat with fur-like trim. The knit cap had blood and a fired bullet stuck into it. Later testing showed that the bullet stuck in the knit cap was fired from this handgun. Testing also revealed gunshot residue on the left pocket of defendant's vest.

¶ 7 During a custodial interview, defendant admitted that he was paid by "Billy" who worked at a store next door to Sonia's Supermarket, to shoot and kill Jarju. At trial, defendant testified that he was walking along 63rd Street when he heard a gunshot and was stopped by the police while he was trying to get away from the shooting. He admitted that he made this statement to the police but testified that he made up this story to get revenge on Billy because Billy had disrespected defendant's girlfriend. He further testified that he also made up this story because he was afraid after a police officer had pushed his head against the wall.

¶ 8 On direct appeal, we affirmed defendant's convictions and sentences for attempt first degree murder and armed habitual criminal holding, in pertinent part, that the trial court did not abuse its discretion in permitting the State to play the surveillance video four times, and he did not receive ineffective assistance of counsel when his defense counsel elicited alleged damaging testimony. *Williams*, 2019 IL App (1st) 160463-U. On December 3, 2019, defendant filed a *pro se* post-conviction petition. His petition alleged: (1) he was illegally detained and arrested in violation of his fourth amendment rights; (2) the police violated his fifth amendment rights after they continued questioning him following his request for an attorney; (3) his trial counsel was ineffective for failing to retain an expert witness to rebut the lab results finding gunshot residue on his vest; and (4) his appellate counsel was ineffective for failing to raise on direct appeal. the issue related to trial counsel's failure challenge the lab results. The post-conviction court found petitioner's petition to be frivolous and patently without merit and summarily dismissed the petition on December 18, 2019. The post-conviction court made the following oral factual findings:

> "[Defendant] was found guilty of attempted first-degree murder and being an armed habitual criminal.
>
> He is complaining that somehow the GSR that was found on his clothing - - comes in with a theory that the police officer chasing him is the one that rubbed the GSR on him and that that wasn't presented at trial.
>
> The evidence against Mr. Williams was overwhelming including a confession and I believe the entire offense was caught on videotape. It was supposed to be a murder for hire of a competing small grocery store by somebody that had another store nearby. But this - - this theory about how the GSR got on him was just one bit of the evidence against him.

I find accordingly his pro se postconviction petition is without merit and is denied.

He attaches some transcript about the chase when the police caught him, like, immediately after the shooting had taken place, but there's no affidavits or any back-up information about the validity of his unusual argument about the GSR. So it's denied without merit.

Clerk to notify."

¶ 9 On the same day that the trial court made the oral findings, December 18, 2019, the record contains a "Criminal Disposition Sheet" with a handwritten notation "Pro se PC. w/o merit clerk to notify." This document was signed by the postconviction judge. The court clerk's half-sheet for that day also reflected that: "Post-Conviction Petition Denied (Judicial Officer: Linn, James B). The court clerk's office sent a written notice to defendant on December 27, 2019, notifying him that his postconviction petition was denied and he had the right to appeal this decision by filing a notice of appeal within 30 days from the date the order was entered. The court clerk's half-sheet reflects that "Notification Sent to Defendant" on that date.

¶ 10 On January 22, 2020, defendant filed a motion for reconsideration and to amend his postconviction petition. On February 10, 2020, the postconviction court made the following oral findings:

"[Defendant], Sheet 3, brings a pro se motion. He's blaming his lawyer. He wants postconviction relief for a poor performance.

He shot somebody on the street in Englewood opening a store that was caught on tape. He was chased and later confessed. He said his confession was coerced. This was all vetted at pretrial and trial and he said his lawyer didn't attack the

evidence sufficiently. He also explained that he heard a shot and ran away and that's why the police officer chased after him, which is contrary to all the other evidence in the case and to the police officer's testimony, the arresting officer.

I find his pro se post conviction petition claiming ineffective assistance of trial and appellate counsel is without merit and it is denied. Clerk to notify."

¶ 11 On February 10, 2020, the same day that the postconviction court made the oral findings, the record contains a "Criminal Disposition Sheet" with a handwritten notation "Pro se P.C. claiming ineffective assistance of trial counsel and appellate counsel w/o merit. Denied. Clerk to notify." This document is signed by the postconviction judge. The court clerk's office sent a written notice to defendant on February 19, 2020, notifying his postconviction petition was denied and he had the right to appeal this decision by filing a notice of appeal within 30 days from the date the order was entered. The court clerk's half-sheet from that date reflects "Notification Sent To Defendant[.]"

¶ 12 ANALYSIS

¶ 13 We first address defendant's contention that the circuit court violated the Act when it summarily dismissed his petition without first issuing a written order as required by section 122-2.1(a) and therefore the matter must be remanded for second-stage proceedings. In response, the State maintains that the oral finding of the circuit court was recorded in the record of proceedings and was documented by the court clerk's half-sheet entry of dismissal as well as a certified report of disposition, signed by the postconviction judge and entered the same day, complied with the Act pursuant to *People v. Porter*, 122 Ill.2d 64 (1988), and *People v. Cooper*, 2015 IL App (1st) 132971.

¶ 14 The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. 725 ILCS 5/122-1 *et seq.* (West 2018). At the first stage of proceedings, a defendant files a petition, which the circuit court independently reviews and, taking the allegations as true, determines whether it is frivolous or is patently without merit. *People v. Tate*, 2012 IL 112214, ¶ 9. A petition should be summarily dismissed as frivolous or patently without merit only when it has no arguable basis in either fact or law. *People v. Hodges*, 234 Ill.2d 1, 11-12 (2009). We review the summary dismissal of a postconviction petition *de novo*. *Id*. at ¶ 9.

¶ 15 Pertinent to defendant's argument on appeal, section 122-2.1(a)(2) of the Act, which governs first-stage postconviction proceedings, provides in relevant part:

> "(a) Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to this Section.
>
> ***
>
> (2) If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision." *Id.*

¶ 16 Although the term "shall" generally denotes a mandatory obligation (*People v. Reed*, 177 Ill.2d 389, 393 (1997)), our supreme court has interpreted the use of "shall" in section 122-2.1(a)(2) to be directory. *People v. Porter*, 122 Ill.2d 64, 81 (1988) (the use of "shall" is mandatory only as it applies to "the court's duty to dismiss a petition if it is frivolous or patently without merit"). Thus, the absence of a written order setting out findings of fact and conclusions of law does not invalidate a petition's dismissal. *Id.* at 82.

¶ 17 In interpreting this provision in *Porter*, our Supreme Court explained that "the use of the term 'shall' does not refer to the contents of the court's order of dismissal itself, but rather to the court's duty to dismiss a petition if it is frivolous or patently without merit." *Id.* at 81 (citing *People v. Wilson*, 146 Ill.App.3d 567 (1st Dist. 1986) (the thirty-day time period stated in section 122-2.1(a) is directly rather than mandatory and the trial court's disposition of the petitioner's pleading after more than thirty days following the docketing was not void). The Supreme Court found further support for its holding by relying upon *People v. Davis*, 93 Ill.2d 155 (1982), in which the supreme court concluded that the requirement that the trial court "shall" state its reasons for imposing a particular sentence under section 5-4-1(c) of the Unified Code of Corrections (now 730 ILCS 5/5-4.5-50 (West 2019)) was directory. *Id.* at 82.

¶ 18 Subsequently, in *People v. Cooper*, 2015 IL App (1st) 132971, this court reviewed the summary dismissal of a postconviction petition where no written order was issued but the court's decision was reflected on the docket entry or half-sheet and notice of the court's decision was sent to the defendant. *Cooper*, 2015 IL App (1st) 132971, ¶ 7. The report of proceedings or transcript for the day the court announced its decision was not part of the record. *Id.* The defendant in *Cooper* relied on the lack of findings to argue that the summary dismissal was on the improper basis of untimeliness. *Id.* Relying upon *Porter*, the *Cooper* court held that the statutory provision requiring a written order with findings is directory. *Id.* ¶ 9 (citing *Porter*, 122 Ill.2d at 81-82). We found that a "written order of summary dismissal is not required" as long as the dismissal "decision is entered of record," including sending it to the defendant. *Id.* ¶ 14 (citing *Perez*, 2014 IL 115927, ¶¶ 15, 29).

¶ 19 Here, the postconviction court's dismissal decision on December 18, 2019 was well within the 90 days of the petitions' filing on December 3, 2019. Moreover, the dismissal was reflected on the

December 18, 2019 report of proceedings and recorded on the half-sheet, the "Criminal Disposition Sheet" signed by the postconviction judge, and written notice thereof was sent to defendant on December 29, 2019. See 725 ILCS 5/122-2.1(a) (West 2014) ("Such order of dismissal * * * shall be served upon the petitioner by certified mail within 10 days of its entry"). We see no reason not to follow our decision in *Cooper*, and thus find that the summary dismissal of defendant's petition was properly entered within 90 days of the petition's filing. In the absence of a written order of summary dismissal, where the postconviction judge's signature was contained in the court record on a document informing defendant that his postconviction petition was summarily dismissed and proper notice of the postconviction court's decision was served upon defendant within 10 days of its entry, these actions met the requirements of section 122-2.1(a)(2) of the Act.

¶ 20 While defendant recognizes these decisions, he contends that our supreme court's decision in *People v. Perez*, 2014 IL 115927 "superceded" *Porter* and that the analysis in *Perez* "nullified *Porter* on the written-order requirement." Defendant's position is that *Perez* "repeatedly cited the written-order requirement in mandatory terms." *Perez*, 2014 IL 115927, ¶¶ 12, 23, 25, and 29.

¶ 21 We do not find that *Perez* supports his position. In *Perez*, the Supreme Court considered the issue of "whether the circuit court complies with the 90-day requirement of section 122-2.1(a) of the Post-Conviction Hearing Act (725 ILCS 5/122-2.1(a) (West 2012)) when it signs and dates an order of dismissal on the ninetieth day after the petition is filed and docketed, but the order is not filed by the clerk until the ninety-first day." *Id.* ¶ 1. Specifically, *Perez* addressed the issue of when the written dismissal order was "entered" and, thus, made final for purposes of the 90-day requirement of section 122-2.1(a). *Id.* at ¶ 10. After examining the language of section 122-2.1(a) and analyzing at length Illinois Supreme Court Rule 272 (Ill.S.Ct.R. 272 (eff. Nov. 1, 1990)), the

court found that the dismissal order was not entered at the time the circuit court signed it, but when it was entered on the record. *Id*. at ¶¶ 11-25.

¶ 22 In its holding, our supreme court addressed defendant's concern that the circuit court would have met the 90-day requirement if it had announced in court that it was dismissing the petition, relying on the public expression doctrine. *Id*. ¶ 23. Our supreme court noted that the defendant's reliance on the public expression doctrine was misguided, and that a simple announcement of a dismissal by the court would not have met the requirements of section 122-2.1(a) that a dismissal be "entered." *Id.*

¶ 23 The *Perez* decision does not address or even mention *Porter*, and we shall not find that the supreme court in *Perez* reversed or narrowed its express and well-considered holding in *Porter* wholly implicitly. We acknowledge that the *Perez* court indicated that merely announcing a dismissal in open court within 90 days may not be sufficient under section 122-2.1(a)(2). *Id.* ¶ 23. However, this case does not concern a bare oral pronouncement, as the court's decision was recorded on the court clerk's half-sheet and the "Criminal Disposition Sheet" signed by the postconviction judge and written notice of the court's decision was timely sent to defendant.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we affirm the summary dismissal of the petitioner at the first stage of postconviction proceedings.

¶ 26 Affirmed.