

NOTICE

Decision filed 08/25/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250730-U

NO. 5-25-0730

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 18-CF-1350
	)	
LADEVON DONNELL PENCE,	)	Honorable
	)	Stacy L. Campbell,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Vaughan and Hackett concurred in the judgment.

ORDER

¶ 1 *Held:* Where the circuit court's order dismissing the defendant's section 2-1401 petition was premature, the dismissal order is vacated and this cause is remanded for further proceedings.

¶ 2 The defendant, Ladevon Donnell Pence, appeals from the circuit court's order that dismissed his petition for relief from judgment. Because the circuit court dismissed the petition just three days after the petition was filed, and without an answer or other pleading from the State, the dismissal order must be vacated, and the cause must be remanded for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On May 30, 2019, the defendant, pursuant to a fully negotiated plea agreement with the State, pleaded guilty to two counts of aggravated battery with a firearm, a Class X felony. One of the two counts accused the defendant of shooting K.C. in the chest, while the other count accused

him of shooting K.C. in the back. In accordance with the parties' agreement, the circuit court sentenced the defendant to consecutive terms of 8 years and 10 years of imprisonment, to be followed by 3 years of mandatory supervised release. The defendant did not appeal from the judgment of conviction and sentence.

¶ 5 On Friday, August 15, 2025, the defendant filed a *pro se* petition for relief from judgment, under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2024)). In his petition, the defendant claimed that the judgment of conviction and sentence was void because his two convictions violated, *inter alia*, the one-act, one-crime rule.

¶ 6 By Monday, August 18, 2025, the State had not filed an answer to the defendant's petition or otherwise pled. However, on that date, the circuit court entered a written order that "denied" the section 2-1401 petition. The court found, *inter alia*, that the defendant had failed to demonstrate that the judgment of conviction and sentence was void. The defendant filed a timely notice of appeal.

¶ 7 II. ANALYSIS

¶ 8 This appeal is from the circuit court's order that dismissed the defendant's section 2-1401 petition requesting relief based on the allegation that the judgment was void. Appellate review is *de novo*. *Pekin Insurance Co. v. Campbell*, 2015 IL App (4th) 140955, ¶ 29.

¶ 9 In his appellant's brief, the defendant focuses exclusively on the alleged voidness of the judgment of conviction and sentence. The defendant does not say anything about the timing or circumstances of the circuit court's dismissal order. That is, the defendant does not say anything about the court's dismissing his petition just three days after the petition was filed, and without the State's filing an answer or otherwise pleading. The State, in its appellee's brief, notes that the defendant does not discuss the timing or circumstances of the dismissal order.

¶ 10 Here, the timing and the circumstances of the circuit court’s dismissal of the section 2-1401 petition dictate the outcome of this appeal. As our supreme court has stated, once a defendant has filed a section 2-1401 petition, the circuit court cannot *sua sponte* dismiss the petition before the conclusion of the usual 30-day period to answer or otherwise plead. *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009). If the State has not answered or otherwise pled, and the court proceeds to dismiss the petition before the 30-day period has expired, the dismissal order is “premature” and must be vacated on appeal. *Id.* Dismissal is premature because it “short-circuit[s] the proceedings and deprive[s] the State of the time it was entitled to answer or otherwise plead.” *Id.*

¶ 11 That outcome is the unfortunate result in this case. By dismissing the section 2-1401 petition just three days (two of which were a weekend) after the petition was filed, the circuit court deprived the State of its time to answer or otherwise plead. The dismissal order must be vacated, and this cause must be remanded so as to give the State an opportunity to answer or otherwise plead. Finally, this court notes that it expresses no opinion on the merits of the defendant’s section 2-1401 petition.

¶ 12 III. CONCLUSION

¶ 13 For the reasons stated above, the judgment of the circuit court is vacated. This cause is remanded to the circuit court for further proceedings consistent with this order.

¶ 14 Judgment vacated; cause remanded.