2026 IL App (1st) 251554-U

No. 1-25-1554

Filed September 16, 2026

Third Division

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES DONELSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. Nos. 98 CR 11525, 98 CR 11527 Honorable Nicholas Kantas, Judge, presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Quish and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant cannot appeal the circuit court's order granting his own motion to withdraw his postconviction petition.

¶ 2 Charles Donelson appealed the circuit court's order granting his motion to withdraw his postconviction petition. The State has filed a motion to dismiss this appeal for lack of appellate jurisdiction. Donelson filed a response, opposing the State's motion.

¶ 3 Donelson pled guilty to felony murder, home invasion, and aggravated criminal sexual assault in 2001. According to the factual basis for the plea, Donelson sexually assaulted Sarah Tyler, held Tyler and Matthew Flowers at gunpoint in their apartment, forced them into humiliating

acts, and fatally shot Flowers—over a five-dollar drug debt. In exchange for his plea, other charges were dismissed and he received concurrent prison terms of 55, 30, and 30 years.

¶ 4 Donelson later moved to withdraw his guilty plea. He withdrew the motion upon the State's agreement to reduce his sentence to concurrent terms of 50, 30, and 30 years.

¶ 5 Subsequently, Donelson filed a petition for relief from judgment, claiming his concurrent sentences were void, as concurrent sentencing for the offenses was not authorized by statute. Our supreme court agreed and directed the circuit court to resentence Donelson in accordance with the plea agreement and applicable statutes. *People v. Donelson*, 2013 IL 113603, ¶¶ 15, 29.[1] The circuit court resentenced him to concurrent terms of 44 and 30 years for murder and home invasion, both consecutive to a 6-year term for aggravated criminal sexual assault. In addition to his prison terms for each offense, Donelson's convictions carried three-year terms of mandatory supervised release (MSR) following his release from prison.

¶ 6 Donelson again attempted to withdraw his guilty plea. He was unsuccessful. See *People v. Donelson*, 2022 IL App (1st) 192065-U.

¶ 7 Donelson filed a *pro se* postconviction petition in 2020, claiming numerous deprivations of constitutional rights. The circuit court summarily dismissed the petition and Donelson appealed. In an agreed order, the parties asked that the matter be remanded for further proceedings, since the circuit court erroneously treated the petition as successive and failed to rule on it within 90 days as required by the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2024)).

¶ 8 In second-stage proceedings, appointed counsel filed a certificate in accordance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). Counsel then moved to withdraw under

[1]The void sentence rule applied in *Donelson* was later abolished. *People v. Castleberry*, 2015 IL 116915, ¶ 19.

People v. Greer, 212 Ill. 2d 192 (2004), asserting Donelson's claims lacked an arguable basis in fact and law. The court permitted counsel to withdraw.

¶ 9 Donelson continued to litigate his petition *pro se* and filed an amended petition in December 2024. By that time, he had been released from the penitentiary and began his term of MSR. Donelson also requested discovery of documents the State had previously provided to appointed counsel. The State prepared electronic copies of the documents stored on a thumb drive. Donelson represented that he could not accept the thumb drive, as he was not permitted to possess such a device under the terms of his MSR. On May 12, 2025, the State tendered Donelson the documents in paper format in court. The matter was continued to July 25, for a status conference. At some point, Donelson returned to the custody of the Illinois Department of Corrections (IDOC) for violating the terms of his MSR.

¶ 10 On May 30, 2025, Donelson filed a pleading he captioned, "Motion Petitioner for Post Conviction Discovery File." In the motion, Donelson asserted that the documents the State tendered him on May 12 were "not discovery." Donelson also asserted that his appointed counsel had told him he would receive the same discovery counsel had received, but Donelson learned on May 12 that "was a ruse." The motion requested discovery, though Donelson failed to specify what he was seeking to discover. In any event, he stated he needed discovery to amend his petition. The motion was scheduled to be heard on June 16. Referring to Donelson's May 30 motion, the Clerk entered "Post-Conviction Filed" on the electronic docket sheet.

¶ 11 The next week, June 5, Donelson filed a motion requesting the court to order he undergo a behavioral clinical examination (BCX).

¶ 12 Donelson was not present when the case was called on June 16. The court noted Donelson had filed motions requesting additional discovery and a BCX. The court stated it would address Donelson's requests at the previously scheduled July 25 status conference.

¶ 13 On July 3, Donelson filed a motion he captioned, "Leave Motion to Withdraw Postconviction Petition *instanter*." The motion read, "Come Charles Donelson in the cause to file a motion to withdraw postconviction petition *instanter* to wit: 1. That pursuant to 725 ILCS 5/122-5 the court may allow a petition to be withdrawn. 2. That sentence expired."

¶ 14 The circuit court granted Donelson's motion a week later stating:

> "the defendant has now filed a motion to withdraw his postconviction petition *instanter*. The defendant is not present in open court. The defendant's appearance shall be waived, and the defendant's *pro se* motions shall be withdrawn at his request. Defendant is in IDOC custody. Cases are off call."

¶ 15 Donelson filed a notice of appeal on August 1, indicating he sought to appeal the court's order granting his motion to withdraw his petition. The notice also stated, "Clerk filed another postconviction. I move to withdraw that as time expired not amended postconviction [*sic*]." Donelson attached a screenshot from the Clerk's publicly available case management system with information about his case. It shows an entry for May 30 that read, "Post-Conviction Filed."

¶ 16 In Donelson's opening brief, he claims the Clerk mishandled his May 30 discovery motion, mischaracterizing it as a postconviction petition, separate from his 2020-filed petition. When Donelson filed his motion to withdraw, he intended to withdraw the additional clerk-designated petition, not his 2020-filed petition, which was pending at the second-stage of postconviction proceedings. He asserts that his July 3 motion to withdraw was ambiguous, as it was unclear whether he was referring to his actual postconviction petition or the "mischaracterized discovery

motion." Donelson contends the court misinterpreted his motion to withdraw and should have waited until he appeared in person to clarify what he meant. Ultimately, he requests that we vacate the circuit court's July 10 order granting the motion to withdraw his petition and remand for postconviction proceedings to resume.

¶ 17 Donelson acknowledges that, in general, a plaintiff cannot appeal from their own request for a voluntary dismissal. See, *e.g.*, *Kahle v. John Deere Co.*, 104 Ill. 2d 302, 306 (1984) (observing that a plaintiff cannot appeal a voluntary dismissal order they requested). He argues, however, that this case is exceptional. According to Donelson, he will not be able to refile his petition since he has completed his sentence, and the Act grants standing only to persons "imprisoned in the penitentiary." 725 ILCS 5/122-1(a) (West 2024); *People v. Johnson*, 2021 IL 125738, ¶ 45 (to have standing, a petitioner must be "imprisoned in the penitentiary" for the challenged offense). Without the ability to refile, he reasons, the dismissal operates as a final adjudication of his petition. Thus, he contends we have jurisdiction to hear his appeal.

¶ 18 The State filed a motion to dismiss this appeal for lack of jurisdiction. The State contends the circuit court's order granting Donelson's motion to withdraw his petition was not a final, appealable order nor otherwise appealable under Illinois Supreme Court Rules.

¶ 19 The Illinois Constitution confers on the appellate court jurisdiction to hear appeals from final judgments or orders entered by the circuit court. *People v. Shinaul*, 2017 IL 120162, ¶ 10; Ill. Const. 1970, art. VI, § 6. A final order "may be one 'which finally determines all the issues presented by the pleadings' or one which constitutes a 'final determination of a collateral matter, distinct from the general subject of the litigation, but which, as between the parties to the particular issue, settles the rights of the parties.' " *People v. Seymore*, 2023 IL 131564, ¶ 26 (quoting *Brauer Machine & Supply Co. v. Parkhill Truck Co.*, 383 Ill. 569, 574-75 (1943)).

¶ 20 Postconviction proceedings under the Act are civil in nature. *People v. Bailey*, 2017 IL 121450, ¶ 29. Thus, the Code of Civil Procedure (Code) (735 ILCS 5/2-101 *et seq*. (West 2024)), applies except where it conflicts with the Act. *Id*. A postconviction petitioner's voluntary withdrawal of their petition is equivalent to a voluntary dismissal in a civil case. *People v. English*, 382 Ill. App. 3d 906, 909 (2008). So, a petitioner who is granted leave to withdraw their petition may refile it within one year under the savings clause of section 13-217 of the Code (735 ILCS 5/13-217 (West 2024)). *People v. Simms*, 2018 IL 122378, ¶ 47.

¶ 21 In *Kahle*, our supreme court observed that a plaintiff who voluntarily withdraws their complaint cannot appeal the order since (1) they requested it and (2) their right to refile protects them from prejudice by the statute of limitations. 104 Ill. 2d at 306. Following *Kahle*, this court has reiterated that a party cannot appeal from an order granting a voluntary dismissal they requested. *Koffski v. Village of North Barrington*, 241 Ill. App. 3d 479, 487 (1993); *Smith v. P.A.C.E.*, 323 Ill. App. 3d 1067, 1073 (2001).

¶ 22 Donelson urges us to relax this rule for what he describes as his unique circumstances. He alleges the Clerk made an error that induced him to file his motion to withdraw. Donelson also asserts he is prejudiced because he will be barred from refiling a postconviction petition.

¶ 23 We are not persuaded that the circumstances here render the order granting Donelson's motion to withdraw a final, appealable order. Notably, Donelson appeals the order granting the withdrawal itself, not a prior order that became final upon entry of the withdrawal or an ancillary order assessing costs. Those are the only recognized circumstances in which a plaintiff can appeal following a voluntary dismissal. *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 503 (1997) (recognizing that a voluntary dismissal makes appealable only those orders preceding the voluntary dismissal that were "final in nature."); *Smith*, 323 Ill. App. 3d at 1073 (recognizing a

plaintiff may appeal "from that part of the order taxing costs" following voluntary dismissal). Donelson's circumstances differ because no issues were determined or rights settled in his proceedings, such that any orders were "final in nature." *Dubina*, 178 Ill. 2d at 503; *Seymore*, 2023 IL 131564, ¶ 26.

¶ 24 In addition, Donelson's substantive arguments as to why the order should be vacated are based on his allegations that the Clerk induced him to file the motion to withdraw and that his intention differed from the court's interpretation. These issues are raised for the first time on appeal and dependent on matters not appearing in the record. Such issues cannot be considered on appeal. *People v. Anderson*, 375 Ill. App. 3d 121, 140 (2007) (noting allegations cannot be raised for the first time on appeal); *Allstate Insurance Co. v. Kovar*, 363 Ill. App. 3d 493, 499 (2006) ("A party may generally not rely on matters outside the record to support its position on appeal."). Donelson could have presented his contentions in a motion filed in the trial court and requested that the court vacate the order. See, *e.g.*, *People v. Pace*, 386 Ill. App. 3d 1056, 1062-63 (2008) (finding a petitioner should have been allowed to reinstate his petition after a voluntary dismissal). His failure to seek this available recourse and present these matters on the record before the trial court makes his appeal premature.

¶ 25 Further, we are disinclined to determine whether Donelson is prejudiced by entry of the order granting his motion to withdraw. Since Donelson has neither sought to reinstate nor refile his petition and may still attempt to do so, our judgment would amount to an advisory opinion on a hypothetical question, which we must avoid. *People ex. rel. Partee v. Murphy*, 133 Ill. 2d 402, 410 (1990). In addition, some facts not appearing in the record may be relevant to the question. Although Donelson had completed his prison term, it appears he was still subject to a term of MSR. A person on MSR is considered "imprisoned in the penitentiary" for purposes of the Act and

may institute an action. *People v. West*, 145 Ill. 2d 517, 519 (1991). The record does not disclose if or when Donelson was discharged from MSR. So, he may have had time remaining to refile his petition after the court's July 10, 2025, order was entered.

¶ 26 Ultimately, a petitioner who withdraws their petition will bear the consequences of the process they have chosen. *People v. Hunt*, 2022 IL App (4th) 210001, ¶ 30; *Simms*, 2018 IL 122378, ¶ 47. And a *pro se* litigant is held to the same standards as a litigant represented by an attorney. *Williams v. Department of Human Services Division of Rehabilitation*, 2019 IL App (1st) 181517, ¶ 30. Since Donelson seeks to appeal an unappealable order, we find that we lack jurisdiction to consider this appeal and we therefore grant the State's motion to dismiss.

¶ 27 Based on the foregoing, we dismiss this appeal for lack of jurisdiction.

¶ 28 Motion granted.

¶ 29 Appeal dismissed.