



¶ 4

## I. BACKGROUND

¶ 5 On December 1, 2016, defendant pleaded guilty under a partially negotiated plea agreement to one count of first degree murder (720 ILCS 5/9-1(a)(2) (West 2014)). In exchange, the State dismissed the remaining charges and recommended a sentence of no more than 35 years in prison.

¶ 6 On May 10, 2017, the trial court conducted a sentencing hearing. The court sentenced defendant to 35 years' imprisonment followed by 3 years of mandatory supervised release (MSR). Defendant's sentence was ordered to be served at 100% pursuant to section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3 (West 2016)). The court advised defendant of his right to appeal. On June 8, 2017, defendant, through counsel, filed a motion to withdraw his guilty plea and a motion to reconsider his sentence. No hearing was held on either of these motions.

¶ 7 On June 3, 2019, defendant filed a *pro se* motion titled "motion for leave to file an injunction relief petition and appoint counsel." Defendant argued section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3 (West 2016)) was unconstitutionally enacted and therefore the requirement that he serve 100% of his sentence was void. Defendant further alleged he was never advised of the required MSR term when he pleaded guilty. Defendant argued his sentence should be reduced to 17.6 years and requested leave to file "an injunction relief petition." No hearing was held on defendant's motion.

¶ 8 On March 1, 2021, defendant filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005 (West 2020)) and section 2-1005(a) of the Code (735 ILCS 5/2-1005(a) (West 2020)). In his motion, defendant

requested summary judgment because “the time within which he or she is required to appear has expired.” Again, no hearing was held on this motion.

¶ 9 On September 9, 2021, defendant filed a “motion for appointment of counsel” wherein defendant requested the trial court appoint counsel “pursuant to 772-5/1112 [*sic*] post-conviction hearing act”. On the same day, defendant also filed a “resentencing motion” pursuant to “Public Act 102-0102 (725 ILCS 5/123 new).” Defendant again argued the truth-in-sentencing provision was void. In addition, defendant requested a resentencing hearing stating “throughout this time I have grown as a person, spiritually, mentally and in the faith I am a different person and much more mature now moving in the signs [*sic*] of reasoning and understanding.” Defendant further asserted “his original sentence[ ] no longer advances the interests of justice” and requested his sentence be commuted.

¶ 10 On September 14, 2021, the trial court entered three written orders. First, the court entered an order on defendant’s “motion for leave to file an injunction relief petition and appoint counsel.” In denying defendant’s motion, the court addressed defendant’s argument regarding MSR, stating, “A review of not only the docket, but also the transcript of proceedings \*\*\* reveals that defendant was fully admonished as to the terms of his incarceration period of 35 years, as well as the 3 year MSR.” The court further stated,

“If the defendant is attempting to frame this as a post-conviction petition, any attempted claim set forth in the motion is without merit. The petition fails to set forth a meritorious claim of a substantial deprivation of a constitutional right. For the forgoing reasons, the motion is denied and the motion/petition is dismissed with prejudice.”

¶ 11 The trial court next entered an order on defendant’s motion for resentencing. The court denied the motion, stating the motion was not timely and therefore the court did not have jurisdiction.

¶ 12 The trial court then entered an order on defendant’s motion for summary judgment. In denying defendant’s motion for summary judgment, the court stated, “A review of the docket fails to reveal any complaint. It appears as if defendant is attempting to construe his motion for leave to file an injunction relief petition as a complaint for post-conviction relief.” The court went on, stating, “If this is in fact the case, defendant failed to make a substantial showing of a constitutional violation and that petition was dismissed with prejudice.”

¶ 13 This appeal followed.

¶ 14 **II. ANALYSIS**

¶ 15 Defendant argues the trial court erred by recharacterizing his “motion for leave to file an injunction relief petition” as a postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2020)) without following the procedures set forth in *People v. Shellstrom*, 216 Ill. 2d 45, 833 N.E.2d 863 (2005), and *People v. Pearson*, 216 Ill. 2d 58, 833 N.E.2d 827 (2005). Defendant further argues to the extent the court’s order denying summary judgment recharacterized his “motion for leave to file an injunction relief petition” as a postconviction petition, it too must be vacated. The State contends the court did not recharacterize the motion for leave to file injunctive relief.

¶ 16 The Act provides a remedy for defendants whose convictions resulted from a substantial violation of their constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). The Act sets up a three-stage process for adjudicating postconviction petitions. *People v. Bocclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002). A

defendant may file only one postconviction petition without obtaining leave of court. 725 ILCS 5/122-1(f) (West 2020). To obtain leave of court, the defendant must satisfy the cause-and-prejudice standard by showing “cause for his or her failure to bring the claim in his or her initial postconviction proceedings and prejudice results from that failure.” 725 ILCS 5/122-1(f) (West 2020).

¶ 17 A trial court may recharacterize an otherwise labeled *pro se* pleading and treat it as a postconviction petition. See *Shellstrom*, 216 Ill. 2d at 53. However, before recharacterizing a defendant’s *pro se* pleading as a first postconviction petition, a trial court must (1) notify the defendant the court intends to recharacterize the pleading; (2) warn the defendant the recharacterization means any subsequent postconviction petition will be subject to the restrictions on successive postconviction petitions; and (3) provide the defendant an opportunity to withdraw the pleading or to amend it so it contains all the claims appropriate to a postconviction petition the defendant believes he or she has. *Shellstrom*, 216 Ill. 2d at 57; *People v. Hood*, 395 Ill. App. 3d 584, 586, 916 N.E.2d 1287, 1289 (2009). “The *Shellstrom* admonitions are designed to protect the rights of *pro se* defendants and, in particular, to inform them of the limitation on filing successive postconviction petitions and the need to amend their initial petition to include all possible postconviction claims.” *People v. Stoffel*, 239 Ill. 2d 314, 328, 941 N.E.2d 147, 156 (2010) (citing *Shellstrom*, 216 Ill. 2d at 57). We review *de novo* whether the trial court has used the proper procedure under *Shellstrom*. *People v. Corredor*, 399 Ill. App. 3d 804, 806, 927 N.E.2d 1231, 1232 (2010).

¶ 18 Here, the record shows the trial court failed to give defendant the requisite admonishments before recharacterizing his “motion for leave to file an injunction relief petition” as a postconviction petition. Defendant titled his motion as a “motion for leave to file an

injunction relief petition and appoint counsel.” A *pro se* filing which alleges a constitutional deprivation without explicitly labeling itself as a postconviction petition under the Act does not have the clear character of a postconviction petition. See 725 ILCS 5/122-1(d); *Shellstrom*, 216 Ill. 2d at 53 n.1. Under *Shellstrom*, the court, upon receiving the ambiguous document, has a choice: (1) recharacterize the document as a postconviction petition or (2) do not recharacterize it as such. See *Shellstrom*, 216 Ill. 2d at 53 n.1. Recharacterizing the *pro se* filing for the sake of argument is not an option.

¶ 19 In the instant case, the trial court recharacterized defendant’s motions as evidenced in its orders entered on September 14, 2021. In both the order denying defendant’s (1) motion for leave to file an injunction relief petition and appoint counsel and (2) motion for summary judgment, the court stated the possibility defendant was attempting to construe his pleadings as a complaint for postconviction relief. The court then proceeded to rule on those pleadings and deny defendant postconviction relief.

¶ 20 The court’s recharacterization of defendant’s “motion for leave to file an injunction relief petition” was not merely “surplusage that was unnecessary to the court’s ultimate decision” as the State suggests. The court recharacterized defendant’s “motion for leave to file an injunction relief petition” without complying with *Shellstrom*, and thus, remand for compliance with *Shellstrom* is necessary.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we vacate the trial court’s dismissal of defendant’s *pro se* motions, and we remand with directions the court admonish defendant and provide him an opportunity to withdraw the pleadings or amend them pursuant to *Shellstrom*.

¶ 23 Vacated and remanded with directions.