

NOTICE
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2019 IL App (5th) 160250-U

NO. 5-16-0250

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party 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,)	Williamson County.
)	
v.)	No. 82-CF-220
)	
LEROY JENKINS,)	Honorable
)	Phillip G. Palmer Sr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not err in dismissing the defendant's motion seeking vacatur of various dispositional orders that had been entered years earlier.
- ¶ 2 The defendant, Leroy Jenkins, represents himself in this appeal from the dismissal of a motion seeking vacatur of various years-old orders that had disposed of various *pro se* pleadings, including a postconviction petition and a petition for relief from judgment. For the reasons that follow, this court affirms the circuit court's dismissal order.

¶ 3

BACKGROUND

¶ 4 In February 1983, a jury found the defendant guilty of armed robbery, aggravated kidnapping, unlawful restraint, and deviate sexual assault. The evidence firmly established that the defendant, while armed with a handgun, kidnapped and robbed a pregnant woman and forced her to perform a sex act. In April 1983, the circuit court adjudged the defendant a habitual criminal and sentenced him to natural-life imprisonment. See Ill. Rev. Stat. 1981, ch. 38, ¶ 33B-1. The defendant appealed from the judgment of conviction. (His direct appeal turned out to be the first of several appeals involving this case, as described below.) This court vacated the unlawful-restraint conviction because only one continuous act of detaining or confining had been committed. In all other respects, this court affirmed the judgment of conviction. *People v. Jenkins*, 126 Ill. App. 3d 1162 (1984) (table) (unpublished order under Supreme Court Rule 23).

¶ 5 In December 1991, the defendant filed *pro se* his first petition for postconviction relief. In January 1992, the circuit court found this postconviction petition patently without merit and summarily dismissed it. This court affirmed the judgment. *People v. Jenkins*, 269 Ill. App. 3d 1159 (1995) (table) (unpublished order under Supreme Court Rule 23).

¶ 6 While the appeal from the summary dismissal of the first postconviction petition was still pending, the defendant filed his second postconviction petition, and the circuit court dismissed it. The defendant did not appeal from the dismissal of the second postconviction petition.

¶ 7 In March 1997, the defendant filed his third *pro se* postconviction petition, as well as a *pro se* petition for *habeas corpus* relief. That same month, the circuit court summarily dismissed the third postconviction petition as frivolous and patently without merit, and it struck as moot the *habeas* petition. The defendant appealed. His court-appointed attorney on appeal, the Office of the State Appellate Defender (OSAD), filed a motion to withdraw as counsel, pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). This court granted OSAD's motion to withdraw and affirmed the judgment of the circuit court. *People v. Jenkins*, 302 Ill. App. 3d 1110 (1999) (table) (unpublished order under Supreme Court Rule 23).

¶ 8 On September 2, 2003, the defendant filed *pro se* a section 2-1401 petition for relief from judgment. See 735 ILCS 5/2-1401(f) (West 2002). Appointed counsel subsequently filed a supplemental petition for relief from judgment. In February 2004, the circuit court denied the section 2-1401 petitions, for various reasons. In March 2004, the defendant filed *pro se* a timely motion for rehearing and a motion to proceed *pro se*. He subsequently filed three supplements to the motion for rehearing. Ultimately, in October 2004, the circuit court denied the defendant's motion for a rehearing and the supplements thereto. On appeal to this court, the defendant proceeded *pro se*. This court affirmed the denial of the defendant's section 2-1401 petitions. *People v. Jenkins*, 376 Ill. App. 3d 1170 (2007) (table) No. 5-04-0705 (Sept. 5, 2007) (unpublished order under Supreme Court Rule 23).

¶ 9 In June 2009, the defendant filed a complaint for a writ of *mandamus*. On motion of the defendants in the *mandamus* action, the circuit court dismissed the complaint. This

court affirmed. *Jenkins v. Lockwood*, 406 Ill. App. 3d 1227 (2011) (table) No. 5-09-0693 (Mar. 7, 2011) (unpublished order under Supreme Court Rule 23).

¶ 10 In December 2012, the defendant filed a *pro se* "motion for new trial and for ineffective assistance of counsel." In February 2013, the circuit court treated the pleading as a motion for leave to file a successive postconviction petition (the defendant's fourth postconviction petition), found that the motion did not meet the requirements of section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2012)), and denied the motion. This court affirmed. *People v. Jenkins*, 2015 IL App (5th) 130116-U.

¶ 11 On March 14, 2016, the defendant filed a *pro se* "motion to vacate order from first post-conviction and 2-1401(f) and remand." This *pro se* motion is the subject of the instant appeal. In the motion, the defendant referred to a few of the various *pro se* pleadings that he had filed over the years, *viz.*: his first postconviction petition, which he had filed more than 24 years earlier, in December 1991; his petition for *habeas corpus* relief, which he had filed 19 years earlier, in March 1997; his section 2-1401 petition for relief from judgment, which he had filed more than 12 years earlier, in September 2003; and his "motion for new trial and for ineffective assistance of counsel," which he had filed more than 3 years earlier, in December 2012. The defendant asserted that at the various times he filed those pleadings with the circuit court, he had failed to serve copies of those pleadings upon the State in a manner compliant with Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989), and due to his failures, the circuit court's orders dismissing or otherwise disposing of those pleadings—orders that were entered in January 1992,

March 1997, October 2004, and February 2013—had been entered prematurely. The remedy, according to the defendant, was vacatur of all of those old orders.

¶ 12 On April 13, 2016, the State filed a motion to dismiss the defendant's motion, on the ground that the circuit court had no jurisdiction to consider the motion's merits or to vacate dispositional orders that the court had entered years (or many years) earlier.

¶ 13 On May 12, 2016, the court entered an order granting the State's motion to dismiss the defendant's motion. The defendant perfected the instant appeal from that order.

¶ 14 ANALYSIS

¶ 15 The defendant represents himself in this appeal. He argues that the circuit court erred in dismissing his *pro se* "motion to vacate order from first post-conviction and 2-1401(f) and remand." However, under the law, the circuit court had no alternative except to dismiss the motion. The defendant was asking the court to vacate dispositional orders that it had entered between 3 and 24 years earlier. Generally, the circuit court loses jurisdiction to vacate or modify its judgment 30 days after entry of the judgment. See, e.g., *People v. Bailey*, 2014 IL 115459, ¶ 8; *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991). As a simple matter of law, the court had long since lost the authority to grant the relief that the defendant was requesting.

¶ 16 Furthermore, this court notes that the premise underlying the defendant's "motion to vacate order from first post-conviction and 2-1401(f) and remand" is faulty. In the motion, the defendant asserted that when he filed *pro se* pleadings at various times between December 1991 and December 2012, he failed to serve the State with copies of those pleadings in a manner compliant with Supreme Court Rule 105, and he argued that

due to his failures to comply with Rule 105, the circuit court's orders dismissing or denying his *pro se* pleadings were premature and needed to be vacated. Our Illinois Supreme Court has made clear that a party cannot fail to comply with Rule 105 and then seek to use his own noncompliance as a basis for challenging an adverse ruling. *People v. Matthews*, 2016 IL 118114, ¶¶ 15, 23.

¶ 17

CONCLUSION

¶ 18 The circuit court did not err in dismissing the defendant's "motion to vacate order from first post-conviction and 2-1401(f) and remand." Dismissal was the only real option. The defendant was seeking vacatur of various dispositional orders that the court had entered years (or many years) earlier, but the court had long since lost jurisdiction to vacate those orders.

¶ 19 Affirmed.