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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT JACKSON

LAURA N. CLIFTON	
Appellant,	**No. W2025-01520-CCA-R3-PC**
v.	
STATE OF TENNESSEE,	**Madison County Circuit Court No. C-25-144**
Appellee.	

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE MADISON COUNTY CIRCUIT COURT

PRINCIPAL BRIEF OF APPELLANT, LAURA N. CLIFTON

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF THE ISSUE

A post-conviction court may dismiss a petition for failure to prosecute only when it gives the petitioner fair warning beforehand and provides adequate findings of fact and conclusions of law demonstrating that the petitioner acted in bad faith or abused the process of the court. In this case, the post-conviction court dismissed the Appellant's petition for failure to prosecute without giving her fair advance warning and without any proof that she acted in bad faith or abused the post-conviction process. Under these circumstances, did the post-conviction court erroneously dismiss the Appellant's petition?

STATEMENT OF THE CASE & FACTS

In May 2024, Appellant Laura N. Clifton entered into an agreement to plead guilty to two counts of sexual exploitation of a minor via electronic means. (I: 1, 10, 12.) The parties agreed that Ms. Clifton would receive concurrent two-year sentences on each count, with release eligibility upon service of 30% of the sentence. (I: 1, 12.) The plea agreement specified that Ms. Clifton would not be placed on the sex offender registry. (I: 1, 10; II: 5.) On May 13, 2024, the trial court accepted Ms. Clifton's guilty plea and imposed the sentence delineated in the plea agreement, including the stipulation that she would not be subject to the sex offender registry.[1] (I: 1, 10.)

Following the imposition of her sentence, Ms. Clifton was placed on the sex offender registry and required to comply with all its requirements. (I: 1, 10, 12.) According to the State, this occurred because any person convicted of sexual exploitation of a minor via electronic means must be placed on the sex offender registry. (I: 10; II: 5.) The State asserted that such a conviction subjects an individual to the sex offender

[1] In the parties' pleadings, they agreed to this information regarding Ms. Clifton's plea. However, the original record transmitted from the post-conviction court clerk did not include the plea agreement, a transcript of the plea hearing, or the final judgments entered by the trial court. To ensure the adequacy of the appellate record, Ms. Clifton has filed a motion asking this Court to order the supplementation of the appellate record to include those documents. Ms. Clifton does not anticipate that the information in those documents will impact the arguments set forth in this brief. If necessary, however, Ms. Clifton will address any material information from those documents in her reply brief.

registry notwithstanding any plea agreement or court order purporting to exempt the individual from the registry. (I: 10; II: 5.)

On May 12, 2025, Ms. Clifton filed a pro se petition for post-conviction relief. (I: 1–2.) In the petition, Ms. Clifton asserted that her guilty plea "was submitted involuntarily and unknowingly" because her plea agreement had provided "that she would not be required to register as a sex offender." (I: 1.) Ms. Clifton averred that, if she had known that "she would have to be put on the [sex offender registry], then she would not have entered a guilty plea." (I: 1.) Ms. Clifton further alleged that being classified as a sex offender would "disrupt her whole life" by impacting her relationship with her own three minor children, as well as their relationships with other children in the community. (I: 2.)

On May 27, 2025, the post-conviction court found that Ms. Clifton was indigent, appointed her counsel, and ordered that the petition would be heard on July 7, 2025. (I: 6–7.)

On June 16, 2025, the State filed a response to Ms. Clifton's pro se petition. (I: 10.) The State acknowledged that the petition was timely and conceded that Ms. Clifton was entitled to post-conviction relief. (I: 10.) Specifically, the State agreed that Ms. Clifton was entitled to withdraw her guilty plea because she had been incorrectly "told that" her convictions would "not require placement on the sex offender registry." (I: 10.) The State further asserted that Ms. Clifton "did not make a bond in this matter"; as a result, the State argued that if the petition were to be granted, Ms. Clifton should "be taken into custody" and "bond [would] need to be set." (I: 10.)

On July 3, 2025, Ms. Clifton filed a motion to be released on her own recognizance in lieu of setting bond upon the grant of her post-conviction petition. (I: 12–13.) In the alternative, she asked the court to set a low bond. (I: 12–13.) In support of her request, Ms. Clifton noted that she had been released from confinement after serving the term of incarceration imposed by the trial court.[2] (I: 12; II: 6.)

The post-conviction court heard the petition as scheduled on July 7, 2025. (II: 1.) At the hearing, the State reiterated its concession that Ms. Clifton was entitled to post-conviction relief because "she was actually told she wouldn't go on the sex offender registry" when her conviction mandated placement on the registry. (II: 5.) The State also reiterated its request for the court to return Ms. Clifton to custody and to require her to "make a bond." (II: 5–6.)

In addition, the State asked that Ms. Clifton be required to "state on the record" that she wanted to proceed with her petition because, "if she [were to go] to trial and [if she were to be] convicted of [the same] charges, she [would have] to go on the sex offender registry." (II: 6.) According to the State, it was important for Ms. Clifton to demonstrate her understanding that her "main complaint" about being subject to the

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[2] The record does not reflect whether Ms. Clifton was released because she served her entire sentence or because she was granted parole. (I: 12; II: 6.) However, according to the Tennessee Department of Correction's "Felony Offender Information" records, she is currently under the supervision of the Jackson Probation and Parole Office, and the "end date" for her sentence is December 17, 2025. Tenn. Dep't of Corr., *Felony Offender Information*, https://foil.app.tn.gov/foil/search.jsp (select "Search by TDOC ID" and enter "00514448") (last visited Dec. 10, 2025).

sex offender registry "cannot be accomplished absent a 'not guilty' verdict." (II: 6.)

Ms. Clifton was then sworn in and, in response to questioning by the court and her own counsel, she expressed confusion about whether she would be taken off the registry given the State's admonition that her "main complaint" about being subject to the registry might not be remedied. (II: 9–10.) Her counsel then clarified that the withdrawal of her guilty plea would result in her removal from the registry "[f]or right now," although she "still would have to go through the trial process," and would again be subject to the registry "if [she were] convicted after trial." (II: 9.) Her counsel further stated that she "would have to be acquitted in order to be off the sex offender registry." (II: 10.) At that point, Ms. Clifton confirmed that she "want[ed] to go through with [her petition]." (II: 10.)

The State did not ask Ms. Clifton any questions but warned her that "[s]he could get consecutive sentencing" if she were found guilty of the same charges. (II: 10.) Ms. Clifton responded that she felt that she had been "pressured into" pleading guilty and believed that the State could not prove all the elements of the charged offenses. (II: 11.) The post-conviction court interjected to admonish Ms. Clifton that they were not in court "to try the case" at that time and that her relief would be limited to withdrawing her guilty plea, which would leave her "facing the very same charge[s]." (II: 11.)

The court then stated, "Ms. Clifton, if you need to take a minute and y'all sit down and speak to this, I have no objection to that." (II: 11.) At that point, Ms. Clifton's counsel asked the court, "[C]an we just pass on it for a moment while she thinks about it?" (II: 11.) The court

responded to counsel, "Sure. Just have a seat. … We'll come back to your case." (II: 12.)

That occurred at 12:17 p.m., at which point the post-conviction court took up other matters. (II: 12.) At 1:08 p.m., the proceedings in this case resumed. (II: 12.) The prosecutor reported that "Ms. Clifton left." (II: 12.) The court remarked that it observed Ms. Clifton "going out the door" but "thought maybe [she was] just going to discuss" the case with an individual who had accompanied her to court. (II: 12–13.) The prosecutor stated he had learned from the courthouse deputies that Ms. Clifton and her companion had "gone" and had "not come back." (II: 13.) The prosecutor reported that he had informed Ms. Clifton's counsel of Ms. Clifton's departure and then stated, "So at this point, I guess she has failed to prosecute her post-conviction [petition]." (II: 13.) Ms. Clifton's counsel stated that he had "no information" apart from learning from the prosecutor that she had left the courthouse. (II: 13.)

The post-conviction court stated, "I guess I will dismiss [the petition] for failure to prosecute" and then commented to Ms. Clifton's counsel, "If she gets in touch with you in the next thirty days …." (II: 13 (ellipsis in original).) The post-conviction court did not finish its thought. (*See* II: 13.) The court adjourned at 1:10 p.m., two minutes after the proceedings had resumed following the break. (II: 14.)

Three days later, on July 10, 2025, the post-conviction court issued an order dismissing the petition. (I: 15–16.) In the order, the post-conviction court found that Ms. Clifton had "been present" at the hearing on her petition "but asked to pass the matter on the docket to consider whether she wished to proceed with the petition." (I: 15.) The court

further found that Ms. Clifton "left the courtroom and did not return." (I: 15.) The court concluded that the petition "should be dismissed because the petitioner failed to remain in the courtroom and present her petition." (I: 15.)

On July 14, 2025, Ms. Clifton filed a motion to reconsider, asking the post-conviction court to set aside its prior order of dismissal and to allow her to proceed with her petition for post-conviction relief. (I: 17–18.) The post-conviction court heard the motion to reconsider on August 25, 2025. (III: 4.) At that hearing, Ms. Clifton testified that the statements by the prosecutor at the prior hearing "put[ ] a lot of doubt in [her] mind," especially because she was concerned that she could not make a $10,000 bond. (III: 8.) Ms. Clifton indicated that she had difficulty navigating the prior hearing because of her "mental health problems," which included diagnoses for "depression, bipolar [disorder], ADD, [and] PTSD." (III: 9.)

Ms. Clifton acknowledged that she left the courtroom during the break on the day in question. (III: 8.) She attested that she went to the parking lot and subsequently attempted to reenter the courtroom but could not do so because the door was locked. (III: 12.) Ms. Clifton asked someone from the clerk's office to allow her to reenter the courtroom, but the individual told her that "court was over with" for the day. (III: 12.) Ms. Clifton did not have her trial counsel's phone number on hand, so she was not able to communicate with him until later. (*See* III: 12.)

Ms. Clifton implored the post-conviction court to allow her to proceed with her petition because she had been assured by everyone involved in the submission of her guilty plea that she "wouldn't be on the

[sex offender registry]," and "[t]hen found out later that [she] was on the [registry]." (III: 13.)

At the conclusion of the hearing, the post-conviction court announced its ruling:

> [W]e were here July 7th of this year. Ms. Clifton did leave the courtroom after being told to stay in the courtroom. Therefore, the Court finds that Ms. Clifton has abandoned her claims for post-conviction relief.

(III: 14–15.) On September 2, 2025, the post-conviction court issued a written order denying Ms. Clifton's request to set aside the dismissal of her petition because she "left the courtroom without permission, did not return, and failed to present her [p]etition." (I: 20.)

On September 30, 2025, Ms. Clifton initiated this appeal.[3] (I: 22–23.)

[3] Ms. Clifton anticipates that the State will ask this Court to dismiss this appeal as untimely because the post-conviction court's July 10, 2025 order of dismissal was a final judgment that triggered the 30-day time limit for initiating an appeal. Contemporaneously with this brief, Ms. Clifton has filed a motion for this Court to excuse the late filing her of her notice of appeal in the interest of justice.

STANDARD OF REVIEW

This Court applies the abuse-of-discretion standard when reviewing a post-conviction court's dismissal of a post-conviction petition for failure to prosecute. *Williams v. State*, 831 S.W.2d 281, 283 (Tenn. 1992); *McLeod v. State*, No. W2024-01786-CCA-R3-PC, 2025 WL 3034326, at *3 (Tenn. Crim. App. Oct. 30, 2025) (citing *Caraway v. State*, No. W2021-00360-CCA-R3-PC, 2022 WL 1580639, at *7 (Tenn. Crim. App. May 19, 2022)). "A [post-conviction] court abuses its discretion when it applies an incorrect legal standard, reaches a conclusion that is not logical, bases its decision on a clearly erroneous assessment of the evidence, or uses reasoning that causes an injustice to the complaining party." *State v. Tolle*, 591 S.W.3d 539, 545 (Tenn. 2019) (quoting *State v. Davidson*, 509 S.W.3d 156, 193 (Tenn. 2016)). In addition, a post-conviction court abuses its discretion when it "unreasonably, arbitrarily, or unconscionably" dismisses a petition for failure to prosecute. *Caraway*, 2022 WL 1580639, at *7.

This Court defers to the post-conviction court's findings of fact "unless the evidence preponderates against them." *Id.* at *8. "By contrast, the post-conviction court's conclusions of law receive no deference or presumption of correctness on appeal." *Id.* (citing *Fields v. State*, 40 S.W.3d 450, 453 (Tenn. 2001)).

ARGUMENT

The post-conviction court erred by dismissing Ms. Clifton's petition for failure to prosecute.

The post-conviction court abused its discretion because its ruling was unreasonable, was not grounded in the correct legal standard, was premised upon a clearly erroneous assessment of the evidence, and resulted in an injustice to Ms. Clifton. That is the case for three reasons: (1) Ms. Clifton did not act in bad faith or abuse the post-conviction process; (2) the post-conviction court did not provide her with proper notice before imposing the severe sanction of dismissal; and (3) the court did not make adequate findings supported by the record or provide legally pertinent conclusions of law to support its decision. Because of these errors, Ms. Clifton is entitled to relief regardless of whether this Court conducts plenary review or reviews the post-conviction court's dismissal for plain error.

A. Ms. Clifton did not act in bad faith or abuse the process of the post-conviction court.

A post-conviction court has "inherent authority to dismiss a petition for post-conviction relief with prejudice based on a petitioner's failure to prosecute." *Caraway*, 2022 WL 1580639, at *7 (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 630–33 (1962)). However, a dismissal for failure to prosecute is a "drastic sanction[ ]" that "run[s] counter to the judicial system's general objective of disposing of cases on the merits." *Henry v. Goins*, 104 S.W.3d 475, 481 (Tenn. 2003) (citing *Childress v. Bennett*, 816 S.W.2d 314, 316 (Tenn. 1991) ("[I]t is the general rule that courts are

reluctant to give effect to rules of procedure … which prevent a litigant from having a claim adjudicated upon its merits.")). Consequently, this Court has emphasized that a post-conviction court's authority to dismiss a petition for failure to prosecute "should be exercised sparingly and with great care." *McLeod*, 2025 WL 3034326, at *5 (quoting *Caraway*, 2022 WL 1580639, at *7). Consistent with these principles, this Court and the Tennessee Supreme Court have approved the dismissal of post-conviction petitions for failure to prosecute only when the petitioner has "abus[ed] the post-conviction process" or has "otherwise act[ed] in bad faith." *Id.* (quoting *Williams*, 831 S.W.2d at 283); *see also Cazes v. State*, 980 S.W.2d 364, 365 (Tenn. 1998) (holding that dismissal of a post-conviction petition with prejudice is appropriate for petitioners who engage in "interminable bad faith conduct" or "abuse the process" of the court).

Conversely, Tennessee appellate courts have consistently held that the extreme sanction of dismissal is not warranted when there is no proof of bad faith or abuse of process by the petitioner. In *McLeod*, for example, the post-conviction court dismissed the petition for failure to prosecute four years after it was filed, noting that "the matter had been reset seventeen times," including "five hearings [that] had been reset because the [p]etitioner was never ready to proceed." *McLeod*, 2025 WL 3034326, at *4. This Court reversed the order of dismissal, finding that there was a "legitimate reason" that the petitioner was unable to proceed on at least one occasion. *Id.* Moreover, despite the significant number of "resets," this Court emphasized the absence of any proof that the petitioner "was using the resets to gain a tactical advantage." *Id.* at *5. Nor was there

anything to suggest that the petitioner "was abusing the post-conviction process" or "was acting in bad faith." *Id.* As a result, this Court "conclude[d] that the post-conviction court erred by dismissing the petition for failure to prosecute." *Id.*

McLeod is the most recent in a line of cases holding that post-conviction courts may not dismiss a petition for failure to prosecute or similar grounds when there is no evidence that the petitioner acted in bad faith or abused the process of the court. *See, e.g.*, *Leslie v. State*, 36 S.W.3d 34, 36 (Tenn. 2000) (holding that the post-conviction court erred by dismissing the petition for failure to prosecute because "[t]here was no evidence or allegation that [the petitioner] abused the post-conviction process"); *Williams*, 831 S.W.2d at 283 (holding that the post-conviction court erred by dismissing the petition with prejudice when the record did not "reflect[ ]bad-faith conduct on the part of the petitioner"); *Jackson v. State*, No. W2019-00731-CCA-R3-PC, 2020 WL 5792961, at *5 (Tenn. Crim. App. Sept. 25, 2020) (holding that the post-conviction court erred by dismissing the petition for failure to prosecute because, although the petitioner had submitted numerous pro se filings seeking continuances and the recusal of the judge, his conduct was "was neither 'a tactical ploy to disrupt and delay orderly judicial proceedings' nor meant to 'unduly hinder the fair, efficient and orderly administration of justice'" (quoting *Lovin v. State*, 286 S.W.3d 275, 286 (Tenn. 2009))).

Other cases illustrate the type of bad-faith conduct and abuse of process that warrant the dismissal of a post-conviction petition for failure to prosecute. In *Caraway*, for example, this Court affirmed the dismissal

of the post-conviction petition four years after it was initially filed. *Caraway*, 2022 WL 1580639, at *7. During that time, the petitioner caused a "breakdown in communication" with the first attorney who represented him and made "threats to her safety." *Id.* By the time of dismissal, the court had "appointed three different attorneys to represent [the petitioner]." *Id.* "Each counsel's attempt to proceed forward with a hearing was frustrated by the [p]etitioner's repeated refrain of adding unspecified issues or witnesses." *Id.* In addition, "[a] clear pattern … emerged showing that after [the post-conviction] court admonished the [p]etitioner that the petition would be dismissed if he did not proceed forward, the [p]etitioner would then claim an unsubstantiated 'conflict of interest'" with the court or his appointed counsel. *Id.* After granting numerous continuances, when the petitioner persisted in his refusal to proceed with an evidentiary hearing at the "sixth court setting," the post-conviction court granted the State's request to dismiss the petition for failure to prosecute. *Id.*

Noting the "gravity of a dismissal of a petition for post-conviction relief for failure to prosecute," this Court found that dismissal on that basis was reasonable under the circumstances because the petitioner's "pattern of conduct" amounted to "[f]lagrant abuse of the judicial process." *Id.* (quoting *Green v. Carlson*, 649 F.2d 285, 287 (5th Cir. Unit A June 1981) (per curiam)); *see also Dillard v. State*, No. W2010-00306-CCA-R3-PC, 2011 WL 744740, at *5 (Tenn. Crim. App. Mar. 1, 2011) (affirming the dismissal of the post-conviction petition for failure to prosecute three years after it was filed because the petitioner "abused the

judicial process" through conduct that "included his vacillation about whether he wanted to proceed pro se or with appointed counsel, his feigning of a heart attack, his repeated requests for continuances, and, last but not least, his threatening of his appointed counsel and the post-conviction court").

Like the petitioners in *McLeod*, *Leslie*, *Williams*, and *Jackson*, Ms. Clifton did not act in bad faith or abuse the post-conviction process in any manner that warranted the dismissal of her petition for failure to prosecute. Ms. Clifton timely filed her post-conviction petition on May 12, 2025, and the post-conviction court ordered dismissal less than two months later on July 7, 2025. (I: 1; II: 1.) Ms. Clifton testified at that hearing at the behest of the prosecutor, who insisted that Ms. Clifton take the stand to demonstrate her understanding of the post-conviction process. (*See* II: 6.) Ms. Clifton initially expressed some confusion about her situation—an understandable reaction for a layperson who had agreed to plead guilty based upon the inaccurate assurances of her trial counsel, the State, and the trial court that she would not be placed on the sex offender registry; who was then placed on the registry; who was released after she served her sentence of confinement; and who was meant to understand that post-conviction relief would result in the possibility of her being re-incarcerated, depending upon whether a bond were to be set and whether she could pay the necessary costs, and would also result in her removal from the registry, although she could be tried on the charges and could be placed back on the registry depending upon the outcome of her case. (*See* II: 9–11.)

After some clarifying questions by her own counsel, Ms. Clifton confirmed that she "want[ed] to go though with [her petition]." (II: 10.) That was her last statement about how she wanted to proceed. (II: 10.) For some reason, however, she remained on the stand while the prosecutor raised the specter of consecutive sentencing and, when she responded by indicating that she believed she was not guilty of the charges, was admonished by the post-conviction court that they were not in court "to try the case" at that time. (II: 11.)

Even though Ms. Clifton's final statement indicated a resolute decision to proceed with her petition, the post-conviction court encouraged her to take some time to confer with counsel and think about her decision, and Ms. Clifton's counsel took the court up on that offer. (II: 11.) Ms. Clifton admitted to experiencing some doubt and stress at that moment, and she briefly left the courtroom and went to the parking lot with the person who had accompanied her to court. (III: 8–9.) Less than one hour after the post-conviction court encouraged her to take some time to think about her decision, the prosecutor reported that she had left the courthouse and suggested that her conduct amounted to failure to prosecute. (II: 13.) The post-conviction court quickly agreed, adjourning the hearing at 1:10 p.m. (II: 13–14.) Ms. Clifton attempted to reenter the courtroom to reaffirm her decision to proceed with her petition, but she was told by someone in the clerk's office that "court was over with" for the day. (III: 12.)

Nothing in that series of events suggests bad faith or abuse of process by Ms. Clifton. The hearing was the first court setting on Ms. Clifton's petition, demonstrating that she had not sought to use "resets"

or repeated requests for continuances "to gain a tactical advantage." *McLeod*, 2025 WL 3034326, at *4. Under the circumstances, there was no tactical advantage to be gained by delay given the State's concession that she was entitled to the relief sought in her post-conviction petition. (I: 10; II: 5.)

Nor was there any proof that Ms. Clifton sought "to disrupt and delay orderly judicial proceedings" or that she "meant to 'unduly hinder the fair, efficient and orderly administration of justice.'" *Jackson*, 2020 WL 5792961, at *5 (quoting *Lovin*, 286 S.W.3d at 286). Ms. Clifton's actions bear no resemblance to those of the petitioners in *Caraway* and *Dillard*, who engaged in a "pattern of conduct" over an extended timespan that included meritless delay tactics, a refusal to cooperate with appointed counsel, and threats directed toward counsel or the court. *See* *Caraway*, 2022 WL 1580639, at *7; *Dillard*, 2011 WL 744740, at *5. In contrast to the petitioners in those cases, Ms. Clifton experienced some doubt when faced with a difficult, confusing set of circumstances; ended her testimony with a resolute confirmation that she "want[ed] to go though with [her petition]"; briefly left the courtroom after the post-conviction court offered her an opportunity to think about her decision at 12:17 p.m.; and returned to find that the court had adjourned at 1:10 p.m. (II: 10–14.)

In short, Ms. Clifton attempted in good faith to navigate a difficult decision with significant ramifications for her and her children. (I: 2.) She did not act in bad faith or abuse the post-conviction process. Notably, in the orders dismissing Ms. Clifton's petition for failure to prosecute and denying her motion for reconsideration, the post-conviction court did not

mention bad faith or abuse of process, which are fundamental requirements for imposing the drastic sanction of dismissal for failure to prosecute. *See Williams*, 831 S.W.2d at 283; *McLeod*, 2025 WL 3034326, at *4; *Caraway*, 2022 WL 1580639, at *7–8. Indeed, the post-conviction court's orders do not cite any legal authority or mention any legal standard whatsoever. *See Tolle*, 591 S.W.3d at 545 (explaining that a court abuses its discretion when it fails to apply the correct legal standard); *McLeod*, 2025 WL 3034326, at *3 (explaining that a post-conviction court abuses its discretion when it orders dismissal without providing "conclusions of law to support its decision to dismiss"). Therefore, the post-conviction court abused its discretion by dismissing Ms. Clifton's petition for failure to prosecute.

B. The post-conviction court did not provide proper notice that it was going to dismiss Ms. Clifton's petition.

Because of the severity of dismissing a post-conviction petition for failure to prosecute, a post-conviction court is generally required to provide the petitioner with "fair warning" before imposing such a sanction. *See Dillard*, 2011 WL 744740, at *5 (holding that the post-conviction court "appropriately dismissed the petition for failure to prosecute when the petitioner, after … fair warning from the court that he would be required to proceed …, refused to go forward with his proof"); *see also Regions Bank v. Prager*, 625 S.W.3d 842, 850 n.6 (Tenn. 2021) ("We take this opportunity to emphasize that, barring exceptional circumstances, a trial court should always give proper notice to the parties that it is considering a sua sponte dismissal of a lawsuit, even for

failure to prosecute."). Absent extraordinary circumstances, a post-conviction court abuses its discretion by ordering dismissal without first providing the petitioner with proper notice. *See McLeod*, 2025 WL 3034326, at *5 (finding that dismissal was improper when "nothing in the record suggest[ed] that the post-conviction court had warned the [p]etitioner that the petition might be dismissed … for failure to prosecute").

Here, the post-conviction court failed to provide Ms. Clifton with the requisite notice before dismissing her petition for failure to prosecute. As noted, Ms. Clifton ended her testimony at the July 7, 2025 hearing by stating without equivocation that she wanted to proceed with her petition. (II: 10.) The post-conviction court then encouraged her to take time to think more about whether she wanted to proceed, but it did not warn her that she would be required to reaffirm her desire to proceed or face the final dismissal of her petition for failure to prosecute. (II: 11–12.) Nor did the court order her to remain in the courtroom or warn her that she would face dismissal if she briefly left the courtroom and did not return by whatever time court happened to adjourn. (II: 11–12.)

Yet that is precisely what occurred when Ms. Clifton went with her companion to the parking lot and was not back in the courtroom when the court was ready to adjourn in the early afternoon. (II: 13–14; III: 12–13.) At that point, the State first advanced the notion that Ms. Clifton had "failed to prosecute her post-conviction [petition]" but did not say anything about dismissal. (II: 13.) The post-conviction court then announced, "I guess I will dismiss [the petition] for failure to prosecute," although it suggested that Ms. Clifton could avoid dismissal if she were

to "get[ ] in touch with [her counsel] in the next thirty days …." (II: 13.) Three days later, the post-conviction court entered a written order of dismissal. (I: 15.)

Based upon that procedural sequence, it is evident that the post-conviction court did not provide Ms. Clifton with fair warning before imposing the drastic sanction of dismissal. If anything, by indicating that Ms. Clifton could request relief "in the next thirty days," the court suggested that it was not yet prepared to enter a final order of dismissal at that time, although it did just that three days later. (I: 15; II: 13.)

In addition, the post-conviction court had other options at its disposal. For one, given that the State had conceded that Ms. Clifton was entitled to the relief sought in her post-conviction petition and her final statement during her testimony indicated unambiguously that she "want[ed] to go through with [her petition]" (II: 10), the court could have simply granted her relief. Or, to the extent that the post-conviction court perceived lingering uncertainty, it could have instructed Ms. Clifton's counsel to submit notice within a specified time limit confirming her intent to proceed with her petition, with a warning that the failure to do so would result in dismissal for failure to prosecute. In the alternative, when the post-conviction court granted Ms. Clifton additional time to think about her decision, it could have warned her that if she failed to reaffirm her decision to proceed with her petition that day, or if she left

the courtroom and failed to return before adjournment, then the court would consider dismissing her petition for failure to prosecute.[4]

Any of those options would have afforded Ms. Clifton with pre-dismissal notice. By opting instead to dismiss Ms. Clifton's petition without fair warning, the post-conviction court abused its discretion because it failed to adhere to the required procedure for ordering dismissal for failure to prosecute.

C. The post-conviction court did not make adequate findings to support the severe sanction of dismissal for failure to prosecute.

A post-conviction court errs when it orders dismissal for failure to prosecute but fails to "make adequate findings of fact and conclusions of law to support its decision." *Nance v. State*, No. E2005-02265-CCA-R3-PC, 2006 WL 1575110, at *3 (Tenn. Crim. App. June 9, 2006). A post-conviction court's findings of fact and conclusions of law are insufficient when they fail to describe with specificity how the petitioner acted in bad faith or abused the post-conviction process. *Id.*

In *Nance*, for example, the post-conviction court issued a written order finding that "[t]he cause came on for a hearing" and the "petitioner having failed to appear, … the [p]etition should be dismissed for failure to prosecute." *Id.* at *2. Because the post-conviction court's findings did not describe any specific conduct by the petitioner that amounted to bad

[4] By adopting this approach, the court would satisfy the requirement of supplying notice before ordering dismissal, but dismissal would still be inappropriate absent proof of bad faith or abuse of process for the reasons explained in the previous section.

faith, abuse of process, or purposeful "delay[s] of the time of the hearing," this Court held that the findings were inadequate and "determined that the post-conviction court's dismissal of the petition [had to] be reversed" on that basis. *Id.* at *3.

Similarly, in *McLeod*, this Court held that the post-conviction court's findings of fact and conclusions of law were lacking when it ordered dismissal "[i]n a written order that [was] barely more than one page in length … stat[ing] only that … five hearings had been reset because the [p]etitioner was never ready to proceed." 2025 WL 3034326, at *4. The record reflected that the petitioner had a legitimate, good-faith reason for at least one of the delays, and the post-conviction court's findings did not indicate that the other delays were attributable to bad-faith conduct or abuse of process. *Id.* at *3–4. Again, this Court "conclude[d] that the post-conviction court erred by dismissing the petition for failure to prosecute." *Id.* at *4–5.

The same is true here. In a written order that is barely more than one page in length, the post-conviction court found that Ms. Clifton "left the courtroom and did not return," then concluded that her petition "should be dismissed because [she] failed to remain in the courtroom and present her petition." (I: 15.) The court did not make any finding suggesting that Ms. Clifton acted in bad faith, abused the court's process, or engaged in a "tactical ploy to disrupt and delay orderly judicial proceedings." *Jackson*, 2020 WL 5792961, at *5. And the post-conviction court failed to provide adequate conclusions of law because, as noted, it neither mentioned nor applied any legal authority or any legal standard in its order of dismissal. (*See* I: 15.)

Furthermore, key findings by the post-conviction court are contradicted by the record. For example, at the conclusion of the hearing on the motion to reconsider, the court found that "Ms. Clifton did leave the courtroom after being told to stay in the courtroom." (III: 14.) But the record shows that she was never told to stay in the courtroom. (*See* II: 10–12.) Similarly, in the order denying the motion to reconsider, the post-conviction court found that, during the hearing on July 7, 2025, Ms. Clifton "left the courtroom without permission" and "did not return." (I: 20.) But there is nothing in the record to suggest that permission was required to exit the courtroom. And Ms. Clifton's undisputed testimony demonstrated that she attempted to return to the courtroom but was unable to do so after the court adjourned for the day at 1:10 p.m. (II: 14; III: 8–13.) Because the evidence preponderates against those findings, they cannot justify the post-conviction court's decision to dismiss the petition for failure to prosecute. *Caraway*, 2022 WL 1580639, at *8.

In summary, the post-conviction court failed to make any findings suggesting that Ms. Clifton acted in bad faith or abused the post-conviction process, and the court failed to provide conclusions of law grounded in the correct legal standard (or any legal standard at all). As a result, the post-conviction court abused its discretion.

D. Ms. Clifton is entitled to relief under plenary or plain-error review.

Once an issue is raised and the post-conviction court has ruled on the issue, a party is not required to continue to argue the issue or further dispute the court's ruling in order to preserve the issue for appellate

review. *See State v. Green*, No. W2024-00370-CCA-R3-CD, 2025 WL 2027873, at *4 (Tenn. Crim. App. July 21, 2025) (finding that an issue is preserved when it is raised before the trial court, the trial court issues a ruling, and the party has no further "opportunity to object to a ruling or order" (quoting Tenn. R. Crim. P. 51)); *see also Goines v. State*, 572 S.W.2d 644, 649 (Tenn. 1978) (Henry, C.J.) (holding that an issue had been preserved for appellate review because "[t]he trial judge had ruled; the question had been resolved; there was nothing left to decide"), *abrogated on other grounds by State v. Tuttle*, 515 S.W.3d 282, 289 (Tenn. 2017).

Here, when Ms. Clifton had not returned to the courtroom by the time the post-conviction court was ready to adjourn, it declared that it would "dismiss [the petition] for failure to prosecute," and it subsequently issued a written order implementing that ruling. (I: 15; II: 13.) At that point, Ms. Clifton was not required to further dispute the post-conviction court's ruling to preserve her right to challenge it on appeal, although she attempted to do so by filing a motion to reconsider. (I: 17–18.) Under these circumstances, it is appropriate for this Court to subject the issue to plenary review.

However, if the Court elects to conduct plain-error review, Ms. Clifton is nevertheless entitled to relief because

> (1) the record clearly establishes what occurred in the [post-conviction] court; (2) a clear and unequivocal rule of law was breached; (3) a substantial right of the accused was adversely affected; (4) the accused did not waive the issue for tactical reasons; and (5) consideration of the error is "necessary to do substantial justice."

State v. Gomez, 239 S.W.3d 733, 737 (Tenn. 2007) (quoting *State v. Smith*, 24 S.W.3d 274 (Tenn. 2000)).

As to the first plain-error requirement, the record clearly establishes what occurred in the post-conviction court because the parties' written pleadings, the court's orders, and the transcripts of the hearings provide all the information needed to resolve the single issue raised on appeal.[5]

Regarding the second plain-error requirement, for the reasons explained in the previous sections, the post-conviction court's error resulted in the breach of a clear and unequivocal rule of law—specifically, the well-established rules mandating that a post-conviction court may dismiss a post-conviction petition for failure to prosecute only when it gives fair warning and provides adequate findings of fact and conclusions of law demonstrating that the petitioner acted in bad faith or abused the process of the court.

The third plain-error requirement is likewise satisfied because the post-conviction court's error adversely affected Ms. Clifton's substantial right to obtain post-conviction relief, which is necessary to address a constitutional violation conceded by the State. (I: 10; II: 5.)

As to the fourth plain-error requirement, there is nothing to suggest that Ms. Clifton waived this issue for any tactical reason. *See State v. Cooper*, 321 S.W.3d 501, 506 (Tenn. 2010) (holding that this plain-error

[5] As noted, in an abundance of caution and to ensure the adequacy of the record, Ms. Clifton has filed a motion to supplement the record to include her plea agreement, a transcript of the plea hearing, and the final judgments entered by the trial court.

requirement was met when there was "no indication that [the defendant] waived the issue for tactical reasons"); *Gomez*, 239 S.W.3d at 742 ("[T]he record in this case is silent and does not establish that the Defendants made a tactical decision to waive their … claims …. Accordingly, we conclude that the fourth prerequisite for plain error has been met."). There is no tactical advantage to be gained by forgoing a meritorious claim for post-conviction relief that has been conceded by the State.

Regarding the fifth plain-error requirement, this Court's consideration of this issue is necessary to do substantial justice. The substantial justice requirement encompasses the harmless error analysis undertaken to determine whether an error impacted the outcome of the proceeding. *See State v. Knowles,* 470 S.W.3d 416, 425 (Tenn. 2015) (explaining that the fifth plain-error requirement focuses on whether "substantial justice is at stake; that is, ***[whether] the error was so significant that it 'probably changed the outcome of the [proceeding]***" (quoting *State v. Hatcher*, 310 S.W.3d 788, 808 (Tenn. 2010) (emphasis added)). Here, but for the post-conviction court's errors, Ms. Clifton would have been entitled to obtain post-conviction relief, withdraw her guilty plea, require the State to prove the charges against her, and potentially avoid being convicted and placed on the sex offender registry. That demonstrates that the post-conviction court's error impacted the outcome of the proceeding and must be redressed to effectuate substantial justice.

CONCLUSION

For all the foregoing reasons, the post-conviction court erred when it dismissed Ms. Clifton's petition for failure to prosecute. This Court should reverse the order of dismissal and remand the case to the post-conviction court so that Ms. Clifton may proceed with her petition.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief consists of 6,700 words and complies with the requirements set forth in Section 3, Rule 3.02 of Tennessee Supreme Court Rule 46.

I further certify that the Tennessee Attorney General's Office (c/o Ronald L. Coleman, Ronald.Coleman@ag.tn.gov) is a registered user of the e-filing system and will automatically receive electronic service of this document pursuant to Section 4, Rule 4.01 of Tennessee Supreme Court Rule 46.

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