2011 IL App (1st) 100927-U

FOURTH DIVISION
December 8, 2011

No. 1-10-0927

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 05 CR 24130
	)	06 CR 07146
	)	
JERMAINE CARPENTER,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant lacked standing to file a postconviction petition challenging his guilty plea, where defendant was already civilly committed as a sexually violent person. The Post-Conviction Hearing Act was not a viable vehicle to raise defendant's claim. Defendant's petition therefore was frivolous and patently without merit. This court affirmed the summary dismissal of defendant's petition.

¶ 2 Defendant Jermaine Carpenter appeals from the first-stage dismissal of his petition filed under the Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1 *et seq*. (West 2008)). Defendant contends he stated a claim of arguable merit that his guilty plea was

involuntary, and thus his due process rights violated, when the trial court failed to inform him during the plea hearing that he was subject to commitment as a sexually violent person. He contends trial counsel was constitutionally ineffective for failing to inform him of this, as well. We affirm.

¶ 3 Defendant is currently serving a term of civil commitment as a sexually violent person. The limited record on appeal shows that on January 29, 2007, defendant pleaded guilty to aggravated criminal sexual abuse (05CR-24130) and aggravated battery of a correctional officer (06CR-07146) in exchange for a seven-year sentence. Defendant's guilty plea hearing does not appear in the record. Defendant timely filed a *pro se* motion to withdraw his guilty plea and vacate his sentence. He argued that his attorneys failed to "fight for" him or take his best interests into consideration and he was induced to plead guilty. The trial court appointed defendant counsel, and defendant subsequently withdrew his motion.

¶ 4 Prior to defendant's scheduled mandatory supervised release, on March 16, 2009, the State filed a petition to commit defendant as a sexually violent person under the Sexually Violent Persons Commitment Act (Commitment Act) (725 ILCS 207/1 *et seq*. (West 2008)). Although the court's judgment does not appear in the record, defendant apparently was civilly committed as a sexually violent person.

¶ 5 On January 15, 2010, defendant, *pro se*, filed this postconviction petition. Defendant alleged, *inter alia*, that his guilty plea was not voluntary and knowing, and thus in violation of his due process rights, because neither the trial court, the State, nor defendant's attorney informed him that he would be subject to commitment as a sexually violent person. Defendant also alleged that his defense attorney was constitutionally ineffective for failing to so inform him.

¶ 6 The circuit court summarily dismissed defendant's petition as frivolous and patently without merit. Defendant appealed.

¶ 7 We review the first-stage summary dismissal of a postconviction petition *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The Post-Conviction Act provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution, the Illinois Constitution, or both. 725 ILCS 5/122-1 *et seq.* (West 2008); *Hodges*, 234 Ill. 2d at 9. A *pro se* postconviction petition may be summarily dismissed as frivolous and patently without merit if it has no arguable basis in law or fact, *i.e.* if it is based on an indisputably meritless legal theory or a fanciful factual allegation. *Hodges*, 234 Ill. 2d at 11-12, 16-17.

¶ 8 On appeal, defendant renews his claims of constitutional deprivation relating to his commitment as a sexually violent person.

¶ 9 The Commitment Act (725 ILCS 207/1 *et seq*. (West 2008)) allows the State to extend the incarceration of criminal defendants beyond the time they would otherwise be entitled to release if those defendants are found to be "sexually violent." *People v. Steward*, 406 Ill. App. 3d 82, 91 (2010). Under the Commitment Act, the Attorney General or the State's Attorney in the county where defendant was convicted may petition the trial court to have defendant committed as a sexually violent person prior to his release or discharge from prison or within 30 days of placement on MSR. 725 ILCS 207/15 (West 2008); *Steward*, 406 Ill. App. 3d at 91. A person determined to be sexually violent after a trial may be civilly committed to institutional care until that person is no longer a sexually violent person. 725 ILCS 207/35, 40 (West 2008); *Steward*, 406 Ill. App. 3d at 91.

¶ 10 For the reasons to follow, we find defendant's collateral claim cannot be considered. In *Steward*, 406 Ill. App. 3d at 92, this court held that the Post-Conviction Act is not a viable vehicle to challenge civil commitment under the Commitment Act, which provides its own mechanisms to dispute commitment. *Steward* determined that a person challenging his

commitment as a sexually violent person lacks standing to file a postconviction petition because he is not "imprisoned in a penitentiary" within the meaning of the Post-Conviction Act (see 725 ILCS 5/122-1(a) (West 2008)). See also *In re Commitment of Phillips,* 367 Ill. App. 3d 1036, 1041-42 (2006) (holding same). *Steward* further concluded that, where a sexually violent person lacks standing to file a postconviction petition, any such petition filed is on its face frivolous and patently without merit and may be summarily dismissed. See also *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 14 (defendant no longer imprisoned under Post-Conviction Act lacked standing to bring postconviction petition and petition properly dismissed at first-stage proceedings).

¶ 11 This case presents the same scenario as in *Steward*. Here, assuming defendant was committed under the Commitment Act, he does not have standing to challenge his commitment as a sexually violent person through a postconviction petition. Because defendant lacks standing, his petition is frivolous and patently without merit, and it was properly dismissed at the first stage of proceedings.

¶ 12 We note, finally, that even were we to consider defendant's petition under the Post-Conviction Act, we would be required to affirm its summary dismissal because defendant has failed to provide adequate documentary support of his constitutional claims, as required, and they therefore lack corroboration. See 725 ILCS 5/122-2 (West 2008); *Hodges*, 234 Ill. 2d at 10. In his petition, defendant raised constitutional claims regarding admonishments and advice given to him at the time of his guilty plea, yet defendant failed to include a transcript of the plea hearing or offer any explanation for its absence. Absent a record of the plea hearing or other evidence, such as an affidavit, there is no way for a court to determine whether defendant's factual and legal assertions have any legitimacy. Thus, regardless of standing, defendant's constitutional claims would have failed.

¶ 13 Based on the foregoing, we affirm the decision of the circuit court of Cook County summarily dismissing defendant's postconviction petition.

¶ 14 Affirmed.