

2011 IL App (1st) 101149-U
No. 1-10-1149

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SECOND DIVISION
July 19, 2011

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.)	No. 08 CR 154
)	
CURTIS PERRYMAN,)	Honorable
)	Thomas J. Hennelly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Karnezis concurred
in the judgment.

ORDER

HELD: Where the sole issue raised by defendant on appeal was not alleged in his *pro se* post-conviction petition, the issue was forfeited¹ and the circuit court's summary dismissal of his

¹Courts often use the terms "forfeit" and "waive" interchangeably in criminal cases. *People v. Blair*, 215 Ill. 2d 427, 444 (2005). For purposes of this order, we use the term "forfeited" to mean issues that could have been raised, but were not, and are therefore barred. *Id.* Waiver, on the other hand, means the voluntary relinquishment of a known right. *Hill v. Cowan*, 202 Ill. 2d 151, 158 (2002).

petition was affirmed.

¶ 1 Defendant Curtis Perryman appeals from an order of the circuit court summarily dismissing his *pro se* post-conviction petition as frivolous and patently without merit. On appeal, defendant contends that his petition alleged a meritorious claim that his right to due process was violated when the trial court failed to advise him prior to accepting his guilty plea that a two-year term of mandatory supervised release (MSR) would be added to his negotiated sentence. We find that no such claim was alleged in defendant's petition and affirm the summary dismissal.

¶ 2 In two separate cases, defendant was charged with aggravated robbery and unlawful restraint for robbing two 7-11 stores on the same night. In February 2008, defendant entered into a fully-negotiated guilty plea, pleading guilty to one count of aggravated robbery in each case. Pursuant to the agreement, the trial court sentenced defendant to concurrent terms of 15 years' imprisonment in each case. The transcript from the plea hearing shows that when the trial court advised defendant of the range of possible sentences that could be imposed, the court expressly stated "Mr. Perryman, you will be subject to [a] mandatory supervisory release period of two years, much like parole." Defendant did not move to withdraw his guilty plea, nor did he attempt to perfect an appeal from that judgment.

¶ 3 In September 2009, defendant filed the instant *pro se*

petition for relief under the Post-Conviction Hearing Act (the Act). 725 ILCS 5/122-1 *et seq.* (West 2008). Defendant alleged that his trial counsel rendered ineffective assistance because he failed to argue that defendant was not advised of his *Miranda* rights when he was questioned, and that the police reports showed that defendant did not commit the crime where no proceeds from the robbery were found on defendant. Defendant also alleged that a statement of facts prepared by an assistant State's Attorney differed from the police report and incorrectly stated that he had no criminal history when he has a prior Class X conviction. In addition, defendant alleged "I was told that if I didn't plead guilty to the crime that I would face 30 years and that my Class 1 felony would be upgraded to an Class X felony." The circuit court found that defendant's allegations were frivolous and patently without merit, and summarily dismissed his *pro se* post-conviction petition.

¶ 4 On appeal, defendant solely contends that his right to due process was violated when the trial court failed to advise him prior to accepting his guilty plea that a two-year term of MSR would be added to his fully-negotiated sentence. Defendant claims that he did not receive the benefit of his bargain with the State and that his plea was involuntary because he was not fully informed of the consequences of his plea. Defendant asks this court to either reduce his sentence to 13 years to give him

a cumulative sentence of the 15 years he agreed to, or to allow him to withdraw his plea with the opportunity to plead anew.

¶ 5 Defendant argues that his post-conviction petition alleged that he was coerced into pleading guilty by defense counsel who told him he was subject to a 30-year sentence. He asserts that, liberally construed, this allegation states the gist of a claim that his right to due process was violated when he was not informed of the true sentencing range he faced. Defendant states that, although he faulted counsel in his petition, it was the trial court's obligation to inform him of the consequences of his plea, including the two-year term of MSR. Based on this logic, defendant claims that his petition sufficiently raised the allegation that the trial court failed to advise him of MSR.

¶ 6 The State contends that defendant forfeited his right to appeal the issue challenging the MSR admonishments because it was not alleged in his post-conviction petition. The State argues that defendant cannot change his claim, then assert that it is the same because it falls under the general topic of being a sentencing issue. The State points out that the circuit court never considered the MSR issue because it was not alleged in the petition, and therefore, this court is barred from considering defendant's claim on appeal. Alternatively, the State asserts

that defendant's claim is belied by the record which shows that the trial court explicitly advised him of the MSR term.

¶ 7 In reply, defendant maintains that his allegation can still be reviewed by this court. He argues that the trial court's failure to advise him of the statutorily mandated term of MSR makes his sentence "akin" to one that does not conform with a statutory requirement, and thus, void. He then argues that a void sentence can be challenged at any time.

¶ 8 We review the circuit court's summary dismissal of a post-conviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). The Act explicitly states that "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." 725 ILCS 5/122-3 (West 2008).

¶ 9 Here, we find that defendant's *pro se* post-conviction petition is devoid of any allegation challenging the trial court's MSR admonishment. The petition makes absolutely no mention of MSR, nor does it claim that any of the trial court's admonishments were insufficient. Defendant's argument that the MSR issue stems from the allegation stated in his petition is completely unpersuasive.

¶ 10 It is well-established that defendant is precluded from raising an issue on appeal that was not alleged in the post-

conviction petition he filed in the circuit court. *People v. Lee Jones*, 211 Ill. 2d 140, 148 (2004). Accordingly, we find that defendant has forfeited the MSR issue for purposes of appeal. *Id.* at 149-50.

¶ 11 Our supreme court has stressed that "our appellate court is not free, as this court is under its supervisory authority, to excuse, in the context of postconviction proceedings, an appellate waiver caused by the failure of a defendant to include issues in his or her postconviction petition." *People v. Tramaine Jones*, 213 Ill. 2d 498, 508 (2004). Where defendant is barred from raising the issue for the first time on appeal, the proper forum for his claim is a successive post-conviction action, if he can meet the strictures of the cause and prejudice test for successive petitions. *Id.* at 208-09; *Lee Jones*, 211 Ill. 2d at 148-49. In light of our supreme court's decisions, we find that this court is prohibited from considering the sole issue raised in defendant's appellate brief because it was not raised in his post-conviction petition.

¶ 12 In addition, we reject defendant's argument that the trial court's failure to advise him of the statutorily mandated term of MSR makes his sentence "akin" to one that does not conform with a statutory requirement, and thus, void. Defendant's characterization of his sentence as being "akin" to one that violates a statute is an acknowledgment that, in

actuality, it does not. See *People v. Taylor*, 237 Ill. 2d 68, 76 (2010) (defendant's characterization of his statement as an "implicit claim of ineffective assistance of counsel" is an acknowledgment that he did not specifically raise that claim). Here, the issue is not whether defendant's sentence conforms with the sentencing statutes. It does. The issue defendant has raised is whether the trial court properly admonished him of MSR, as required by Supreme Court Rule 402 (eff. July 1, 1997). Because defendant's issue does not involve an alleged statutory violation, it cannot be considered as a void sentence.

¶ 13 For these reasons, we affirm the order of the circuit court of Cook County summarily dismissing defendant's *pro se* post-conviction petition.

¶ 14 Affirmed.