

No. 1-09-2803

**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).

SECOND DIVISION  
May 24, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 25659
	)	
DARRYL MEEKS,	)	Honorable
	)	William O'Brien,
Defendant-Appellant.	)	Judge Presiding.

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

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O R D E R

*HELD:* The trial court erred in summarily dismissing defendant's *pro se* postconviction petition when it had an arguable basis in law and fact.

Defendant Darryl Meeks appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). He contends the trial court erred in dismissing his petition when it

established that his attorney's erroneous calculation of his presentence custody credit rendered his plea unknowing and denied him the benefit of his bargain with the State. Defendant also contends that the court erred when it failed to explicitly link the term of Mandatory Supervised Release (MSR) which he will be required to serve upon his release from prison to his sentences and imposed certain fines and fees. We reverse and remand.

In May 2006, defendant entered into a negotiated plea of guilty to attempted burglary in exchange for a sentence of three-and-one-half years in prison. The instant sentence was to be served consecutive to the 12-year sentence defendant received in case 04 CR 21071. During the plea hearing, defense counsel indicated that defendant had 593 days' time served on the instant case, and "1,018 days in the aggregate."

The court then admonished defendant that he was pleading guilty to a Class 3 felony with a sentencing range of between 2 and 5 years in prison, and that upon his release he could be subject to up to 30 months of conditional discharge. Defendant indicated that he understood and was satisfied with the representation of his attorney.

The court sentenced defendant to three years and six months in prison. The court further indicated that defendant "would receive credit for the time that [he] had been in custody in aggregate, that is 1,018 days."

Defendant did not file either a motion to withdraw the plea and vacate the judgment or a direct appeal.

In 2007, defendant sent a letter to the trial court indicating that the Department of Corrections (DOC) had determined that the trial court's sentencing order was "partially invalid." The letter further explained that defendant had only received 593 days of presentence custody credit, rather than the 1,018 days discussed during the plea hearing. Defendant asked the trial court to instruct the DOC to comply with the court's order and award him 1,018 days of presentence custody credit.

In June 2009, defendant filed a *pro se* postconviction petition alleging, *inter alia*, that due to an "unfulfilled promise," he was serving a prison sentence significantly different from the one he was promised. The petition further alleged that defendant had entered a guilty plea in exchange for a sentence negotiated by his counsel and had been promised 1,018 days of aggregate presentence custody credit. However, the DOC refused to credit him with 425 of those days, thus, "substantially breaching the plea agreement." The trial court subsequently dismissed the petition as frivolous and patently without merit.

Before addressing the merits of defendant's contentions on appeal, this court must first address the State's argument that defendant waived these claims because he failed to raise them on

direct appeal. Here, defendant did not pursue a direct appeal, and, consequently, he may raise claims of constitutional deprivations in his postconviction petition. See *People v. Brooks*, 371 Ill. App. 3d 482, 485-86 (2007) (finding the rule that a defendant cannot raise an issue in a postconviction petition that he could have raised on direct appeal inapplicable when the defendant did not take a direct appeal). Accordingly, this court will consider the merits of defendant's claims.

The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. 725 ILCS 5/122-1 (West 2008). At the first stage of a postconviction proceeding, a defendant files a petition and the circuit court determines whether it is frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 2008); *People v. Coleman*, 183 Ill. 2d 366, 379 (1998). "Unless positively rebutted by the record, all well-pled facts [in the petition] are taken as true" at the first stage. *People v. Montgomery*, 327 Ill. App. 3d 180, 183-84 (2001); see also *People v. Jefferson*, 345 Ill. App. 3d 60, 76 (2003) (summary dismissal is proper when the trial record contradicts a defendant's postconviction allegations and the supporting documentation attached to the petition).

A petition is summarily dismissed as frivolous or patently without merit only when it has no arguable basis in either fact

or law. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). Our supreme court has held that a petition lacks an arguable basis in fact or law when it is based on "an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. Fanciful factual allegations are those which are "fantastic or delusional" and an example of an indisputably meritless legal theory is one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16-17. We review the summary dismissal of a postconviction petition *de novo*. *Coleman*, 183 Ill. 2d at 388-89.

A defendant may challenge the constitutionality of his guilty plea by alleging either that he did not receive the benefit of his bargain with the State or that the plea was not made voluntarily or with full knowledge of the consequences. *People v. Manning*, 227 Ill. 2d 403, 412 (2008). To knowingly and voluntarily plead guilty, the defendant must be advised of the direct consequences of a guilty plea, that is, those consequences which have a definite, immediate, and largely automatic effect on the range of the sentence that he will serve. *People v. Williams*, 188 Ill. 2d 365, 371-72 (1999); see also *People v. Curry*, 178 Ill. 2d 509, 528 (1997) (defendants have a constitutional right to be reasonably informed with respect to the direct consequences of accepting or rejecting a plea).

Here, defendant contends that his attorney's miscalculation of his presentence custody credit rendered his plea unknowing and involuntary. He also argues that this miscalculation constituted ineffective assistance of counsel and denied him the benefit of his bargain with the State.

The State responds that neither the State nor the trial court had the authority to award defendant double presentence custody credit. See *People v. Latona*, 184 Ill. 2d 260, 271 (1998) (when a defendant sentenced to consecutive sentences has been incarcerated on more than one offense simultaneously, he shall be credited only once for actual days served). The State further contends that only our supreme court, through an exercise of its supervisory authority, may grant defendant the remedy he seeks by reducing his sentence by 425 days. See *People v. Harper*, 387 Ill. App. 3d 240, 243-44 (2009) (finding that the trial court did not have the authority to award double day-for-day credit against the defendant's consecutive sentences while also determining that only our supreme court through an exercise of its supervisory authority could grant the defendant's requested relief, *i.e.*, a reduction in his sentence).

However, the question of whether this court has the authority to grant the ultimate remedy sought by defendant is premature; the only question before us in the instant appeal is whether defendant's *pro se* postconviction petition has an

arguable basis in fact and law. See *Hodges*, 234 Ill. 2d at 11-12. If it does, then this cause must be remanded for further proceedings under the Act.

Here, defendant contends that his plea was not made with the full knowledge of the consequences (*Manning*, 227 Ill. 2d at 412), when he was misadvised by his counsel and the trial court regarding the amount of presentence custody credit he would receive upon pleading guilty (*Curry*, 178 Ill. 2d at 528). During the plea hearing, both defense counsel and the court told defendant that he would receive 1,018 days of presentence custody credit when, in reality, defendant was only eligible to receive credit for the 593 days that he had actually spent in custody prior to entering his plea. Accordingly, defendant's allegation that his plea was rendered unknowing because he was erroneously advised as to a direct consequence of the plea (see *Williams*, 188 Ill. 2d at 371-72), cannot be characterized as either fantastic or based on a meritless legal theory when it was supported by the record. See *Hodges*, 234 Ill. 2d at 16-17. Thus, as the petition had an arguable basis in law and fact, the trial court erred when it dismissed the petition as frivolous and patently without merit. See *Hodges*, 234 Ill. 2d at 11-12.

This court does not reach defendant's other contentions on appeal as the Act does not permit a trial court to partially

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dismiss a postconviction petition at the first stage. See *People v. Rivera*, 198 Ill. 2d 364, 370-71 (2001).

Although we reverse the dismissal and remand this case to the trial court for second stage proceedings, we express no opinion as to whether defendant will ultimately prevail on his claim that his plea was unknowing, or any other claim raised in his petition. See *Hodges*, 234 Ill. 2d at 22.

The judgment of the circuit court of Cook County is reversed.

Reversed and remanded.