

No. 1-09-3020

**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).

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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. 03 CR 27802
	)	
CORRIE SINGLETON,	)	The Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

*HELD:* Where neither defendant's *pro se* post-conviction petition nor his amended petition raised a claim alleging that his trial counsel rendered ineffective assistance when he failed to ensure that defendant's guilty plea was voluntary, the issue was forfeited on appeal, and the circuit court's dismissal of defendant's post-conviction petition during second-stage proceedings was affirmed.

¶ 1 Defendant Corrie Singleton appeals from an order of the circuit court granting the State's

motion to dismiss his post-conviction petition without an evidentiary hearing. On appeal, defendant contends that the court erred when it dismissed his petition because he made a substantial showing that his trial counsel rendered ineffective assistance when he failed to ensure that defendant's guilty plea was voluntary. We affirm.

¶ 2 Following a June 2004 fully negotiated guilty plea, defendant was convicted of armed robbery and aggravated battery. Pursuant to the agreement, defendant was sentenced to concurrent prison terms of seven years and five years, respectively. Defendant did not move to withdraw his guilty plea, nor did he attempt to perfect an appeal from that judgment.

¶ 3 In August 2006, defendant filed a *pro se* petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2006)) alleging that his counsel had rendered ineffective assistance. Defendant alleged that counsel "lied about evidence in the case stating that there was an [*sic*] weapon against me." Defendant also alleged that counsel was unprofessional in handling his case, did not inform him of all the facts in the case, and did not review the status of the case with him. Defendant did not elaborate any further, nor did he provide any facts in support of these allegations. In November 2006, the circuit court found that defendant's claims were bald, conclusory allegations that lacked factual support, and summarily dismissed the petition as frivolous and patently without merit. Defendant appealed.

¶ 4 While the above appeal was pending, in April 2007, defendant filed a successive *pro se* post-conviction petition alleging that his due process rights were violated because the State did not advise him that he would have to serve a three-year term of mandatory supervised release (MSR), he did not agree to serve such term, and thus, the MSR term violated his plea agreement. The circuit court found that it did not have jurisdiction to consider this petition because

defendant had filed an appeal from the dismissal of his first petition, which was pending.

Defendant appealed the circuit court's judgment, but subsequently withdrew that appeal. *People v. Singleton*, No. 1-07-1767 (2008) (dispositional order). Accordingly, the MSR issue is not before this court.

¶ 5 In September 2007, this court granted defendant's agreed motion for summary disposition finding that the circuit court had dismissed his initial post-conviction petition 91 days after it was filed, in excess of the 90-day statutory time period. Consequently, we remanded defendant's initial petition to the circuit court with directions to advance that petition to second-stage proceedings under the Act. *People v. Singleton*, No. 1-07-0023 (2007) (dispositional order).

¶ 6 On March 25, 2009, post-conviction counsel filed an amended post-conviction petition solely contending that defendant was denied his right to due process at his guilty plea hearing. Defendant claimed that the trial court failed to ensure that his plea was voluntary because it did not ask him if any threats or promises had been made to him in exchange for his plea in accordance with Supreme Court Rule 402 (eff. July 1, 1997). Defendant asked that the circuit court allow him to withdraw his guilty plea and proceed with a trial, or grant him an evidentiary hearing, or ask him in open court if any threats or promises were made to him in exchange for his guilty plea and determine the voluntariness of his plea based on his answers. The amended petition did not raise an allegation of ineffective assistance of counsel.

¶ 7 Attached to the amended post-conviction petition was an affidavit from defendant in which he averred that his counsel repeatedly advised him that if he went to trial, he would be found guilty and sentenced to 30 years' imprisonment because a gun was used in the offense. Defendant stated that he did not want to serve a 30-year prison term, so he "decided" to plead

guilty. Defendant then asserted that he felt like he was "forced" into pleading guilty when he did not want to because his counsel told him he would be sentenced to 30 years in prison if he went to trial. Defendant noted that the trial court never asked him if anyone had made any threats or promises to him in exchange for his plea. He claimed that if the court had so inquired, he would have responded that the "main reason" he was pleading guilty was because his counsel told him he would be sentence to 30 years' imprisonment. Also attached to the post-conviction petition were court transcripts from defendant's Rule 402 conference and his guilty plea hearing.

¶ 8 On the following court date, post-conviction counsel noted that he had previously filed an amended petition and informed the court that this was "a single issue case."

¶ 9 The State moved to dismiss defendant's amended post-conviction petition arguing that defendant failed to show that his right to due process was violated, and that he failed to present any facts, statements or affidavits that supported his claim that his counsel made a threat or promise to induce him to plead guilty. The State argued that the record showed that the trial court properly admonished defendant regarding the consequences of his guilty plea, and that defendant was completely aware of the charges he was pleading guilty to and the possible sentences he faced. The State further argued that the record showed that defendant's plea was made knowingly and voluntarily, and that defendant did not hesitate to ask the court questions during the proceedings. In addition, the State argued that counsel's act of advising defendant that he could be sentenced to 30 years' imprisonment if he went to trial was proper and did not constitute a threat or promise.

¶ 10 At a hearing on the State's motion to dismiss, the State repeated the arguments raised in its written motion, noting that the trial court must substantially comply with the admonishment

requirements in Rule 402. The State maintained that counsel had a duty to advise defendant of the minimum and maximum sentence he could receive if he were found guilty at trial, and such advice did not constitute a threat or promise.

¶ 11 Post-conviction counsel argued that it was undisputed that the trial court did not ask defendant whether any threats or promises had been made to entice him to plead guilty. Counsel also argued that, according to defendant's affidavit, trial counsel did not advise defendant of the sentencing range for his offense, but instead, told him he would be sentenced to 30 years' imprisonment. Counsel noted that defendant stated in his affidavit that if the court would have asked him about any threats or promises, he would have then told the court that his trial counsel told him he would be sentenced to a term of 30 years' imprisonment. Counsel further argued that the record showed that defendant twice indicated that he did not want to plead guilty, but then decided to do so after his trial counsel advised him that he would be sentenced to 30 years' imprisonment. Counsel agreed that only substantial compliance with Rule 402 was needed.

¶ 12 The trial court asked post-conviction counsel if his argument was that defendant received ineffective assistance of counsel when his trial counsel made him a threat or promise before defendant entered his guilty plea. Post-conviction counsel replied "I believe that the claim was that he was denied his right to due process." When the court asked how that right was denied, counsel responded that the requirements of Supreme Court Rule 402 were not satisfied. The court then asked if there was still an ineffective assistance of counsel claim. Counsel stated that he had not abandoned the claim raised in defendant's *pro se* petition. The court asked counsel how defendant had been prejudiced by what had occurred. Counsel answered that defendant would not have been able to plead guilty because his plea would not have been knowing,

voluntary and intelligent. The court again asked counsel how defendant was prejudiced, and said that prejudice is required to determine if trial counsel was ineffective. Counsel replied that the focus of the amended petition was that defendant's due process rights were violated because his plea was not knowing, voluntary and intelligent. Counsel further stated that he would stand on defendant's *pro se* petition. The court asked why there was not an affidavit from trial counsel. Post-conviction counsel stated that he had made an inquiry, but received no response.

¶ 13 The circuit court stated that it wanted to "analyze this in a particular way, not necessarily the way you presented it to me." The court then stated that if there was a claim that defendant's due process rights were violated by ineffective counsel, then there would be a constitutional violation that would be actionable under the Act. The court found that, viewing the plea proceedings as a whole, there was substantial compliance with Supreme Court Rule 402, and defendant's guilty plea was voluntary. The court further found that the trial court's failure to ask defendant about any threats or promises was not fatal to his plea and did not impact his constitutional rights.

¶ 14 The court then stated that, as it understood the petition, defendant alleged that due to his trial counsel's ineffective actions, defendant was induced to make an involuntary plea. The court said that the question then becomes whether trial counsel's actions in advising defendant rendered the plea involuntary, which would be an ineffective assistance of counsel claim. The court then stated:

"I am sorry if I am belaboring this point, but I wanted to be clear how, ultimately, in my view this comes down to an ineffective assistance of counsel claim as to whether or not Mr.

Singleton's constitutional rights have been violated because, based on what I see in front of me, that would be the only constitutional right violation that's actionable under the Post Conviction Act."

The court found that the information defendant was given by his trial counsel is the advice that every defense attorney is required to give his client when there is a plea offer. The court said that if it had something from trial counsel stating that he had misrepresented the situation or misinformed defendant, then the circumstances would be different and would warrant an evidentiary hearing. It found, however, that defendant had not shown that he was given incorrect advice or prejudiced by counsel's actions. The court further stated that defendant's subjective state of mind interpreting counsel's advice as a threat was not a controlling factor for determining if counsel rendered ineffective assistance. The court then found that defendant failed to demonstrate that his trial counsel's performance was deficient or that he suffered prejudice as a result of counsel's performance; therefore, defendant did not receive ineffective assistance of counsel. Accordingly, the circuit court granted the State's motion and dismissed defendant's post-conviction petition.

¶ 15 On appeal, defendant contends that the circuit court erred when it dismissed his petition because he made a substantial showing that his trial counsel rendered ineffective assistance when he failed to ensure that defendant's guilty plea was voluntary. Defendant claims that he alleged that his trial counsel forced him to plead guilty, that he initially disputed the factual basis for his plea, and that the trial court never asked him if any threats or promises were made to obtain his plea. Defendant maintains that when trial counsel told him that he would be sentenced to 30

years' imprisonment if he went to trial, defendant, "in effect," "felt forced into pleading guilty." Defendant asserts that counsel's actions crossed the line from advice to coercion because they "suggested" that he had no other choice but to plead guilty, which resulted in an involuntary plea.

¶ 16 The State contends that defendant has forfeited this issue because the claim he now raises on appeal was not alleged in either his *pro se* post-conviction petition or his amended petition filed in the circuit court. The State argues that in his *pro se* petition, defendant did not claim that his plea was coerced, but instead, alleged that trial counsel was ineffective because he was unprofessional and did not inform him of the facts and status of his case. The State further argues that in his amended petition, defendant raised no claim of ineffective assistance of counsel, but instead, argued that his right to due process was violated. The State asserts that the circuit court "transformed" defendant's claims into a claim that trial counsel rendered ineffective assistance by coercing defendant into pleading guilty, but argues that this claim was not raised in the pleadings, and therefore, cannot be reviewed by this court.

¶ 17 In reply, defendant argues that his *pro se* petition alleged that trial counsel was ineffective for causing him to plead guilty. He further claims that his amended petition alleged that trial counsel did not ensure that his plea was voluntary, and his affidavit attached to that petition averred that he was forced to plead guilty by counsel. Defendant asserts that this court should liberally construe his filings in his favor as comprising a claim of ineffective assistance of counsel, which is what the circuit court did.

¶ 18 We review the circuit court's dismissal of a post-conviction petition without an evidentiary hearing *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). Under plenary review, this court is required to make our own independent assessment of the allegations raised

in the post-conviction petition, and we are "free to substitute [our] judgment for that of the circuit court in order to formulate the legally correct answer." *Id.* at 388. 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 2006).

¶ 19 Here, we find that defendant's *pro se* post-conviction petition is devoid of an allegation that his trial counsel rendered ineffective assistance when he failed to ensure that defendant's guilty plea was voluntary. In his *pro se* petition, defendant alleged that his trial counsel was ineffective because he lied about evidence in the case, was unprofessional in handling his case, did not inform him of all the facts in the case, and did not review the status of the case with him. Defendant did not elaborate any further, nor did he provide any facts in support of these allegations. The *pro se* petition makes absolutely no mention of defendant's guilty plea, nor does it claim that counsel forced or coerced him into pleading guilty by telling him that he would be sentenced to 30 years' imprisonment if he went to trial. Defendant's claim that his *pro se* petition alleged that counsel was ineffective for causing his guilty plea is completely unpersuasive.

¶ 20 Similarly, we find that defendant's amended post-conviction petition is devoid of an allegation that his trial counsel rendered ineffective assistance. Defendant's amended petition solely alleged that he was denied his right to due process at his guilty plea hearing because the trial court failed to ask him if any threats or promises had been made to him in exchange for his plea, thereby failing to ensure that his plea was voluntary. The amended petition makes absolutely no mention of an ineffective assistance of counsel claim.

¶ 21 We find it significant to note that on the court date following the filing of the amended petition, and before the State filed its motion to dismiss, post-conviction counsel expressly

informed the circuit court that this was "a single issue case." Thereafter, in its motion to dismiss, the State solely argued that defendant failed to show that his right to due process was violated. Moreover, at the hearing on the State's motion, post-conviction counsel focused his entire argument on the alleged violation of defendant's due process rights. When the circuit court asked post-conviction counsel if his argument was that defendant received ineffective assistance of counsel, post-conviction counsel replied "I believe that the claim was that he was denied his right to due process." Counsel further informed the court that the focus of the amended petition was that defendant's due process rights were violated because his plea was not knowing, voluntary and intelligent. It was only after repeated questioning by the circuit court that counsel stated that he had not abandoned the ineffective assistance of counsel claims raised in defendant's *pro se* petition. However, counsel stated that he would stand on those allegations as raised in defendant's *pro se* petition. As stated above, defendant's *pro se* petition did not allege that counsel was ineffective for coercing defendant to plead guilty.

¶ 22 The record shows that the circuit court expressly stated that it was going to analyze defendant's claim "in a particular way, not necessarily the way you presented it to me." The court then reviewed defendant's petition not only as a due process violation, but also as a claim of ineffective assistance of counsel for inducing defendant into making an involuntary plea. Under our *de novo* review, we owe no deference to the circuit court's analysis and we are free to substitute our judgment to reach a legally correct disposition. *Coleman*, 183 Ill. 2d at 388.

¶ 23 It is well-established that defendant is precluded from raising an issue on appeal that was not alleged in the post-conviction petition filed in the circuit court. *People v. Lee Jones*, 211 Ill. 2d 140, 148 (2004). Accordingly, we find that defendant has forfeited his claim on appeal that

his trial counsel rendered ineffective assistance when he failed to ensure that defendant's guilty plea was voluntary. *Id.* at 149-50.

¶ 24 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 either his *pro se* or amended post-conviction petitions.

¶ 25 For these reasons, we affirm the judgment of the circuit court of Cook County granting the State's motion to dismiss defendant's post-conviction petition.

¶ 26 Affirmed.