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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08—CF—1065
	)	
KURT C. JAGADE,	)	Honorable
	)	Kathryn E. Creswell,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices McLaren and Schostok concurred in the judgment.

**ORDER**

*Held:* Because a trial court may not summarily dismiss a postconviction petition only in part, the trial court erred in granting defendant's petition in part and summarily dismissing the remainder.

¶ 1 Defendant, Kurt C. Jagade, appeals from an order of the circuit court of Du Page County summarily dismissing (see 725 ILCS 5/122—2.1(a)(2) (West 2010)) his petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122—1 *et seq.* (West 2008)) for relief from his conviction of burglary (720 ILCS 5/19—1(a) (West 2008)). We conclude that, because the trial

court effectively granted the petition in part, it could not summarily dismiss the remainder. We therefore reverse and remand for further proceedings.

¶ 2 A Du Page County grand jury returned a three-count indictment charging defendant with burglary, criminal damage to property (720 ILCS 5/21—1(1)(a) (West 2008)), and theft (720 ILCS 5/16—1(a)(1)(A) (West 2008)). On September 17, 2008, pursuant to an agreement with the State, defendant pleaded guilty to the burglary charge in exchange for a seven-year prison term and the dismissal of the other charges. In a separate case, defendant had been charged with a traffic offense. At the hearing at which defendant pleaded guilty to the burglary charge, his attorney, Anthony Coco, stated, “part of our agreement is there is \*\*\* a driving-while-revoked case. Part of the agreement is that case is going to be nolle prossed.” Du Page County Assistant State’s Attorney Anne Therieau confirmed that nol-prossing the traffic charge was part of the agreement. Although the record reflects that the State terminated the prosecution of the traffic charge, defendant’s bond in that matter had been forfeited on May 8, 2008, and on September 2, 2008, a judgment of forfeiture had been entered.

¶ 3 On April 30, 2009, defendant filed a *pro se* postconviction petition seeking relief from the burglary conviction. As amended (with leave of the trial court), the petition alleged that defendant was deprived of his right to effective assistance of counsel because his trial attorney did not move to suppress certain evidence. Defendant further alleged that the State breached the plea agreement. Defendant claimed, *inter alia*, that “the State even though agreeing to dismiss all action [in the traffic case] refused or failed to rescind the judgment of forfeiture.” On January 14, 2010, the following exchange occurred at a hearing at which Therieau and Coco were present:

“THE COURT: \*\*\*

This was a situation where the Defendant has filed a post conviction petition. I'm not asking for input from either side. But having reviewed his allegations, one of the allegations is that judgment of forfeiture was supposed to be vacated on the [traffic] case, and that didn't happen.

I pulled my file. My file reflects that was part of the agreement, and that the [traffic case] was going to be dismissed on motion of the State. I reviewed the transcript. For some reason, the transcript only refers to the nolle, and the nolle did take place, but the judgment was not vacated.

And I'd ask both of you to take a look at that and then to see if you agree the [judgment of forfeiture] should be vacated?

And Ms. Therieau, what's your position?

MS. THERIEAU: I agree. I certainly have no objection. I ask an order be entered today vacating that judgment nunc pro tunc.

THE COURT: That order will be entered today.

My notes also show it was part of the agreement because the Defendant was actually in custody at the time judgment entered. So, it was, clearly, an oversight."

¶ 4 The trial court entered an agreed order vacating the judgment of forfeiture *nunc pro tunc* to the date defendant pleaded guilty to the burglary charge. The next day, the trial court summarily dismissed defendant's petition. See 725 ILCS 5/122—2.1(a)(2) (West 2010). This appeal followed.

¶ 5 Under the Act, a person imprisoned for a crime may mount a collateral attack on his or her conviction and sentence based on violations of his constitutional rights. *People v. Erickson*, 183 Ill. 2d 213, 222 (1998). Except in cases where the death penalty has been imposed, the Act provides for

summary dismissal of a postconviction petition if the trial court, after examining the petition, concludes that it is “frivolous or is patently without merit.” 725 ILCS 5/122—2.1(a)(2) (West 2008). If the petition is not summarily dismissed, it will be docketed for further proceedings and counsel will be appointed to represent the defendant if he or she is indigent and requests that counsel be appointed. 725 ILCS 5/122—4 (West 2008). The trial court’s decision to summarily dismiss a postconviction petition is based on the trial court’s independent review of the petition, and “reversal is required where the record shows that the circuit court sought or relied on input from the State when determining whether the petition is frivolous.” *People v. Gaultney*, 174 Ill. 2d 410, 419 (1996). In addition, the Act does not provide for *partial* summary dismissal of a petition. *People v. Rivera*, 198 Ill. 2d 364, 370-71 (2001).

¶ 6 Defendant contends that the summary dismissal of his petition was improper because (1) the trial court sought the State’s input as to whether to vacate the judgment of forfeiture and (2) by vacating the judgment of forfeiture, the trial court effectively granted the petition in part and could not then summarily dismiss the remainder. We agree with the latter contention.

¶ 7 That the order vacating the judgment of forfeiture was entered *nunc pro tunc* might appear, at first blush, to undermine defendant’s argument. “ ‘A *nunc pro tunc* order is an entry now for something that was done on a previous date and is made to make the record speak now for what was actually done then.’ ” *In re Aaron R.*, 387 Ill. App. 3d 1130, 1139-40 (2009) (quoting *Pestka v. Town of Fort Sheridan Co.*, 371 Ill. App. 3d 286, 295 (2007)). A trial court has jurisdiction to correct its own records even after its jurisdiction in a particular case has lapsed. See *Gegenhuber v. Hystopolis Production, Inc.*, 277 Ill. App. 3d 429, 431-32 (1995). Resort to the collateral remedy provided by the Act is unnecessary, and the filing of a postconviction petition should not affect the trial court’s

jurisdiction to correct its records even if doing so vitiates a postconviction claim based on the error. Here, however, the trial court exceeded its authority to correct its records by means of a *nunc pro tunc* order. As stated in *Aaron R.*:

“A *nunc pro tunc* order may only be used to correct clerical errors or matters of form in a prior judgment to make the record reflect what the court actually ordered. [Citation.] Any *nunc pro tunc* correction must be based on definite and certain evidence of record and not merely the recollection of the judge or a party. [Citation.] A *nunc pro tunc* order cannot be used to alter the court’s judgment. [Citation.] A *nunc pro tunc* order may not be used to correct judicial errors [citation] nor may such orders be used to supply omitted judicial action.” *Aaron R.*, 387 Ill. App. 3d at 1140.

Here, the trial court supplied omitted judicial action—vacating the judgment of forfeiture—based on its own notes (which are not part of the record) indicating that the parties had agreed that the judgment of forfeiture would be vacated.

¶ 8 In an attempt to characterize the vacatur of the judgment of forfeiture as something other than postconviction relief, the State insists that its agreement to nol-pros the traffic charge did not require that judgment to be vacated. Thus, although the State acknowledges that the constitutional safeguards attendant to the acceptance of a defendant’s guilty plea require the State to fulfill any promise or agreement that was part of the inducement or consideration for the plea (*Santobello v. New York*, 404 U.S. 257, 262 (1971)), the State maintains that defendant received everything to which he was entitled under the plea agreement and has no grievance of a constitutional dimension. The State implies that, with the prosecutor’s consent, the trial court vacated the judgment of forfeiture as a matter of grace rather than constitutional imperative and that the trial court derived

its jurisdiction to do so not from defendant's postconviction petition, but by virtue of the "revestment doctrine" (see, e.g., *People v. Minniti*, 373 Ill. App. 3d 55, 65 (2007) (a court that has lost jurisdiction following the entry of a final judgment may be revested with jurisdiction "when the parties (1) actively participate without objection (2) in further proceedings that are inconsistent with the merits of the prior judgment")). This characterization flies in the face of the record. The trial court's remarks clearly indicate that it was under the impression that the vacatur of the judgment of forfeiture was part of the consideration for defendant's guilty plea. Under the circumstances the trial court's order was tantamount to relief under the Act. Pursuant to *Rivera*, the trial court could not grant part of the relief requested in the petition and then summarily dismiss the petition.

¶ 9 For the foregoing reasons, the judgment of the circuit court of Du Page County is reversed and the cause is remanded for further consideration of defendant's petition in accordance with sections 122—4 through 122—6 of the Act (725 ILCS 5/122—4 through 122—6 (West 2010)).

¶ 10 Reversed and remanded.