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2011 IL App (3d) 090226-U

Order filed August 1, 2011
Modified upon denial of Petition for Rehearing September 2, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Plaintiff-Appellee,) Peoria County, Illinois,
)
v.) Appeal No. 3-09-0226
) Circuit No. 05-CF-622
MISAEL VELAQUEZ,)
) Honorable
Defendant-Appellant.) Michael E. Brandt,
) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's dismissal of defendant's postconviction petition as frivolous was appropriate. The record clearly demonstrates that defendant entered his guilty plea knowingly.
- ¶ 2 Defendant, Misael Velaquez, pled guilty to one count aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2004)) and was sentenced to 180 days imprisonment and a term of 48 months probation. Defendant filed a postconviction petition with the

trial court, claiming that his guilty plea was not knowingly entered. The trial court dismissed the petition as frivolous. Defendant appeals this determination. We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged with aggravated criminal sexual abuse (720 ILCS 5/12–16(d) (West 2004)) and criminal sexual abuse (720 ILCS 5/12–15(a)(1) (West 2004)). At arraignment, the trial court asked defendant if he spoke English, and he replied "Yeah. 50%." The court then asked defendant if he understood what was being said, and he responded, "Yeah."

¶ 5

On September 19, 2005, defendant pled guilty to aggravated criminal sexual abuse. Defendant did not request, and the court did not provide, an interpreter. During the hearing, the trial court asked defendant if he could read and write the English language sufficiently enough to understand the documents. Defendant said that his lawyer had read the documents to him and that he understood the "things she told me[.]" Defendant then informed the court that he did not agree that his conduct should be considered a Class 2 felony, but that he wanted to accept the plea agreement instead of going to trial. At the end of the proceeding, the trial court accepted the plea agreement after finding that the guilty plea was made knowingly, voluntarily, and intelligently.

¶ 6

Defendant returned to the trial court for sentencing on December 5, 2005. Pursuant to defendant's request, an interpreter was present. However, the record does not show that defendant ever used the interpreter. Prior to sentencing, the trial court asked defendant to confirm his guilty plea. Defendant confirmed his plea and said that he had no questions regarding the agreement. Defendant's attorney stated for the record that,

"when Mr. Velaquez entered the plea of guilty back on September 19, *** he did not have the benefit of the interpreter [*sic*] then, but *** he fully understood what he was doing *** so there couldn't be any confusion that *** there was something that he didn't understand." Defendant agreed with this statement and said, "I understand what you say on September." The trial court then reaffirmed its findings made on September 19, 2005, that the guilty plea was made knowingly, voluntarily, and intelligently, and sentenced defendant to 180 days confinement in the Peoria County jail and 48 months probation.

¶ 7 On September 18, 2008, defendant filed a *pro se* postconviction petition which alleged that he did not enter his guilty plea knowingly because a Spanish language interpreter was not present at the guilty plea hearing. The trial court dismissed defendant's petition as frivolous, noting that an interpreter was present "when [defendant] plead [*sic*] guilty on 12-5-05." Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant appeals the trial court's dismissal of his postconviction petition. Pursuant to section 122-2.1(a)(2) of the Post-Conviction Hearing Act, the trial court can dismiss a postconviction petition if it determines that the petition is frivolous or is patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2008). A petition is frivolous or patently without merit if it has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1 (2009). Further, on appeal a reviewing court is not bound to accept the reasons given by the trial court for its judgment. *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382 (1983). It is the judgment, and not what else may have been said by the lower court, that is on appeal to a court of review. *Id.*

¶ 10 Here, when the trial court dismissed defendant's petition, it did so based on the erroneous belief that an interpreter was present when defendant entered his guilty plea on December 5, 2005. In reality, defendant pled guilty on September 19, 2005, and no interpreter was present. However, this misstatement by the trial court has no impact on our decision, because we find that the record clearly shows that defendant entered his plea knowingly. Therefore, defendant's postconviction petition had no arguable basis in law or fact and was properly dismissed as frivolous.

¶ 11 Initially, we note that defendant claimed throughout his case that he understood what was being said by the court. At his arraignment, when asked if he spoke English, defendant responded, "Yeah. 50%." The court then asked if he understood what was being said and he responded, "Yeah." When defendant entered his guilty plea, the court asked if he could read and write the English language sufficiently enough to understand the documents, and he said that his lawyer had read them to him and that he understood the "things she told me[.]" At sentencing, defendant's lawyer said that even though defendant did not have the benefit of an interpreter when he pled guilty on September 19, he fully understood what was happening. Defendant corroborated this by telling the court, "I understand what you say on September."

¶ 12 While it is obvious that defendant's English is not perfect, the record clearly indicates that defendant understood the guilty plea. In this regard, we note that defendant discussed with the court the classification of the offense. Defendant communicated to the court that he did not agree with the classification but that he did not want to go to trial. This exchange is further proof that defendant entered his guilty plea knowingly.

¶ 13 We further note that defendant did not request an interpreter until his sentencing. Importantly, the court reaffirmed defendant's guilty plea at this time. With the interpreter present, the court asked defendant if he still wished to go forward with the plea agreement and if he had any questions regarding the agreement. Defendant said that he had no questions and that he wished to go forward with the agreement. Thereafter, the court reaffirmed defendant's guilty plea. Defendant apparently understood everything that was going on because he did not use the services of the interpreter.

¶ 14 Viewing the record as a whole, we find that it clearly shows that defendant understood the terms of the plea agreement. We therefore conclude that the trial court did not err when it dismissed the petition as frivolous.

¶ 15 Finally, we note that defendant raises other issues on appeal that were not raised in his postconviction petition. We do not address these issues because they were not presented in the postconviction petition, and therefore were waived. 725 ILCS 5/122-3 (West 2006). Only issues that were presented in the postconviction petition filed in the circuit court can be raised while the matter is on review. *People v. Jones*, 211 Ill. 2d 140 (2004).

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Peoria County is affirmed.

¶ 18 Affirmed.