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3-09-0632

Order Filed February 23, 2011

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	For the 12th Judicial Circuit
	)	Will County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	No. 02-CF-1992
	)	
JAMES BLACK,	)	
	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding

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

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**ORDER**

*Held:* The trial court did not err in summarily dismissing the defendant's postconviction petition where the defendant, having pled guilty, waived his right to a postconviction due process claim.

Defendant James Black filed a *pro se* postconviction petition alleging his right to due process was violated by the State's delay in indicting him on a charge of unlawful possession of contraband (720 ILCS 5/31A-1.1(b) (West 2000)). The trial court summarily dismissed Black's petition, finding he had failed to raise a constitutional question upon which relief could be granted. Because we find

that by pleading guilty Black waived his right to a claim of a due process violation, we affirm the trial court.

### FACTS

While incarcerated on another charge, defendant James Black was charged by complaint with one count of unlawful possession of contraband in a penal institution (720 ILCS 5/31A-1.1(b) (West 2000)). Represented by counsel, Black pled guilty to the charge and was sentenced to a six-year prison term to run consecutively to his existing sentence. Black filed a *pro se* postconviction petition in which he alleged that in a blatant due process violation the State had failed to arraign him on the charge within the time limitation set under section 109-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/109-3.1(b) (West 2000)). Specifically, Black alleged that the incident occurred on May 16, 2001, but he was not charged and arraigned until “approximately” March 15, 2002, which was outside the time frame of 30 days specified under the Code. The record indicates Black was indicted on November 6, 2002. The trial court summarily dismissed Black’s petition for failure to raise a constitutional question upon which relief could be granted. Black filed a motion to reconsider the dismissal of his petition which the trial court denied. He follows with this appeal.

### ANALYSIS

Our review of the trial court's dismissal of defendant's postconviction petition is *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). Under the Post-Conviction Hearing Act (Act) ( 725 ILCS 5/122-1 *et seq.* (West 2002)), persons under criminal sentence can assert their convictions were the result of a substantial denial of their constitutional rights. *Hodges*, 234 Ill. 2d at 9. A constitutional right, however, like any other right of an accused, may be waived. *People v. Brown*, 41 Ill. 2d 503, 505 (1969). It is well established that in voluntarily pleading guilty, a defendant waives non-

jurisdictional errors or irregularities, including constitutional ones. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). See also *People v. Dennis*, 34 Ill. 2d 219, 221-222 (1966) (because of his voluntary guilty plea, defendant waived right to bring claim of illegal search and seizure in postconviction petition).

In the instant case, the record discloses that in open court Black was fully admonished as to the consequences of his guilty plea. In reply to questions by the trial court, Black indicated he had consulted with his attorney about entering a plea of guilty and that he was satisfied with the services which had been rendered by that attorney. He also acknowledged he understood the factual basis of the guilty plea and the potential sentence for the charge. Black stated his plea of guilty was given freely and voluntarily. Because Black entered a plea of guilty to the charge of unlawful possession of contraband in a penal institution, we find he has waived any right to assert a postconviction claim of a due process violation based on the State's failure to timely indict him. Based on our finding, we conclude the trial court did not err in summarily dismissing Black's postconviction petition.

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

Affirm.