

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).

2011 IL App (4th) 100584-U

Filed 11/23/11

NO. 4-10-0584

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
UCHE PHILLIP MORDI,)	No. 07CF223
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where any appeal in this case would be frivolous, we grant the motion to withdraw as counsel filed by the office of the State Appellate Defender (OSAD). We agreed any appeal would be frivolous because defendant had completed his sentence prior to filing his postconviction petition.

¶ 2 In January 2008, a jury found defendant, Uche Phillip Mordi, guilty of the offense of unlawful possession of a controlled substance. In February 2008, the trial court sentenced him to two years of probation. In March 2010, defendant was discharged from probation. In June 2010, defendant filed a petition for postconviction relief, which the court summarily dismissed.

¶ 3 On appeal, OSAD moves to withdraw its representation of defendant pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be frivolous. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5 In January 2008, the State charged defendant by amended information with one count of possession with intent to deliver a controlled substance (count I) (720 ILCS 570/401(c)(2) (West 2008)) and one count of unlawful possession of a controlled substance (count II) (720 ILCS 570/402(c) (West 2008)). A jury found defendant guilty of possession under count II but not guilty of possession with intent to deliver under count I.

¶ 6 In February 2008, the trial court sentenced defendant to two years' probation and ordered him to serve 180 days in jail with credit for 110 days' served. The written probation order indicated the probation term was to terminate on February 28, 2010. Defendant did not file a direct appeal. On March 3, 2010, an order of discharge from probation was filed.

¶ 7 In June 2010, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2010)). Defendant alleged his attorney rendered ineffective assistance of counsel by failing to (1) move for suppression of statements he made at his arraignment hearing, (2) appeal the issue regarding his arraignment statements, and (3) inform him of his rights under the Vienna Convention that he could contact his country's consulate.

¶ 8 The trial court dismissed the petition, finding it frivolous and patently without merit. In July 2010, defendant filed a motion to reconsider, which the court denied. This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum pursuant to *Finley*. Proof of service has been shown on defendant.

This court granted defendant leave to file additional points and authorities on or before August 22, 2011, and he has done so. The State has also filed a responsive brief. Based on our examination of the record, we conclude, as has OSAD, that an appeal in this cause would be frivolous.

¶ 11 The Act provides that a defendant may only seek relief under the Act if he is "imprisoned in the penitentiary" when his petition is filed. 725 ILCS 5/122-1(a) (West 2010). For purposes of section 122-1(a) of the Act, "imprisoned in the penitentiary" "has been held to include petitioners whose liberty, in some way or another, was curtailed to a degree by the state." *People v. Carrera*, 239 Ill. 2d 241, 246, 940 N.E.2d 1111, 1114 (2010). A defendant sentenced to probation may file a petition for postconviction relief under the Act. *Carrera*, 239 Ill. 2d at 246, 940 N.E.2d at 1114.

¶ 12 In the case *sub judice*, defendant successfully completed his probation term prior to filing his postconviction petition. "Given the fact that defendant had fully served his underlying sentence prior to filing his postconviction petition, defendant's liberty was not curtailed by the state in any way, and he was not a person 'imprisoned in the penitentiary,' as required in order to file a claim for postconviction relief." *Carrera*, 239 Ill. 2d at 253, 940 N.E.2d at 1118; see also *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 8, 955 N.E.2d 664, 666-67 (finding the "[d]efendant was not 'imprisoned in the penitentiary' as required by the Act because he had fully served his underlying sentence prior to filing his petition and, therefore, had no standing to file a petition for postconviction relief"). As a result, postconviction relief was unavailable to defendant.

¶ 13 Our supreme court has noted "a postconviction remedy is available only to those

that are actually being deprived of their liberty, and not to those who have served their sentences and might wish to purge their records of past convictions." *Carrera*, 239 Ill. 2d at 257, 940 N.E.2d at 1121. We note defendant lists his current address as the Allenwood Federal Correctional Institution in White Deer, Pennsylvania. While defendant is currently in prison, the current constraints on defendant's liberties are being imposed by federal authorities. As defendant completed the sentence for his state crime, dismissal of his postconviction petition was appropriate. Accordingly, as any appeal in this matter would be frivolous, we grant OSAD's motion to withdraw.

¶ 14

III. CONCLUSION

¶ 15 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 16 Affirmed.