

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) 100631-U

Filed 12/15/11

NOS. 4-10-0631, 4-10-0632, 4-10-0633 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
v.)	Adams County
JEREMY L. ROBERTS,)	Nos. 09CF337
Defendant-Appellant.)	09CF154
)	09CF280
)	
)	Honorable
)	William O. Mays,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the trial court's dismissal of defendant's petition for postconviction relief and remanded with directions that the court commence second-stage proceedings because the court solicited input from the State on the merits of the defendant's postconviction petition during first-stage proceedings.

¶ 2 Defendant, Jeremy L. Roberts, appeals the trial court's July 2010 dismissal of his *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 2010)), alleging that the court committed reversible error by (1) soliciting input from the State on the merits of his postconviction petition during first-stage proceedings and (2) conducting an *ex parte* hearing with the State on his postconviction petition.

Because we agree with defendant's first claim, we reverse and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 In September 2009, defendant, Jeremy L. Roberts, pleaded guilty to (1) possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)) (Adams County case No. 09-CF-154); (2) theft (property valued over \$300) (720 ILCS 5/16-1(a)(1) (West 2008)) (Adams County case No. 09-CF-280); and (3) residential burglary (720 ILCS 5/19-3(a) (West 2008)) (Adams County case No. 09-CF-337) pursuant to a fully-negotiated guilty plea. In exchange for defendant's guilty plea, the State agreed to dismiss other related charges and recommend that the trial court impose the following concurrent sentences: (1) 5 years for possession of a weapon by a felon, (2) 5 years for theft, and (3) 12 years for residential burglary. After determining that defendant's guilty plea was knowing and voluntary, and that a factual basis existed, the court sentenced defendant in accordance with the State's recommendations.

¶ 5 In April 2010, defendant *pro se* filed a motion to reduce and modify sentence. In May 2010, the trial court filed a written order *sua sponte* denying defendant's motion, noting that (1) the court lacked jurisdiction because defendant's motion was not filed within 30 days after the court imposed defendant's sentence and (2) defendant failed to file a written request to withdraw his guilty plea as mandated by Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 6 In June 2010, defendant *pro se* filed a petition for postconviction relief pursuant to the Act, alleging the following:

"Misrepresentation by stated appointed defender due to not being able to come in contact by mail, which was my only means of communication to place an order to reduce my sentence or take back my plea. I didn't not [*sic*] understand the agreement made

and wasn't given the chance to have it explained."

Defendant also filed an application to proceed as a poor person and for appointment of counsel.

¶ 7 At a July 6, 2010, status hearing on defendant's postconviction petition, the following exchange—which comprised the entirety of the hearing—occurred:

"THE COURT: Court's taking up People v. Jeremy Roberts; several cases, 09-CF-154, 09-CF-280, 09-CF-337. [Prosecutor] is here on behalf of the people. [Defendant] is not here. He's been sentenced to the Department of Corrections. He's filed a petition for postconviction relief. Have you looked at that[, prosecutor]?"

[PROSECUTOR]: *** I have looked at it. He filed one already that the court entered an order on, and it appeared to me that the second thing he was filing was very similar to what you already denied, but I didn't know if you wanted to take a look at that.

THE COURT: Why don't we continue it two weeks, just do an order to that effect—[the court thinks it has] a copy. Let me look at that and see if I can do something about it. Or need to proceed with the terms of an attorney."

¶ 8 Two weeks later, the trial court entered an order, denying defendant's petition. Specifically, the court found that defendant (1) had previously raised the same issues in his April 2010 motion to reduce and modify sentence, (2) failed to comply with Supreme Court Rule

605(c) by not filing a written motion for leave to withdraw his guilty plea, and (3) failed to raise any issues not previously considered by the court.

¶ 9 This appeal followed.

¶ 10 II. THE TRIAL COURT'S FIRST-STAGE DISMISSAL OF DEFENDANT'S
PETITION FOR POSTCONVICTION RELIEF

A. Proceedings Under the Act and the Standard of Review

¶ 11 A defendant may proceed under the Act by alleging that "in the proceedings which resulted in his or her conviction[,] there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2010). In noncapital cases, the Act establishes a three-stage process for adjudicating a postconviction petition. 725 ILCS 5/122-1 through 122-8 (West 2010); *People v. Jones*, 213 Ill. 2d 498, 503, 821 N.E.2d 1093, 1096 (2004). At the first stage, "the trial court, without input from the State, examines the petition *only* to determine if [it alleges] a constitutional deprivation unrebutted by the record, rendering the petition neither frivolous nor patently without merit." (Emphasis in original.) *People v. Phyfiher*, 361 Ill. App. 3d 881, 883, 838 N.E.2d 181, 184 (2005). "Section 122-2.1 [of the Act] directs that if the defendant is sentenced to imprisonment (rather than death) and the circuit court determines that the petition is frivolous or patently without merit, it shall be dismissed in a written order. 725 ILCS 5/122-2.1(a)(2) (West 2004)." *People v. Torres*, 228 Ill. 2d 382, 394, 888 N.E.2d 91, 99-100 (2008).

¶ 12 If a petition is not dismissed at stage one, it proceeds to stage two, where section 122-4 of the Act provides for the appointment of counsel for an indigent defendant who wishes counsel to be appointed (725 ILCS 5/122-4 (West 2006)). At the second stage, the State has the opportunity to answer or move to dismiss the petition (725 ILCS 5/122-5 (West 2006)). The

expenditure of scarce resources—if the court determined that the postconviction petition was frivolous or patently without merit. See Pub. Act 83-942, § 1A (eff. Nov. 23, 1983) (1983 Ill. Laws 6200, [6201 where section 122-2.1(a) is added]) 725 ILCS 5/122-2.1(a)(2) (West 2010). In this regard, Illinois courts have repeatedly held that the court's finding that a postconviction petition is frivolous or patently without merit must be made without any input from the State or further input from the petitioner. See *People v. Dredge*, 148 Ill. App. 3d 911, 912, 500 N.E.2d 445, 446 (1986) (where this court explained that subsequent to the 1983 revision of the Act, a trial court must first determine whether a defendant's postconviction petition is frivolous or patently without merit without input from the State or further pleadings from the defendant); *People v. Prier*, 245 Ill. App. 3d 1037, 1039, 613 N.E.2d 1226, 1228 (1993) (at the first stage, the trial court considers the postconviction petition without any input from the State or further pleadings from defendant to determine if it is frivolous or patently without merit); *People v. Jones*, 211 Ill. 2d 140, 144, 809 N.E.2d 1233, 1236 (2004) (the trial court's review at this first stage is independent, as the Act does not permit any further pleadings from the defendant or any input from the State). Thus, the enactment of Public Act 83-942 in November 1983 effectively (1) inserted the aforementioned first-stage proceeding into the court's initial evaluation of a defendant's postconviction petition and (2) shifted the court's appointment of counsel or determination that a defendant did not desire the appointment of counsel under the previous version of the Act to what is now referred to as second-stage proceedings.

¶ 16 The State responds that although it may have been error for the trial court to solicit input from the State at the first stage, any error was harmless because defendant's postconviction petition was frivolous and patently without merit. However, given this clear and

