



defense counsel did not err by failing to inform him of such a motion.

¶ 6 In September 2010, defendant, Sean Beck, filed a *pro se* postconviction petition, seeking collateral review of his guilty plea and sentence in case No. 07-CF-33 (case 33) and his admission to the petitions to revoke his probation and resentences in case Nos. 06-CF-417 (case 417) and 07-CF-13 (case 13). The next month, the Coles County circuit court dismissed defendant's petition as frivolous or otherwise patently without merit. Defendant then filed a notice of appeal, and the court appointed the office of the State Appellate Defender (OSAD) to represent him.

¶ 7 On appeal, OSAD moves to withdraw its representation of defendant, contending no viable issues of legal merit exist. We grant OSAD's motion and affirm the trial court's judgment.

¶ 8 I. BACKGROUND

¶ 9 A. Case 33

¶ 10 In January 2007, a Statewide grand jury indicted defendant with four counts of methamphetamine conspiracy (720 ILCS 646/65(a) (West Supp. 2005)), two counts of unlawful possession of methamphetamine precursor (720 ILCS 646/20(a)(1) (West Supp. 2005)), and one count of participation in methamphetamine manufacturing (720 ILCS 646/15(a)(1) (West Supp. 2005)). The indictments were all based on defendant's actions between September 12, 2005, and July 3, 2006. Count II of the indictments was a methamphetamine-conspiracy charge.

¶ 11 On July 30, 2007, the trial court held a plea hearing in this case that was separate from a hearing on defendant's pending revocation-of-probation petitions in cases 417 and 13. The plea agreement was recited at the plea hearing and provided (1) defendant would receive a

10-year prison term on count II; (2) defendant would be ordered to pay court costs, a \$15,000 drug-assessment fine, a \$3,000 mandatory assessment, a \$200 deoxyribonucleic-acid-testing fee (if defendant did not have a sample already on file), and a \$100 lab fee; (3) defendant would cooperate with the prosecution of any codefendants involved in what was commonly referred to as the Kristina Curtner conspiracy; and (4) the other charges would be dismissed. Defendant indicated he understood the terms of the plea agreement. Moreover, defendant answered in the negative when asked if any promises had been made to him that were not revealed in court as part of the plea agreement.

¶ 12 Additionally, at the plea hearing, the trial court stated the following in explaining the possible penalties for count II:

"In addition, sir, if you are sentenced to the Department of Corrections, which your plea agreement encompasses, that is a ten-year sentence, your sentence will also include, in addition to that ten-year sentence, a three-year mandatory supervised release period, that used to be called parole, the violation of which could result in you being put back in the Department of Corrections."

Defendant indicated he understood all of the penalties.

¶ 13 After finishing the admonishments and hearing the State's factual basis, the trial court accepted defendant's guilty plea to count II. Before proceeding to the hearing on the probation-revocation petitions in the other cases, the court stated, *inter alia*, the following:

"Sir, I have now imposed a sentence upon you on the methamphetamine conspiracy charge filed by the Attorney General

in 07-CF-33. You have the right to appeal. Before you can appeal this Court's decision, you must, within 30 days of today's date, file with the Clerk of the Court a written motion to withdraw your plea of guilty and vacate the judgment. In the motion, you must state all reasons you want to withdraw your guilty plea."

Defendant indicated he understood the admonishment. The court's written sentencing judgment did not include a mandatory supervised release term. Defendant did not appeal his guilty plea and sentence.

¶ 14

#### B. Cases 417 and 13

¶ 15 In case 417, the State charged defendant with one count of participation in methamphetamine manufacturing (720 ILCS 646/15(a)(1) (West 2006)) for defendant's actions on August 15, 2006. In case 13, the State charged defendant with one count of methamphetamine possession (720 ILCS 646/15(a)(1) (West 2006)) for defendant's actions on January 2, 2007. On February 2, 2007, the trial court held a joint plea hearing on the two aforementioned charges. Pursuant to a plea agreement, defendant pleaded guilty to the two charges, and the court imposed the agreed sentence of concurrent probation terms of 24 months.

¶ 16 On June 28, 2007, the State filed a petition to revoke defendant's probation in case 13. On July 30, 2007, the State filed a motion to revoke defendant's probation in case 417. Also, on July 30, 2007, the trial court held a joint hearing on the State's petitions to revoke defendant's probation in cases 417 and 13, which was separate from the guilty plea proceedings in case 33. The parties entered into an agreement, which was set forth in court. Under the agreement, defendant would admit the allegations in the two petitions, and the State would recommend

resentences of consecutive prison terms of two years in case 13 and four years in case 417.

Those resentences would run concurrent with the prison term in case 33. Defendant indicated he understood the agreement and would accept it. Defendant also replied in the negative when asked if any promises had been made to him that were not revealed in court as part of the agreement.

¶ 17 Before accepting the admissions and agreement, the trial court informed defendant of the following:

"Now, sir, as to the Class III felony, you were previously admonished before being placed on probation, sir, that that carried a possible sentence of two to five years in the Department of Corrections, a one-year mandatory supervised release, and a fine of up to \$25,000.

In the Class I felony, participation in methamphetamine manufacturing, sir, that is a possible prison sentence of four to fifteen years in the Department of Corrections, a two-year mandatory supervised release, and a maximum fine of \$25,000."

Defendant indicated he understood the possible penalties on resentencing. The court accepted defendant's admissions and the parties' agreement and resentenced defendant in accordance with the agreement.

¶ 18 After resentencing, the trial court admonished defendant of, *inter alia*, the following:

"If you wish to appeal, you must within 30 days of today's date file

with the Clerk of the Court a written motion to withdraw your admissions and to vacate the judgments I have entered in each of these cases."

Defendant indicated he understood the admonishment. The court's written resentencing judgments did not include the mandatory supervised release terms. Additionally, defendant did not appeal his probation revocations and resentences.

¶ 19 C. Postconviction Petition

¶ 20 In September 2010, defendant filed a *pro se* postconviction petition, listing all three case numbers. In his petition, defendant argued (1) he did not receive the benefit of his plea bargain because (a) he did not get an additional three months off 50% of his sentence and (b) he must serve a mandatory supervised release term that was not part of the plea bargain, (2) the trial court failed to notify him of his right to file a motion for a sentence reduction, and (3) he was denied effective assistance of counsel because counsel failed to advise him of his right to file a motion for a sentence reduction. Defendant attached the written sentence judgments from each of the three cases and a docket sheet from case 33 to his petition. On October 28, 2010, the court dismissed defendant's petition as frivolous or otherwise patently without merit. Eight days later, defendant timely filed a *pro se* notice of appeal from the court's dismissal of his postconviction petition. While defendant only listed the information for case 33 on the notice of appeal, a postconviction petition is treated as a whole at the first stage of the postconviction petition (see *People v. Rivera*, 198 Ill. 2d 364, 374, 763 N.E.2d 306, 311-12 (2001) (noting the Postconviction Act does not permit the summary dismissal of individual claims)), and the notice of appeal clearly applies to the court's October 28, 2010, dismissal of defendant's postconviction

petition, which involved all three cases. Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 651(a) (eff. Dec. 1, 1984). (We note defendant's amended notice of appeal that he moved for filing on January 20, 2011, was untimely under Illinois Supreme Court Rules 606(d) (eff. Mar. 20, 2009) and Illinois Supreme Court Rules 303(b)(5) and (d) (eff. May 30, 2008).)

¶ 21 In October 2011, OSAD filed a motion to withdraw as counsel on defendant's appeal from the dismissal of his postconviction petition. OSAD asserts it has thoroughly reviewed the record and concludes no viable issues of legal merit exist in this appeal. Attached to the motion is a memorandum that addresses defendant's arguments and sets forth the procedural history of the case. OSAD's proof of service indicates defendant was provided with a copy of the motion, and this court granted defendant to and including November 17, 2011, to file additional points and authorities. None were filed.

¶ 22 **II. ANALYSIS**

¶ 23 In this case, defendant appeals the first-stage dismissal of his *pro se* postconviction petition.

¶ 24 The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/art. 122 (West 2010)) provides a defendant with a collateral means to challenge his or her conviction or sentence for violations of federal or state constitutional rights. *People v. Jones*, 211 Ill. 2d 140, 143, 809 N.E.2d 1233, 1236 (2004). When a case does not involve the death penalty, the adjudication of a postconviction petition follows a three-stage process. *Jones*, 211 Ill. 2d at 144, 809 N.E.2d at 1236. At the first stage, the trial court must, independently and without considering any argument by the State, decide whether the defendant's petition is "frivolous or is patently

without merit." 725 ILCS 5/122-2.1(a)(2) (West 2008). To survive dismissal at this initial stage, the postconviction petition "need only present the gist of a constitutional claim," which is "a low threshold" that requires the petition to contain only a limited amount of detail. *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996). Legal argument or citation to legal authority is not required. *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). However, section 122-2 of the Postconviction Act (725 ILCS 5/122-2 (West 2010)) requires the petition to "have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." In analyzing the petition, courts are to take the allegations of the petition as true as well as liberally construe them. *Brown*, 236 Ill. 2d at 184, 923 N.E.2d at 754.

¶ 25 Moreover, our supreme court has further explained a court may summarily dismiss a *pro se* postconviction petition "as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). A petition lacks an arguable legal basis when it is based on an indisputably meritless legal theory, such as one the record completely contradicts. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition lacks an arguable factual basis when it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Hodges*, 234 Ill. 2d at 16-17, 912 N.E.2d at 1212.

¶ 26 We review *de novo* the trial court's dismissal of a postconviction petition without an evidentiary hearing. *People v. Simms*, 192 Ill. 2d 348, 360, 736 N.E.2d 1092, 1105-06 (2000).

¶ 27 A. Standard for Withdrawal of Counsel

¶ 28 In *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987), the United States Supreme Court addressed the withdrawal of counsel in collateral postconviction proceedings and held the United States Constitution does not require the full protection of *Anders v. California*, 386 U.S. 738 (1967), with such motions. The Court noted the respondent did not present a due-process violation when her counsel withdrew because her state right to counsel had been satisfied. *Finley*, 481 U.S. at 558. Thus, state law dictates counsel's performance in a postconviction proceeding. The Supreme Court of Illinois has held that, in a postconviction proceeding, the Postconviction Act entitles a defendant to reasonable representation. *People v. Guest*, 166 Ill. 2d 381, 412, 655 N.E.2d 873, 887 (1995).

¶ 29 In *People v. McKenney*, 255 Ill. App. 3d 644, 646, 627 N.E.2d 715, 717 (1994), the Second District granted appellate counsel's motion to withdraw as counsel on an appeal from a postconviction petition, finding counsel's representation was reasonable. There, the motion stated counsel had reviewed the record and found no issue that would merit relief. The motion also provided the procedural history of the case and the issues raised in the defendant's petition. *McKenney*, 255 Ill. App. 3d at 645, 627 N.E.2d at 716.

¶ 30 B. Petition's Merits

¶ 31 1. *Lack of Verification Affidavit*

¶ 32 OSAD first notes defendant's postconviction petition lacks the verification affidavit required by section 122–1(b) of the Postconviction Act (725 ILCS 5/122-1(b) (West 2010)). However, a split in authority exists as to whether the lack of a verification affidavit is a proper basis for a first-stage dismissal. Compare *People v. Carr*, 407 Ill. App. 3d 513, 516, 944 N.E.2d 859, 861 (2011) (Second District finding it is a proper basis for a first-stage dismissal)

with *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 34 (First District holding it is not a valid reason for a first-stage dismissal). Since neither this court nor our supreme court has ruled on this issue, it is not a proper reason for affirming the trial court's dismissal based on a *Finley* motion as briefing by the State is required to fully address the issue.

¶ 33

### 2. *Supporting Documents*

¶ 34 OSAD next points out the trial court dismissed defendant's petition because he failed to include supporting documents but contends defendant's issues did not require more supporting documents than the ones he provided. Our supreme court has held a defendant's failure to either attach the "affidavits, records, or other evidence" required by section 122-2 of the Postconviction Act (725 ILCS 5/122-2 (West 2006)) or explain their absence alone justifies the trial court's summary dismissal of the petition. *People v. Delton*, 227 Ill. 2d 247, 255, 882 N.E.2d 516, 520 (2008). We agree with OSAD that most of defendant's issues did not require additional supporting documentation and thus will address the need for supporting documents in analyzing the merits of defendant's claims.

¶ 35

### 3. *Benefit-of-the-Bargain Claims*

¶ 36 In his postconviction petition, defendant asserts he did not receive the benefit of his bargain because (1) he did not receive the additional three months off his sentence as promised and (2) a term of mandatory supervised release was not part of his plea bargain. Our supreme court has recognized a defendant's constitutional right to due process and fundamental fairness is violated when he pleaded guilty in exchange for a specific sentence but received a different, more onerous sentence than the agreed one. *People v. Whitfield*, 217 Ill. 2d 177, 188-89, 840 N.E.2d 658, 666 (2005).

¶ 37

a. *Additional Three Months*

¶ 38 Defendant refers to sentencing guidelines at the time of his plea negotiations and alleges his "plea agreement" included "he would receive a sentence at 50% and an additional 3 months off that percent." The record contradicts defendant's assertion since, at both the plea and probation-revocation hearings, defendant indicated he understood the agreements and no other promises were made to him that were not included in the agreement recited in court. See, e.g., *People v. Torres*, 228 Ill. 2d 382, 396-97, 888 N.E.2d 91, 101 (2008) (noting the defendant's acknowledgment at a plea hearing that no agreements or promises regarding his plea existed served to contradict a postconviction assertion he pleaded guilty in reliance upon an alleged, undisclosed promise by his counsel regarding sentencing). Moreover, defendant did not attach any supporting documents showing this alleged additional promise. Accordingly, this issue is frivolous and patently without merit.

¶ 39

b. *Mandatory Supervised Release*

¶ 40 In his petition, defendant asserts the mandatory supervised release terms were not part of the negotiations with the State, and the court did not advise of him of the mandatory supervised release terms.

¶ 41

Initially, we note defendant cannot obtain relief for any mandatory supervised release issue in cases 417 and 13. When a trial court fails to properly admonish a defendant about mandatory supervised release, the appropriate remedies are (1) to allow the defendant to withdraw his plea or (2) to enforce the State's promise. *Whitfield*, 217 Ill. 2d at 202, 840 N.E.2d at 673. To enforce the State's promise, the court reduces the defendant's prison term by the length of the mandatory supervised release term because mandatory supervised release is

mandated by statute. *Whitfield*, 217 Ill. 2d at 202-05, 840 N.E.2d at 673-75. In his petition, defendant stated he did not want to withdraw his plea agreement but wanted to enforce the agreement. OSAD notes defendant has completed his sentences in cases 417 and 13. Accordingly, defendant's prison terms cannot now be reduced. Thus, we only address defendant's mandatory supervised release arguments as to case 33.

¶ 42           Regarding case 33, section 5-8-1(d) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d) (West 2006)) mandates the imposition of a mandatory supervised release term whenever the trial court imposes a prison sentence. *People v. Andrews*, 403 Ill. App. 3d 654, 664, 936 N.E.2d 648, 657 (2010). Thus, this court emphasized the parties have nothing to negotiate regarding a mandatory supervised release term as the trial court must impose the mandatory supervised release term mandated by the statute. *Andrews*, 403 Ill. App. 3d at 664, 936 N.E.2d at 657. Therefore, no error occurred because the mandatory supervised release term was not part of the plea negotiations or expressed in the plea agreement.

¶ 43           As to what the court had to advise defendant regarding mandatory supervised release, this court has held that, "as long as the trial court informs a defendant at the time of his guilty plea that an MSR [(mandatory supervised release)] term must follow any prison sentence that is imposed upon him, he has received all the notice and all the due process to which he is entitled regarding MSR." *Andrews*, 403 Ill. App. 3d at 665, 936 N.E.2d at 657. In this case, the court informed defendant of the term of mandatory supervised release that would follow a prison sentence in setting forth the penalties for the methamphetamine-conspiracy charge. Moreover, since the court explained a three-year term of mandatory supervised release would be added to defendant's agreed 10-year sentence, the court's admonishment regarding mandatory supervised

release even meets the Second District's requirement the admonishment must link the mandatory supervised release term to the actual sentence the defendant would receive under his plea agreement. See *People v. Burns*, 405 Ill. App. 3d 40, 43-45, 933 N.E.2d 1208, 1212-13 (2010).

¶ 44 Thus, we find defendant's mandatory supervised release argument is also frivolous and patently without merit.

¶ 45 *4. Admonishments Regarding Appeals*

¶ 46 Defendant next asserts the trial court failed to admonish him about his right to file a motion to reduce his sentence.

¶ 47 In this case, defendant's sentence and resentences were the result of a fully negotiated guilty plea or admission as all of the sentences were agreed upon. Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) contains the admonishments regarding appeals when the judgment and sentence was entered on a negotiated guilty plea and informs the defendant he must file a motion to withdraw the guilty plea and vacate the judgment to perfect his appeal rights. The reason for that is fully negotiated guilty pleas are governed by contract-law principles. *People v. Absher*, 242 Ill. 2d 77, 87, 950 N.E.2d 659, 666 (2011). Our supreme court has determined "that to allow a defendant to unilaterally modify the terms of a fully negotiated plea agreement while holding the State to its part of the bargain 'flies in the face of contract law principles' [citation], because 'the guilty plea and the sentence "go hand in hand" as material elements of the plea bargain' [citation]." *Absher*, 242 Ill. 2d at 87, 950 N.E.2d at 666. Thus, the defendant can only seek to modify the terms of a fully negotiated guilty plea by withdrawing that plea and vacating the judgment since that returns the parties to the *status quo* before the agreement. *Absher*, 242 Ill. 2d at 87, 950 N.E.2d at 666. While Rule 605(c) does not apply to

probation-revocation proceedings (*People v. Tufte*, 165 Ill. 2d 66, 76, 649 N.E.2d 374, 379 (1995)), the same contract principles would apply to a fully negotiated resentencing in a probation-revocation proceeding. Accordingly, in both proceedings, defendant could not file a motion to reduce his sentence to challenge the agreed-upon sentences. Thus, the trial court did not err by failing to admonish him about such a motion, making this issue also frivolous and patently without merit.

¶ 48

#### *5. Ineffective Assistance of Counsel*

¶ 49 Last, defendant argues his counsel was ineffective for failing to advise him of his right to file a motion to reduce his sentence. Since we have found defendant was not entitled to file such a motion, this issue too is frivolous and patently without merit.

¶ 50

### III. CONCLUSION

¶ 51 For the reasons stated, we agree with OSAD that no viable issue of legal merit can be raised on appeal and find OSAD has provided defendant with reasonable representation. Thus, we grant OSAD's motion and affirm the trial court's dismissal of defendant's postconviction petition.

¶ 52

Affirmed.