

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) 100599-U

Filed 10/12/11

NO. 4-10-0599

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
KAREEM A. VAUGHN,)	No. 10CF541
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The court granted appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirmed the trial court's judgment where counsel concluded no meritorious issues could be raised on appeal as to whether (1) defendant's guilty plea was coerced; (2) defendant received ineffective assistance of counsel since defense counsel (a) only spoke to him on three occasions for a total of 15 minutes, (b) did not fight for a better plea agreement, and (c) failed to inform defendant of his right to withdraw his guilty plea and his right to request a sentence reduction; and (3) the State violated defendant's constitutional rights by charging him by information rather than by indictment.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal because no meritorious issues can be raised in this case. We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2010, defendant, Kareem A. Vaughn, entered into a negotiated plea with

the State. Under the plea agreement (1) defendant would plead guilty to one count of unlawful possession of a controlled substance with intent to deliver (cocaine) (720 ILCS 570/401(a)(2)(a) (West 2010)) in exchange for a 25-year prison sentence, and (2) the State would agree to dismiss the charges in Champaign County case Nos. 10-CF-236 and 10-CF-519. After the trial court discussed the terms of the plea with defendant, the following exchange took place:

"THE COURT: So you understand that by pleading guilty that means we won't have a trial?

DEFENDANT: Yes.

THE COURT: Is your plea of guilty today voluntary? Is this of your own free will?

DEFENDANT: Yes.

THE COURT: I understand the situation, sir, but I want to make sure this is a decision that you're making; is that correct?

DEFENDANT: Yes.

THE COURT: All right. Has anyone forced you or threatened you in any way to get you to plead guilty?

DEFENDANT: Uh-uh. No."

¶ 5 After discussing the plea agreement with defendant, the trial court requested the factual basis, which showed the following. In January 2010, officers of the Champaign police department narcotics unit served a warrant on defendant's residence. Defendant arrived at the scene after officers had entered his home and was placed under arrest. Officers recovered 54.6 grams of crack cocaine inside defendant's residence. The crack cocaine was packaged in 13

individual Baggies. Police questioned defendant at the scene and he admitted the crack cocaine was his. Defendant told officers he had been selling crack cocaine for several months.

¶ 6 After hearing the factual basis, defense counsel admitted it was substantially accurate, and defendant persisted in his guilty plea. The trial court accepted defendant's plea, and sentenced him to 25 years' imprisonment. The charges in case Nos. 10-CF-236 and 10-CF-519 were dismissed per the plea agreement. Defendant did not file a direct appeal.

¶ 7 In June 2010, defendant filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 through 122-8 (West 2010)). In his petition, defendant alleged (1) he was coerced into pleading guilty; (2) he received ineffective assistance of counsel because (a) he only spoke to trial counsel on three occasions for a total of 15 minutes, (b) counsel did not "fight for a better 'plea agreement,'" and (c) counsel failed to inform him he could file a motion to withdraw his guilty plea or a motion to reduce his sentence; and (3) the State violated his constitutional rights by charging him by information instead of by indictment. In July 2010, the trial court summarily dismissed defendant's petition as frivolous and patently without merit.

¶ 8 In July 2010, defendant filed a notice of appeal, and OSAD was appointed as defense counsel. In June 2011, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by July 29, 2011. Defendant filed none. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 9

II. ANALYSIS

¶ 10 OSAD argues this appeal presents no meritorious claim upon which defendant could realistically expect to obtain relief. We agree.

¶ 11 A. Timeliness of Trial Court's Dismissal

¶ 12 Under section 122-2.1(a) of the Postconviction Act (725 ILCS 5/122-2.1(a) (West 2010)), the trial court was required to enter an order on defendant's petition within 90 days of the date it was filed and docketed. Upon determining the petition was frivolous and patently without merit, the court was required to provide defendant with a written order dismissing the petition within 10 days of its entry. 725 ILCS 5/122-2.1(a)(2) (West 2010).

¶ 13 In the case at bar, defendant filed his petition on June 16, 2010. On July 2, 2010, the trial court entered an order dismissing defendant's petition as frivolous and patently without merit. On July 6, 2010, the court notified defendant of the dismissal and informed him of his right to appeal its decision. In both instances, the court met the time requirements under section 122-2.1(a) of the Postconviction Act. We agree with OSAD no meritorious argument can be made regarding this issue.

¶ 14 B. Defendant's Postconviction Petition

¶ 15 "The Post-Conviction Hearing Act *** [citation] provides a remedy for defendants who have suffered a substantial violation of their constitutional rights at trial." *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). An action for postconviction relief is a collateral attack on the proceedings, not an appeal on the merits. *People v. Harris*, 206 Ill. 2d 1, 12, 794 N.E.2d 314, 323 (2002). "The purpose of a post-

conviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal." *Id.*

¶ 16 At the first stage of a postconviction proceeding, the trial court must independently review the petition within 90 days and determine whether it is frivolous or patently without merit. *Edwards*, 197 Ill. 2d at 244, 757 N.E.2d at 445. If the court determines the petition is subject to summary dismissal at the first stage, it must dismiss the petition in a written order. *Id.* This court has stated, "[t]o withstand dismissal at the first stage of postconviction proceedings, a *pro se* petition for postconviction relief need only contain a simple statement that presents the gist of a claim for relief when nothing in the trial record contradicts that claim." (Internal quotation marks omitted.) *People v. Patton*, 315 Ill. App. 3d 968, 972, 735 N.E.2d 185, 189 (2000); see also *Edwards*, 197 Ill. 2d at 244, 757 N.E.2d at 445 ("The gist standard is a low threshold." (Internal quotation marks omitted.)). However, where a voluntary plea of guilty has been entered and accepted, nonjurisdictional constitutional errors or irregularities are considered waived, and "the petitioner cannot complain of any denial of constitutional rights unless there is some substance to his claim, implied in the petition, that his guilty plea was involuntary." *People v. Newell*, 41 Ill. 2d 329, 331, 243 N.E.2d 200, 201 (1968).

¶ 17 In the present case, defendant's coercion claim is belied by the record. The trial court asked defendant if his plea was voluntary and of his own free will, and he stated it was. The court then asked defendant if this was a decision he wanted to make, and he stated it was. Finally, the court asked defendant if anyone forced him or threatened him in any way to plead guilty, and he replied they had not. Nothing in the record supports defendant's coercion claim.

Given defendant's statements in response to the court's inquiries, we conclude the State did not coerce defendant into entering into the plea agreement. Because we conclude defendant's guilty plea was voluntary, his remaining claims are waived.

¶ 18

III. CONCLUSION

¶ 19 After reviewing the record consistent with our responsibilities under *Finley*, we agree with OSAD defendant failed to raise any meritorious issues in his appeal, and we grant OSAD's motion to withdraw as counsel for defendant and affirm the trial court's judgment.

¶ 20

Affirmed.