

NOTICE

Decision filed 03/30/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0008

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff,	)	Circuit Court of
	)	Hamilton County.
v.	)	No. 07-CF-18
	)	
WILLIAM J. CRAIG,	)	
	)	
Defendant	)	Honorable
	)	Barry L. Vaughan,
(William J. Craig, Petitioner-Appellant, v. The State	)	Judge, presiding.
of Illinois, Respondent-Appellee).	)	

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JUSTICE STEWART delivered the judgment of the court.  
Presiding Justice Chapman and Justice Donovan concurred in the judgment.

**RULE 23 ORDER**

*Held:* Where the petitioner raises the issue of an improper admonishment for the first time on appeal, the sentence is not void and the issue is forfeited.

The petitioner, William J. Craig, appeals the circuit court's dismissal of his postconviction petition. He prays that this court will reverse the dismissal of his postconviction petition and remand the case to the circuit court for the entry of an order reducing his sentence. For the following reasons, we affirm the circuit court's judgment.

BACKGROUND

The petitioner pled guilty to attempted unlawful procurement of anhydrous ammonia in exchange for the State recommending a 10-year sentence of imprisonment. The circuit court adopted the plea agreement after finding that a factual basis existed. On December 9, 2009, the petitioner filed a postconviction petition. In the postconviction petition, he argued that the factual basis provided to the court was insufficient because it did not establish any

intent. He also argued that he had been provided ineffective assistance of counsel when his attorney failed to investigate the possibility of an entrapment defense. The court dismissed the petition, finding that there was not a requirement for the petitioner to agree with the factual basis and that the petitioner's claim did not constitute an entrapment defense. The petitioner filed this timely appeal.

## ANALYSIS

On appeal, the petitioner focuses on the argument that he was not given a proper admonishment by the court regarding mandatory supervised release, and he asks that his sentence be reduced to eight years of imprisonment to allow him to receive the benefit of his bargain. He asserts that the improper admonishment is a due process violation and that therefore his petition states the gist of a constitutional claim and should not have been dismissed. He further argues that the improper admonishment makes his sentence void and that, thus, the issue can be raised at any time. The issues raised in his postconviction petition are not raised on appeal.

In response, the State argues that the petitioner raises the issue of an improper admonishment for the first time on appeal and that, therefore, it is forfeited. It also argues that an improper admonishment does not make a sentence void. In the alternative, the State argues, forfeiture aside, that the petitioner was aware of the mandatory-supervised-release term and that, thus, this court should affirm the circuit court's dismissal of the postconviction petition.

We review *de novo* the dismissal of a postconviction petition without an evidentiary hearing. *People v. Coleman*, 183 Ill. 2d 366, 389 (1998). We first address the issue of forfeiture. The Post-Conviction Hearing Act governs the filing of postconviction petitions, and section 122-3 states, "Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." 725 ILCS 5/122-3 (West 2004). Any

issue to be reviewed must be included in the postconviction petition filed in the circuit court, and a defendant may not raise an issue for the first time on appeal. *People v. Petrenko*, 237 Ill. 2d 490, 502 (2010).

In the instant case, the petitioner did not include in his postconviction petition his argument regarding an improper admonishment. It is raised for the first time on appeal, and thus, it is forfeited.

We also reject the petitioner's claim that an improper admonishment renders the sentence void. "A void judgment is one entered by a court (1) without jurisdiction or (2) that exceeded its jurisdiction by entering an order beyond its inherent power." *People v. Johnson*, 327 Ill. App. 3d 252, 256 (2002). Generally, an improper admonishment does not render the defendant's conviction and sentence void. *People v. Gregory*, 379 Ill. App. 3d 414, 418 (2008). Here, the court's jurisdiction is not at issue. Thus, even assuming that there was an improper admonishment, the judgment would still not be rendered void and the defendant's claim is subject to the forfeiture rule.

In conclusion, the petitioner's improper-admonishment claim is forfeited, and the circuit court's dismissal of the postconviction petition is affirmed. In light of our decision, we do not address the issue of whether an improper admonishment actually occurred.

#### CONCLUSION

For the foregoing reasons, we affirm the circuit court's dismissal of the petitioner's postconviction petition.

Affirmed.