

NOTICE

Decision filed 05/09/11. 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. 5-09-0457

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 04-CF-2487
)	
LARRY M. JORDAN,)	Honorable
)	James Hackett,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Chapman and Justice Stewart concurred in the judgment.

R U L E 2 3 O R D E R

Held: Where the record supports the circuit court's decision to deny the defendant's postconviction petition, there is no manifest error and the denial of the postconviction petition is affirmed.

The defendant, Larry Jordan, appeals the circuit court's denial of his postconviction petition after a third-stage evidentiary hearing. The defendant argues that he received ineffective assistance of counsel which rendered his plea involuntary. He requests that this court enter an order reversing the circuit court's order dismissing his postconviction petition and remand the cause for further proceedings in the circuit court. For the following reasons, we affirm.

BACKGROUND

On March 7, 2005, the defendant pled guilty to one count of armed violence in exchange for the State dismissing three other counts and recommending a 14-year sentence of imprisonment. The plea hearing, presided over by the Honorable Ann Callis, occurred in pertinent part as follows:

"THE COURT: *** Sir, did you listen to the plea negotiations and the factual basis set forth by your attorney?

MR. JORDAN: Yes, ma'am, I did.

Q. And you're in agreement with the plea negotiations?

A. I guess. I get what I get.

Q. You—are you in agreement with the plea negotiations?

A. Yes, ma'am.

* * *

THE COURT: *** Do you understand what you are charged with as stated?

MR. JORDAN: Oh, yes, ma'am.

Q. And you wish to plead guilty to that charge?

A. Yes, ma'am.

Q. That's a Class X Enhanced Felony, 10 to 30 years, a fine not to exceed \$25,000.00, and Mandatory Supervised Release time of 3 years.

Do you understand your possible range of penalties?

A. Yes, ma'am.

Q. And you wish to persist in your plea of guilty?

A. Yes, ma'am.

* * *

Q. Has anybody forced you to enter into this plea today?

A. I feel like I was badly coaxed, if I can say that.

Q. Well, if—if someone forced you to enter into this plea today, I cannot bind myself to the plea.

A. No, it's—

Q. So, we're going to—to go to trial.

A. Yes,—no, I don't want to go to no trial.

Q. Well, has anybody forced you to enter—

A. No, nobody forced me to do anything. I just—don't hit me no more with that ugly stick. That's what I'm saying. Let's—I'm agreeing.

Q. So, no one has forced you to enter this plea today?

A. No.

Q. No one has made any threats against you to enter into this plea today?

A. No.

Q. No one promised you anything other than the plea negotiations to enter into this plea today?

A. Not today. Not today.

Q. You're entering into this plea knowingly and voluntarily?

A. Yes, ma'am.

Q. Are you entering into this plea of your own free will?

A. Yes, ma'am."

The court accepted the terms of the negotiated plea agreement.

The defendant did not file a motion to withdraw his guilty plea or a direct appeal. On April 17, 2006, the defendant filed a postconviction petition. In the petition, he alleged that he received ineffective assistance of counsel and that if these errors had not occurred, he would have insisted on a jury trial. He asked that the court allow him to withdraw his guilty plea and that he be permitted to proceed to a jury trial.

On April 19, 2006, the circuit court summarily dismissed the defendant's postconviction petition based on the doctrines of forfeiture and *res judicata*. The defendant appealed the dismissal. On September 14, 2007, the reviewing court reversed the dismissal and remanded for further proceedings. *People v. Jordan*, No. 5-06-0234 (Sept. 14, 2007)

(unpublished order pursuant to Supreme Court Rule 23 (eff. July 1, 1994)).

The circuit court appointed counsel for the defendant, and on August 6, 2009, an evidentiary hearing was held. On August 20, 2009, the court denied the postconviction petition, holding that there was no basis for the claim of ineffective assistance of counsel. The court stated as follows:

"There is no ineffective assistance of counsel claim substantiated here. The court does not find that there was any lack of preparation on the part of defendant's attorney. Mr. Hildebrand appears to be familiar with the facts of this case. There was no trickery in this case by the attorney or mistake by the defendant at the plea. It appears that a recommendation was made by the attorney to the defendant after reviewing the case and speaking to the state's attorney. Attorney Hildebrand's alleged other problems with a busy docket do not result in a measurable effect herein. Defendant's claim that he might have done better at trial is speculation which does not require a remedy at this time."

The defendant filed this timely appeal. The Office of the State Appellate Defender (OSAD) was appointed as the defendant's counsel. On August 27, 2010, OSAD filed a motion to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). On September 7, 2010, the defendant filed a motion to proceed *pro se* on appeal. On October 18, 2010, the court granted both the motion to withdraw as counsel and the defendant's motion to proceed *pro se* on appeal.

ANALYSIS

On appeal, the defendant argues that he received ineffective assistance of counsel from his plea counsel. The defendant argues that he was "manipulated" by plea counsel to accept the plea agreement and plead guilty because counsel was not prepared for a trial. The defendant contends that he would have chosen to go to a jury trial if he had a more

competent attorney. He contends that the postconviction court abused its discretion because his allegations were supported by the record. The defendant requests that this court enter an order reversing the circuit court's denial of his postconviction petition and remand the cause so that he may be allowed to withdraw his guilty plea and proceed to a trial.

In response, the State argues that the record clearly reflects that the defendant's plea was entered knowingly and voluntarily and that the defendant's plea counsel was reasonable in advising a defendant with an extensive criminal background and no solid defense to consider the negotiated agreement. The State contends that the circuit court properly denied the defendant's postconviction petition after the evidentiary hearing.

On appeal, the circuit court's decision to grant or deny relief at the third stage of a postconviction proceeding will not be disturbed unless it is manifestly erroneous. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). "The term 'manifest error' means error that is 'clearly evident, plain, and indisputable.'" *Coleman*, 206 Ill. 2d at 277 (quoting *People v. Ruiz*, 177 Ill. 2d 368, 384-85 (1997)).

Moreover, a claim of ineffective assistance of counsel in a postconviction petition is reviewed under the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). This requires the defendant to show (1) that counsel's representation fell below an objective standard of reasonableness (*Id.* at 687) and (2) that he was prejudiced to the extent that absent counsel's errors, the result of the proceeding would have been different (*Id.* at 694).

In the instant case, the defendant's claim of ineffective assistance of counsel was reviewed by the circuit court in an evidentiary hearing. At the hearing, there was conflicting statements by the plea counsel and the defendant regarding the representation of the defendant. The circuit court had the opportunity to listen to the conflicting testimony and chose to credit the plea counsel's testimony as more plausible. The circuit court found that the plea counsel was prepared and familiar with the case. It denied the petition, holding that

there was no claim of ineffective assistance of counsel substantiated. We will not disturb this judgment absent a manifest error. The record reflects that the defendant did have an extensive criminal history and that a strong defense was not available.

Moreover, the record reflects that at the plea hearing the circuit court extensively questioned the defendant regarding the voluntariness of his plea. Although the defendant at one point stated that he felt he had been "coaxed" into pleading guilty, he made it clear afterwards that he still wanted to plead guilty by his own free will, by asserting to the judge that his plea was voluntary and that he did not want to go to a trial. Therefore, we find no manifest error made by the circuit court and affirm the denial of the postconviction petition.

CONCLUSION

For the foregoing reasons, we affirm the circuit court's order denying the defendant's postconviction petition.

Affirmed.