

No. 1-10-2191

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 05 CR 352
)	
JERRELL MATTHEWS,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Summary dismissal of defendant's *pro se* postconviction petition affirmed; the circuit court's written order summarily dismissing the petition in its entirety as frivolous and patently without merit was not a void partial summary dismissal, as there was no procedural impropriety in failing to specifically address each claim raised in the petition.

¶ 2 Defendant Jerrell Matthews appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2010). On appeal, defendant contends that the circuit court's failure to address one of the issues in his petition violated the proscription against partial summary dismissals and the requirement that petitions be ruled on within 90 days. We affirm.

1-10-2191

¶ 3 Following a bench trial, defendant was convicted of the first-degree murder of Dushawn Shelby and sentenced to 50 years in prison. On direct appeal, defendant raised only one issue, that the circuit court erred in admitting evidence of defendant's involvement in drug activity. As that issue had not been preserved for appeal, defendant asked that we review it as plain error. Upon review of the evidence in the context of a plain-error analysis, we concluded that the trial evidence was not closely balanced and declined to excuse defendant's forfeiture of the issue raised on appeal. *People v. Matthews*, No. 1-07-2407 (2009) (unpublished order under Supreme Court Rule 23).

¶ 4 On April 23, 2010, defendant filed a 24-page *pro se* petition for postconviction relief. The petition alleged ineffective assistance by defendant's trial counsel, describing a number of specific examples of trial counsel's alleged deficiencies, and claimed the evidence of defendant's guilt was insufficient, primarily because the testimony of the State's principal witness, Derrell Wilson, who testified he was present when defendant shot Shelby, was improbable, unbelievable, and inconsistent. The petition also asserted that counsel on appeal was ineffective for failing to raise the issues of "reasonable doubt given the weak and uncertain credibility" of Wilson and the deficient performance of defendant's trial counsel.

¶ 5 On June 14, 2010, the circuit court summarily dismissed the *pro se* postconviction petition in a written order. Both in its oral remarks and its written order, the court ruled that one of defendant's arguments, that the State failed to prove him guilty beyond a reasonable doubt, could have been raised on direct appeal and was not an issue for postconviction review. The written order addressed other issues raised in the petition but did not specifically address whether defendant's counsel on direct appeal was ineffective for failing to argue insufficiency of the evidence. The dismissal order concluded: "Therefore, the court finds that the issues raised and presented by petitioner are frivolous and patently without merit. Accordingly, the petition for post-conviction relief is hereby dismissed."

1-10-2191

¶ 6 On appeal, defendant contends that the circuit court dismissed his postconviction petition without ruling on one of the issues presented therein, *i.e.*, that defendant's appellate counsel was ineffective for failing to raise the issue of insufficiency of the evidence. The result, defendant asserts, is that the order was only a partial dismissal of the petition and contravened both the requirement that the petition be ruled on within 90 days of its filing and the proscription against partial summary dismissal of a postconviction petition. Defendant concludes that this cause must be remanded to the circuit court for second-stage proceedings.

¶ 7 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) permits collateral constitutional challenges to criminal convictions and sentences. *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007). A *pro se* postconviction petition may be dismissed summarily 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 (2009). Section 122-2.1(a) of the Act requires the circuit court to examine a postconviction petition and enter an order thereon within 90 days. 725 ILCS 5/122-2.1(a) (West 2010). A petition survives the first stage of proceedings if the circuit court fails to make a finding within 90 days that it is frivolous. 725 ILCS 5/122-2.1 (West 2010); *People v. Brooks*, 221 Ill. 2d 381, 389 (2006). In a multi-claim petition, "summary partial dismissals made during the first stage of a post-conviction proceeding are not permitted under the Act." *People v. Rivera*, 198 Ill. 2d 364, 374 (2001). If some claims are subject to a dismissal at the first stage while others are not, the entire postconviction petition must be docketed for second-stage proceedings. 725 ILCS 5/122-2.1(b) (West 2010); *People v. Johnson*, 377 Ill. App. 3d 854, 858 (2007), citing *Rivera*, 198 Ill. 2d at 370-71. We review *de novo* the summary dismissal of a postconviction petition. *People v. Brown*, 225 Ill. 2d 188, 198 (2007). An appellate court may affirm the trial court's dismissal of a postconviction petition on any basis shown by the record. *People v. Davis*, 382 Ill. App. 3d 701, 706 (2008).

1-10-2191

¶ 8 We concur that the circuit court was required to issue a written order either dismissing all of the issues or ordering that the entire petition be docketed for further consideration. The record demonstrates that the court did precisely that. In dismissing defendant's postconviction petition 52 days after it was filed and docketed, the circuit court explicitly found in its written order that the issues raised in the petition were frivolous and patently without merit.

¶ 9 Defendant relies on section 122-2.1(a)(2) of the Act and *People v. Porter*, 122 Ill. 2d 64, 85 (1988) in support of his claim that the circuit court's summary dismissal order was void where it failed to review all of his claims within the 90-day period prescribed by the Act. Defendant argues that the circuit court's failure to address his claim of ineffective appellate counsel within 90 days is tantamount to a first-stage partial summary dismissal of his petition, which our supreme court prohibited in *Rivera*, 198 Ill. 2d at 374. We disagree. Unlike *Rivera*, where the circuit court summarily dismissed four of the six claims raised in the defendant's postconviction petition and appointed an attorney to assist him with presentation of his two remaining claims at the second stage of postconviction proceedings, here the circuit court did not appoint counsel and did not advance any claim to the second stage. The plain and ordinary meaning of the dismissal order entered here is that the court considered all of the issues raised and deemed all of the issues to be meritless, and that the entire petition was dismissed. We conclude that, within 90 days after the filing and docketing of defendant's petition, the court examined the petition and entered a written order pursuant to section 122-2.1(a)(2) of the Act, dismissing the petition in its entirety.

¶ 10 Defendant contends, however, that where the court issued a written decision addressing his claims, "it had to address all of those claims and not engage in a piecemeal analysis." However, given that the circuit court is not required to specify any factual findings or legal conclusions in an order dismissing a postconviction petition (*Porter*, 122 Ill. 2d at 82-83), it follows that its failure to explicitly address a specific claim does not require reversal. In *People v. Lee*, 344 Ill. App. 3d 851 (2003), we held that where the circuit court's dismissal order failed to

1-10-2191

give reasons for dismissing one of the claims in the petition but plainly intended to dismiss the entire postconviction petition, *Rivera* did not require reversal. *Id.* at 854-55. The same result obtains in the instant case. Defendant suffered no prejudice from the lack of specific findings on his claim regarding ineffective assistance of appellate counsel because the circuit court's decision was subject to *de novo* review, and defendant was free to argue on appeal that the claim was not frivolous and patently without merit. As defendant does not advance that argument on appeal, we do not address it.

¶ 11 For the reasons stated, we conclude that the circuit court's choice to not specifically address one of the claims raised in defendant's *pro se* postconviction petition was not the equivalent of a partial summary dismissal. The order summarily dismissing the petition in its entirety is affirmed.

¶ 12 Affirmed.