

No. 1-10-2281

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. 04 CR 21178
)	
RONALD HILLOCK,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* The dismissal of defendant's post-conviction petition is affirmed, where defendant did not make a substantial showing that he was deprived of the effective assistance of trial and appellate counsel.
- ¶ 2 Defendant Ronald Hillock appeals from the second-stage dismissal of his petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2008). On appeal, defendant contends that his petition made a substantial showing that he was denied effective assistance of appellate counsel where counsel did not argue that the trial court failed to properly admonish him that he would be required to serve mandatory consecutive sentences.

Defendant also contends that appellate counsel was ineffective for failing to raise the issue of trial counsel's ineffectiveness, where counsel did not investigate a fraudulent job offer letter that was presented to the trial court in mitigation at sentencing. We affirm.

¶ 3 Defendant entered non-negotiated guilty pleas to nine counts of theft and one count of identity theft from several small businesses that had employed him as their accountant. For the first eight convictions, the trial court sentenced defendant to concurrent terms of 14 years' imprisonment for each of the four Class 1 thefts and to 6 years' imprisonment for each of the four Class 2 thefts. For the two remaining offenses, which occurred while defendant was free on bond for the previous crimes, the court sentenced defendant to concurrent prison terms of 15 years for the Class 1 theft and 3 years for the Class 4 identity theft, which ran consecutive to the sentences for the eight prior crimes, for an aggregate sentence of 29 years' imprisonment.

¶ 4 At the outset of the plea proceedings on January 31, 2006, the trial court read through each of the 10 charges, and defendant acknowledged that he was pleading guilty to each count. The trial court then stated:

"So, basically you have Class 1's, Class 2's and Class 4 offenses, and a term of imprisonment for these charges, from what I understand from the parties, and I assume that's correct, that you are still eligible for probation. In other words, there's no mandatory statutory prohibition, however, if you're sentenced to imprisonment on a Class 1 it's 4 to 15 years, on a Class 2 it's 3 to 7 years, and on a Class 4 it's 1 to 3 years in the Illinois Department of Corrections, up to \$25,000 fine on each charge, as well as other mandatory fines, fees and costs. And upon your release from prison, if you are sentenced to prison, 3 - 2 years on the Class 1 and

Class 2 and 1 year on the Class 4 of Mandatory Supervised

Release, which is what we use to call parole."

After defendant stated that he understood that admonishment, the court instructed defendant that by pleading guilty he was giving up his rights to a trial, present evidence, and testify. Defendant then indicated that nobody made any promises or threats to force him to plead guilty, and that he was pleading guilty voluntarily. The court received the factual basis for each charge and entered a judgment of guilty on all 10 counts. The case was then continued for a sentencing hearing.

¶ 5 During the hearing on February 22, 2006, consecutive sentencing was discussed in open court on three occasions. First, after the State rested in aggravation, the State and the court discussed that the sentences for the offenses that were committed while defendant was out on bond would run consecutive to the sentences for his prior offenses. Second, while recommending a sentence for defendant, the prosecutor noted that mandatory consecutive sentences were required. Third, in continuing the case, the court stated that it would consider imposing "consecutive versus concurrent" sentences.

¶ 6 Also, during the hearing on February 22, defendant made several arguments in mitigation. He stated that a letter written by Mr. and Mrs. Vasquez, that was part of the presentence investigation report, showed that he had a job offer in Texas with a trucking company called South Texas Trucking. The trial court questioned the authenticity of the letter and continued the hearing. When the parties reconvened on March 10, 2006, the State informed the court that a detective investigated the information in the job offer and discovered it to be false. The trial court stated that if the letter was fraudulent, it would be an aggravating factor in determining defendant's sentence. The court continued the case again to allow the defense an opportunity to conduct its own investigation into the authenticity of the letter, but, during the subsequent hearing on March 24, 2006, defense counsel stated that he was unable to obtain any further

information. Defendant, however, stated that the letter was mailed to his attorney six months ago, the employer had moved, and that he did in fact have a job offer. Following defendant's statements, the trial court and the State again discussed in open court that the sentences for the offenses defendant committed while he was out on bond would be served consecutively to his other offenses.

¶ 7 In sentencing defendant, the trial court found that defendant lied about being an accountant and diverted \$2,700,000 from the victims for his own personal use. The trial court also found it improbable that defendant had received a letter offering him employment. The trial court sentenced defendant to a total of 29 years' imprisonment on his guilty pleas. Defendant filed motions to reconsider his sentence and withdraw his pleas based on the length of his sentence, but he did not assert that his pleas were involuntary because he had not been admonished regarding the imposition of mandatory consecutive sentences. The trial court denied defendant's post-sentencing motions.

¶ 8 On direct appeal, defendant did not challenge his pleas, but contended that the trial court abused its discretion in sentencing him. We rejected defendant's arguments and affirmed the trial court's judgment. *People v. Hillock*, No. 1-06-1951 (2008) (unpublished order under Supreme Court Rule 23).

¶ 9 On June 12, 2008, defendant filed a *pro se* post-conviction petition alleging that appellate counsel was ineffective where counsel did not argue that the trial court failed to properly admonish him that he would be required to serve mandatory consecutive sentences. He also maintained that his appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness for failing to investigate erroneous information concerning defendant's employment.

¶ 10 On March 30, 2009, after the circuit court appointed defendant post-conviction counsel, defendant filed an amended petition, alleging that his post-conviction counsel had a conflict of interest because she believed his trial attorney instead of him.

¶ 11 On August 5, 2009, defendant's appointed counsel filed a supplemental petition, asserting that defendant's pleas of guilty were involuntary because the trial court failed to properly admonish him that his sentences would be consecutive, as required by Illinois Supreme Court Rule 402 (eff. July 1, 1997). The State moved to dismiss defendant's petition, and the trial court granted the State's motion. In doing so, the circuit court found that the record refuted defendant's claims, and that defendant, having deceived his own counsel by submitting the false letter, could not complain that his attorney was ineffective for not saving his client from himself.

¶ 12 In this appeal, defendant challenges the propriety of that dismissal, arguing that he made a substantial showing that he received ineffective assistance of trial and appellate counsel.

¶ 13 The State initially responds that because defendant failed to raise his ineffective assistance claims prior to the post-conviction proceedings, he forfeited these arguments. Where a defendant has previously taken a direct appeal from a judgment of conviction, the judgment of the reviewing court is *res judicata* as to all issues decided by the court, and any other claims that could have been raised on direct appeal, but were not, are waived. *People v. Enis*, 194 Ill. 2d 361, 375 (2000). These procedural bars are relaxed, however, where the alleged waiver stems from the incompetence of appellate counsel. *People v. Harris*, 206 Ill. 2d 1, 33 (2002). Here, defendant alleges in his petition that both his trial and appellate counsel were ineffective. Therefore, we address the merits of defendant's claims. *Harris*, 206 Ill. 2d at 33-34.

¶ 14 The dismissal of a post-conviction petition is warranted at the second stage of proceedings when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation. *People v. Hall*, 217 Ill. 2d 324,

334 (2005); *People v. Coleman*, 183 Ill. 2d 366, 382 (1998). We review the court's dismissal of a post-conviction petition without an evidentiary hearing *de novo*. *Coleman*, 183 Ill. 2d at 389.

¶ 15 To prevail on a claim of ineffective assistance of counsel at the second stage, defendant must make a substantial showing that counsel's representation fell below an objective standard of reasonableness and that defendant was prejudiced by counsel's substandard performance. *Hall*, 217 Ill. 2d at 334-35 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

¶ 16 We first turn to the merits of defendant's claim that his appellate counsel was ineffective in failing to argue that he was not properly admonished regarding the imposition of mandatory consecutive sentences. See 730 ILCS 5/5-8-4(h) (West 2004); *People v. Watkins*, 325 Ill. App. 3d 13, 18 (2001) (stating that mandatory consecutive sentences are required when a defendant charged with a felony commits a separate felony while on pretrial release).

¶ 17 As relevant to this appeal, Rule 402 requires that the trial court inform defendant of "the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences." Ill. S. Ct. R. 402(a) (eff. July 1, 1997). Illinois courts have repeatedly held that a defendant's misapprehension as to sentencing alternatives may render a guilty plea involuntary if the defendant was actually unaware of the possible punishment. *People v. Davis*, 145 Ill. 2d 240, 249 (1991) (citing *People v. Roesler*, 195 Ill. App. 3d 1007, 1011 (1990); *People v. Kraus*, 122 Ill. App. 3d 882, 888 (1984); *People v. Turner*, 111 Ill. App. 3d 358, 371 (1982)). Yet, the failure to properly admonish a defendant, alone, does not automatically establish grounds for reversing the judgment or vacating the plea. *Davis*, 145 Ill. 2d at 250. The determination of whether reversible error has occurred depends on whether real justice has been denied or whether defendant has been prejudiced by the inadequate admonishment. *People v. Torres*, 228 Ill. 2d 382, 399, 888 N.E.2d 91 (2008); *Davis*, 145 Ill. 2d at 250. The entire record may be considered

in determining whether the defendant voluntarily pled guilty. *People v. Dougherty*, 394 Ill. App. 3d 134, 139 (2009).

¶ 18 In this case, the record demonstrates that the circuit court did not inform defendant that he was subject to mandatory consecutive sentences before accepting his pleas of guilty. The State concedes this fact but argues that the court substantially complied with the requirements of Rule 402. In particular, the State points out that the court discussed the imposition of mandatory consecutive sentences during the two sentencing hearings that took place in the weeks following the acceptance of defendant's pleas. We cannot agree with the State's argument because it ignores the critical fact that the court must substantially comply with the requirements set forth in Rule 402 prior to acceptance of a guilty plea. See Ill. S. Ct. R. 402(a).

¶ 19 Notwithstanding our rejection of the State's substantial-compliance argument, we agree that the dismissal of defendant's petition was proper. The Act mandates that a post-conviction petition "shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2010); *People v. Payne*, 336 Ill. App. 3d 154, 163-64 (2002). The failure to either attach the necessary affidavits or explain their absence is fatal to a post-conviction petition. See generally *People v. Collins*, 202 Ill. 2d 59, 66 (2002).

¶ 20 Here, defendant has not attached an affidavit to his post-conviction petition attesting that he was actually unaware that he was subject to consecutive sentencing and would not have pled guilty had he been advised that consecutive sentences were statutorily mandated for two of the crimes charged. Moreover, there is nothing in the record to indicate that, at the time he entered his guilty pleas, defendant did not understand that consecutive sentences were statutorily required for the two offenses that were committed while he was on pretrial release.

¶ 21 As previously noted, the record reveals that the circuit court discussed the imposition of mandatory consecutive sentences with the assistant State's Attorney at various points during the sentencing proceedings while defendant was present. In particular, at the hearing on February 22, 2006, the court discussed how mandatory consecutive sentences would apply to defendant on three separate occasions. With both parties present, the court stated, "So you have a class one and class four that are mandatory consecutive." The court repeated this comment again during the February 22 hearing, and also indicated that it was considering "consecutive versus concurrent" sentences when it continued the case. When the sentencing hearing resumed on March 24, 2006, the trial court asked, "[s]o if the statute is mandatory they would have to be consecutive to the other offenses," to which the State responded positively.

¶ 22 Despite defendant's contentions to the contrary, the record shows that defendant was present for these discussions. During the February 22 hearing, defendant read a statement to the court, and, during the March 24 hearing, defendant spoke to the court about the alleged job offer letter. Also, in the order dismissing defendant's petition, the trial court indicated that the matter of consecutive sentencing was discussed in open court and in defendant's presence. Defendant never indicated that he did not understand that mandatory consecutive sentences would be imposed upon him, nor did he object to the matter of consecutive sentencing. Defendant filed a motion to withdraw his guilty pleas after sentencing, but that motion was predicated on the length of his sentence and did not claim that his pleas were involuntary because he had not been admonished regarding the imposition of mandatory consecutive sentences.

¶ 23 Thus, defendant has not filed an affidavit attesting that he was unaware he was subject to mandatory consecutive sentences, nor has he pointed to anything in the record that would support such an assertion. In light of these circumstances, we conclude that defendant has failed to make

a substantial showing that the failure to raise this issue constituted ineffective assistance of his appellate counsel.

¶ 24 We further find that defendant's petition failed to substantially show that his trial counsel was ineffective for failing to investigate a letter proposing a job offer, which was determined by the trial court to be false. As stated above, to prevail on a claim of ineffective assistance of counsel at the second stage, defendant must make a substantial showing that counsel's representation fell below an objective standard of reasonableness and the defendant was prejudiced by counsel's substandard performance. *Hall*, 217 Ill. 2d at 334-35.

¶ 25 In this case, defendant read a written statement to the trial court indicating that he had a job offer. Defense counsel also maintained that he received a letter from Mr. and Mrs. Vasquez that showed defendant had a job waiting for him. When the trial court asked defense counsel about the individuals who wrote the letter, counsel stated that he had not talked to them, and would have to defer to defendant because he knew them. Subsequently, an investigator for the State determined that the address provided in the letter that proposed to be a trucking business was in fact a residence, and that someone else lived there who had never heard of defendant. The trial court indicated that if the letter was fraudulent, it would be considered an aggravating factor in sentencing. The trial court continued the case for defense counsel to follow up on the letter, but he was unable to obtain any additional information.

¶ 26 In evaluating trial counsel's performance at trial, we find that defendant failed to make any showing that counsel acted unreasonably for not investigating the legitimacy of the job offer letter. As the circuit court found, defendant cannot now complain that his attorney was ineffective for "not saving his client from himself." We also note that, in light of our determination that trial counsel was not ineffective, it cannot be said that appellate counsel's ineffectiveness constituted incompetence. *People v. Johnson*, 183 Ill. 2d 176, 187 (1998).

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¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 28 Affirmed.