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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 05-CF-567
)	
THOMAS F. COX, JR.,)	Honorable
)	T. Jordan Gallagher,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: The trial court properly summarily dismissed defendant's postconviction petition alleging that his guilty plea was coerced by a threat: when he pleaded guilty, he assured the trial court that he had not been threatened, and that assurance was controlling in light of the nature of the alleged threat and the absence of any explanation for why defendant could now reveal it.

¶ 1 Defendant, Thomas F. Cox, Jr., appeals from the summary dismissal of his *pro se* petition filed under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). Defendant argues that his petition was improperly dismissed, because it states the gist of a claim that his guilty plea was involuntary. For the reasons that follow, we affirm.

¶ 2

I. BACKGROUND

¶ 3 Defendant was charged with 10 counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2002)) and 6 counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2002)). On March 3, 2006, defendant entered an open guilty plea to one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2002)), and the State nol-prossed the remaining counts. The factual basis for the plea established that, from August 24, 1999, through October 1, 2003, defendant resided with the victim, A.C., who was born on August 24, 1995. A.C. would testify that, after she turned four, “defendant would come into her room when her mother was at work, and begin to fondle her sex organ with his fingers, that would proceed to him placing his penis inside of her sex organ.” She would further testify that “after the penis was in her sex organ that white gooey stuff would come out and he would wipe it off with a sock or towel.” This occurred approximately twice per week.

¶ 4 Prior to accepting the guilty plea, the court fully admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997). During the course of those admonishments, the following colloquy occurred:

“THE COURT: Finally, sir, as you stand here today, you are presumed innocent, the State would have to prove this charge beyond a reasonable doubt before you could be convicted.

By pleading guilty, you give up that presumption of innocence. Is that what you still want to do?

THE DEFENDANT: Yes.

THE COURT: What is your age, please?

THE DEFENDANT: 39.

THE COURT: How far have you gone in school?

THE DEFENDANT: Tenth grade.

THE COURT: [H]as anyone made any threats to cause you to plead guilty?

THE DEFENDANT: No.

THE COURT: Has anyone made any promises of any kind to cause you to plead guilty?

THE DEFENDANT: No.

THE COURT: Are you pleading guilty freely and voluntarily?

THE DEFENDANT: Yes.”

¶ 5 The trial court sentenced defendant to 20 years’ imprisonment. The sentence was to run consecutively to defendant’s 54-year sentence for three convictions of predatory criminal sexual assault in Kendall County. Defendant moved for reconsideration of his sentence, arguing that the court failed to give proper weight to mitigating factors. Following a hearing, the court denied defendant’s motion, and defendant timely appealed, arguing that his sentence was excessive. We affirmed. See *People v. Cox*, No. 2-07-0978 (2009) (unpublished order under Supreme Court Rule 23).

¶ 6 On November 23, 2010, defendant filed a *pro se* petition under the Act (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging, *inter alia*, that his guilty plea was involuntary because it was coerced by a threat from the victim’s mother, Roxanna, that she would not allow defendant to see his son if defendant did not plead guilty. According to defendant, Roxanna had conveyed the threat to defendant’s trial attorney, who then relayed the information to defendant and defendant’s mother,

Mary Ann Lauk. Defendant alleged that his trial attorney knew that defendant's plea was entered under duress and that his attorney failed to alert the trial court.¹ The petition further alleged that Roxanna told Lauk that Roxanna's daughter, the victim, had "lied about the abuse she suffered from [defendant]." To support his claim, defendant attached to his petition his own affidavit and that of Lauk.

¶ 7 On February 18, 2011, the trial court dismissed the petition as frivolous and patently without merit, finding that "no new claims of innocence were raised nor was there an argument validly alleging the denial of constitutional rights." Defendant timely appealed.

¶ 8 II. ANALYSIS

¶ 9 The Act provides a remedy to defendants who have suffered substantial violations of their constitutional rights. See 725 ILCS 5/122-1 (West 2010); *People v. Edwards*, 197 Ill. 2d 239, 243-44 (2001); *People v. Ramirez*, 162 Ill. 2d 235, 238-39 (1994). When the death penalty is not involved, there are three stages to proceedings under the Act. *Edwards*, 197 Ill. 2d at 244; *Ramirez*, 162 Ill. 2d at 239. "Proceedings under the Act are commenced by the filing of a petition in the circuit court in which the original proceeding took place." *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). "[A] postconviction petition must, among other things, 'clearly set forth the respects in which

¹Defendant makes references to ineffectiveness of counsel but did not include any such claim in his points and authorities, does not cite to authority in relation to this alleged defect and makes no argument as to how failure to stop the defendant from pleading guilty or apprising the trial court constitutes either coercion or ineffectiveness of counsel. To the extent that defendant may claim ineffectiveness of counsel, we deem the issue forfeited for failure to comply with Illinois Supreme Court Rule 341(h)(1), (7) (eff. July 1, 2008).

petitioner's constitutional rights were violated.' ” *Hodges*, 234 Ill. 2d at 9 (quoting 725 ILCS 5/122-2 (West 2006)). At the first stage, a defendant need present only a limited amount of detail in the petition. *Hodges*, 234 Ill. 2d at 9. The trial court independently reviews the petition within 90 days of its filing and determines whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2010); *Edwards*, 197 Ill. 2d at 244. If the petition is not dismissed at this stage, it advances to the second stage for the appointment of counsel. *People v. Mauro*, 362 Ill. App. 3d 440, 441 (2005). At the second stage, counsel may amend the petition and the State may file a motion to dismiss or an answer. *Mauro*, 362 Ill. App. 3d at 441. If the trial court does not dismiss or deny the petition at the second stage, the proceeding advances to the final stage, where the trial court conducts an evidentiary hearing. *Mauro*, 362 Ill. App. 3d at 441-42.

¶ 10 Because this petition was dismissed at the first stage of the postconviction process, we must determine whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2010); *Ramirez*, 162 Ill. 2d at 239-40. A petition is frivolous or patently without merit if it “has no arguable basis either in law or in fact. A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation.” *Hodges*, 234 Ill. 2d at 16. We review the summary dismissal of a petition *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 11 A guilty plea must be voluntary and intelligent. *People v. Blankley*, 319 Ill. App. 3d 996, 1007 (2001). Stated another way, a guilty plea may not be obtained by threats, coercion, or improper promises. See *People v. Pequeno*, 337 Ill. App. 3d 537, 544 (2003). Here, defendant claims that his petition states the gist of a claim that his “guilty plea was the product of coercion and ineffective assistance of counsel.” We disagree. Before accepting defendant’s guilty plea, the trial court held

a colloquy with defendant pursuant to Rule 402. Defendant assured the trial court that he was pleading guilty freely and voluntarily. He assured the trial court that no one had forced or threatened him into pleading guilty. In short, defendant assured the trial court that he was pleading guilty of his own free will. Now, more than four years after the fact, defendant seeks to contradict his own record statements. Specifically, he now insists that he pleaded guilty because of coercion rather than free will. In other words, defendant argues that, although he stated in open court that he had not been coerced into pleading guilty, he did not mean what he said.

¶ 12 This argument is unpersuasive. The purpose of the Rule 402 colloquy is to ensure that a defendant's guilty plea is not accepted unless it is intelligent and voluntary. *People v. Horton*, 250 Ill. App. 3d 944, 951 (1993). This purpose would hardly be served if a defendant were allowed to state on the record that his plea was voluntary and then turn around and claim that it was involuntary. It would reduce the Rule 402 colloquy to a meaningless exercise. See *People v. Robinson*, 157 Ill. App. 3d 622, 629 (1987). As the supreme court stated more than three decades ago, "Rule 402 was designed to insure properly entered pleas of guilty, not to provide for merely an incantation or ceremonial." *People v. Krantz*, 58 Ill. 2d 187, 194-95 (1974); see also *Ramirez*, 162 Ill. 2d at 245 ("exhaustive admonitions cannot be disregarded as merely a ritualistic formality"). Thus, "a defendant cannot be rewarded for disregarding the specific admonitions of the court." *People v. Radunz*, 180 Ill. App. 3d 734, 742 (1989); see also *Robinson*, 157 Ill. App. 3d at 629 ("If a plea of guilty is to have any binding effect or is to be given any subsequent weight, the extensive and exhaustive admonitions given by the circuit court in this case and acknowledged by petitioner must be held to overwhelm petitioner's current assertion that he entered his plea involuntarily."). Thus,

we reject defendant's argument that, although he stated that he was pleading guilty voluntarily, he had really been coerced into doing so.

¶ 13 We acknowledge that the third district case of *People v. Knight*, 405 Ill. App. 3d 461 (2010), cited by defendant for the first time in his reply brief, seemingly supports his argument. In *Knight*, the defendant appealed from the second-stage dismissal of his second amended postconviction petition. The defendant, who pleaded guilty to the stabbing death of a fellow inmate, alleged, *inter alia*, that his plea was involuntary where he was ordered by a prison gang leader to plead guilty. The defendant maintained that he was innocent and that he pleaded guilty only because he feared that he would be killed if he did not. The defendant attached numerous affidavits to the petition wherein the affiants averred that they were present when the victim was murdered and that the defendant was not involved and, further, that members of the gang decided that the defendant should take responsibility. At the time in question, the gang controlled the prison and had access to weapons. The petition also alleged that the gang leader had since died and that the witnesses were now willing to come forward because the gang no longer controlled the prison. On appeal, the State argued that the defendant's claim of coercion was positively rebutted by the record. In response, the defendant maintained that "any statement on his part that his plea was not coerced was itself the result of the same coercion that forced him to plead guilty." *Knight*, 405 Ill. App. 3d at 468. The court found that, because resolution of the issue depended primarily on the credibility of the witnesses, an evidentiary hearing was required.

¶ 14 To be sure, there is no *per se* rule that the Rule 402 colloquy is inescapable. See *Ramirez*, 162 Ill. 2d at 245. However, the holding in *Knight* does not persuade us to reverse the summary dismissal of defendant's petition. Unlike in *Knight*, defendant did not plead guilty under a threat of

death, but rather under a “threat” of a refusal to allow child visitation. While, arguably, Roxanna’s “threat” might have played some role in defendant’s decision to plead guilty, we agree with the State that it was no more than a factor for defendant to consider. Further, unlike the petition in *Knight*, the petition here offers no explanation as to why defendant is suddenly now free to come forward with his claim. Thus, were we to accept defendant’s contention in the present case, virtually all future cases involving guilty pleas would be reduced to guessing games. The trial court would ask the defendant if he or she had been coerced into pleading guilty, the defendant would assure the trial court that he or she had not, and then the trial court would have to guess whether the defendant meant what he or she said. Only after determining that the defendant meant what he or she said could the trial court accept the defendant’s plea. Such a state of affairs would leave the trial court in an untenable position. Simply put, the circumstances in this case are not such that we will reduce the trial court’s admonitions to “merely a ritualistic formality.” *Ramirez*, 162 Ill. 2d at 245.

¶ 15

III. CONCLUSION

¶ 16 In light of the foregoing, the judgment of the circuit court of Kane County is affirmed.

¶ 17 Affirmed.