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2012 IL App (3d) 100900-U

Order filed August 21, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
)	
v.	)	Appeal Nos. 3-10-0900, 3-10-0901, and
	)	3-10-0902
	)	Circuit Nos. 07-CF-900, 07-CF-1934, and
	)	08-CF-193
)	
JIMI McDONALD,	)	Honorable
	)	Gerald R. Kinney,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 2 Defendant, Jimi McDonald, pled guilty to aggravated driving while driver's license suspended (625 ILCS 5/6-303(a), (d) (West 2006)), theft (720 ILCS 5/16-1(a)(2)(A), (b)(4) (West 2006)), and robbery (720 ILCS 5/18-1 (West 2006)). Thereafter, defendant filed a

postconviction petition which the trial court summarily dismissed as frivolous and patently without merit. Defendant appeals, arguing the trial court erred by dismissing his petition because it contained the gist of a constitutional claim. Specifically, defendant contends his guilty plea was not knowing and voluntary because: (1) the court failed to properly admonish him with regard to the period of mandatory supervised release (MSR); and (2) he believed the plea agreement would result in a refund of his bond money. We affirm.

¶ 3

FACTS

¶ 4 As a result of three separate indictments, defendant was charged with aggravated driving while driver's license suspended (625 ILCS 5/6-303(a), (d) (West 2006)), theft (720 ILCS 5/16-1(a)(2)(A), (b)(4) (West 2006)), and robbery (720 ILCS 5/18-1 (West 2006)). On April 25, 2007, Danielle L. Ongenae posted bond for defendant in the case charging aggravated driving while driver's license suspended (case No. 07-CF-900). On November 19, 2007, Ongenae posted bond for defendant for the offense of theft (case No. 07-CF-1934). The bond sheets signed by both defendant and Ongenae for these two offenses included a provision that the money posted by Ongenae may be used to pay fines and fees or for any purpose ordered by the court. On January 25, 2008, defendant appeared in court for a new offense of robbery and the court set bond in the amount \$150,000, with 10% to apply. Defendant did not post bond in this matter.

¶ 5 On September 10, 2008, defendant entered a plea of guilty to the charge of aggravated driving while driver's license suspended. On January 5, 2009, defendant entered a pleas of guilty to the theft and robbery charges. Prior to accepting defendant's guilty pleas, the trial court asked defendant if he was promised anything other than what was disclosed in the plea agreements recited in court. Defendant responded, "No." The trial court also informed defendant of the

period of MSR which accompanied each charge. After accepting defendant's guilty pleas in all three cases, the trial court sentenced defendant to consecutive terms of two years for aggravated driving while driver's license suspended, three years for theft, and five years for robbery pursuant to the terms of the agreements.

¶ 6 Following the sentencing hearing, defendant wrote a series of letters requesting the status of his bond money in cases 07-CF-900 and 07-CF-1934. The Will County circuit clerk informed defendant by letter that his bond money in cases 07-CF-900 and 07-CF-1934 had been applied to outstanding fines and fees in other pending matters which dated back to 1994.

¶ 7 Thereafter, defendant filed a *pro se* postconviction petition which alleged, among other things, his guilty plea was not voluntary because he believed the bond money would be refunded and the court violated his constitutional rights by failing to return his bond money. The petition did not allege that the admonishments defendant received with regards to MSR were insufficient.

¶ 8 The trial court summarily dismissed defendant's petition as frivolous and patently without merit. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues the trial court erred by summarily dismissing his postconviction petition at the first stage because the petition stated the gist of a constitutional claim by alleging defendant's guilty plea in each case was not knowing and voluntary due to inadequate MSR admonishments. In addition, defendant alleged he was not aware the plea agreement would not result in the return of all his bond money with regard to the two charges of theft and aggravated driving with driver's license suspended.

¶ 11 A postconviction petition is a collateral attack on a prior conviction and sentence. *People*

v. Rissley, 206 Ill. 2d 403 (2003). The Post-Conviction Hearing Act provides a three-step procedure for the adjudication of petitions for postconviction relief. 725 ILCS 5/122-1 *et seq.* (West 2010). At the first stage, the trial court must independently determine whether the petition is frivolous or patently without merit. *People v. Morris*, 236 Ill. 2d 345 (2010). A petition is frivolous or patently without merit if its allegations, when taken as true, fail to present the gist of a constitutional claim. *People v. Brooks*, 233 Ill. 2d 146 (2009). An example of an indisputably meritless legal theory is one which is completely contradicted by the record. *People v. Hodges*, 234 Ill. 2d 1 (2009). A trial court's dismissal of a postconviction petition as frivolous or patently without merit is reviewed *de novo*. *Morris*, 236 Ill. 2d 345.

¶ 12 We first address defendant's contention that his postconviction petition contained the gist of a constitutional claim based on the trial court's failure to properly admonish him with regard to the period of MSR. When a defendant appeals the dismissal of a postconviction petition, the question is whether the allegations *in the petition*, liberally construed and taken as true, are sufficient to invoke relief under the act. *People v. Coleman*, 183 Ill. 2d 366 (1998).

¶ 13 Significantly, defendant's postconviction petition in this case did not raise any issue related to MSR. The case law provides that any issue to be reviewed on appeal must be first presented in the petition filed in the circuit court. *People v. Jones*, 211 Ill. 2d 140 (2004). Since defendant did not raise this issue in his petition, the trial court did not consider this issue and could not have erred as defendant alleges for purposes of this appeal.

¶ 14 Defendant also claims his postconviction petition contained the gist of a constitutional claim by alleging his guilty plea was not knowing and voluntary because he believed the bond money would be returned. Since the court dismissed defendant's petition at the first stage, we

must take all of defendant's well-pled facts as true, unless they are otherwise rebutted by the record. *People v. Peeples*, 205 Ill. 2d 480 (2002).

¶ 15 Defendant's claim that he pled guilty with the understanding his bond money would be returned to him is contradicted by the record. The bond sheet defendant signed specifically stated that bond money may be applied to fines and fees or for any purpose ordered by the court. Further, when asked if anyone had promised him anything other than what was recited to the court during the presentation of the plea agreement, defendant responded, "No." The record itself contradicts defendant's contention that he pled guilty with the understanding the bond money would be returned to him.

¶ 16 Defendant argued in his petition that the court violated his constitutional rights when the court failed to return the money posted as bail. However, the record shows Ongenae, rather than defendant, posted the funds to secure defendant's release in cases 07-CF-900 and 07-CF-1934. Thus, we conclude the record shows the money posted was not defendant's and reject the contention that he was deprived of property when the court failed to return the funds to Ongenae . See *People v. Davison*, 378 Ill. App. 3d 1010 (2008). Based on the foregoing, we conclude the allegations in defendant's postconviction petition were meritless. Consequently, the trial court did not err by dismissing defendant's petition as frivolous or patently without merit.

¶ 17 CONCLUSION

¶ 18 The judgment of the circuit court of Will County is affirmed.

¶ 19 Affirmed.