

allegations of a substantial violation of a constitutional right were without merit.

¶ 3 Defendant appeals, arguing the trial court erred by dismissing his amended petition because he made a substantial showing the Department of Corrections (DOC) citation issued to defendant for his conduct did not provide sufficient notice the same conduct could expose him to criminal prosecution for aggravated battery. This court has previously considered and rejected this same argument in *People v. Gay*, 2011 IL App (4th) 100009, 950 N.E.2d 1272. We affirm.

¶ 4 During the pendency of this appeal, this court allowed two motions to file *amicus curiae* briefs raising allegations concerning the unfairness of judicial proceedings against defendant due to his mental disabilities and the exacerbation of his mental illness due to incarceration in "supermax" and other isolated confinement settings. These issues were not raised in the trial court in defendant's postconviction petition. This appeal is not the proper procedure for considering these issues. We do not consider the allegations or argument in the amici briefs.

¶ 5 I. BACKGROUND

¶ 6 In November 2001, the State charged defendant with one count of aggravated battery (720 ILCS 5/12-4(b)(6) (West 2000)) occurring on April 25, 2001, while defendant was an inmate at the Pontiac Correctional Center. The State alleged defendant knowingly made physical contact of an insulting or provoking nature with Warren Salzman, a DOC employee, by throwing a semi-solid substance on Salzman, knowing he was a correctional officer engaged in the execution of his official duties. In January 2002, a jury convicted defendant of aggravated battery.

¶ 7 On July 8, 2005, defendant *pro se* filed a petition for postconviction relief under the Act alleging the trial court infringed on his right to a fair and impartial jury and his appellate counsel was ineffective. On August 20, 2005, defendant filed another *pro se* petition for postconviction relief alleging, in addition to his previous allegations, his posttrial counsel was also ineffective. In April 2006, the trial court appointed counsel in order for defendant to further pursue his arguments.

¶ 8 On December 11, 2006, appointed counsel filed a supplemental petition for postconviction relief further elaborating on defendant's previous arguments. On September 11, 2007, the State filed a motion to dismiss defendant's original and supplemental petitions. On December 26, 2008, defendant filed an amended petition for postconviction relief arguing his due process rights were violated because he was not put on proper notice throwing feces and urine on a correctional officer would lead to criminal prosecution.

¶ 9 On October 13, 2009, the State filed a motion to dismiss defendant's amended petition. Following a second-stage hearing on February 19, 2010, the trial court took the matter under advisement. On April 15, 2010, the court entered its order granting the State's motion to dismiss because defendant failed to allege a substantial violation of a constitutional right. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred by dismissing his postconviction petition. He contends he was not put on proper notice throwing feces and urine on a correctional officer could expose him to criminal charges and an increased sentence.

¶ 12 The Act provides a three-stage process for adjudication of petitions for

postconviction relief. At the first stage, the trial court, without input from the State or further pleadings from the defendant, determines if the petition is frivolous or patently without merit.

People v. Dredge, 148 Ill. App. 3d 911, 912, 500 N.E.2d 445, 446 (1986).

¶ 13 If a petition is not dismissed at stage one, section 122-4 of the Act provides for appointment of counsel for an indigent defendant who wishes counsel to be appointed (725 ILCS 5/122-4 (West 2010)). At this stage, the State may answer the petition or move to dismiss it (725 ILCS 5/122-5 (West 2010)). Dismissal of a petition at the second stage is warranted only 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. Coleman*, 183 Ill. 2d 366, 382, 701 N.E.2d 1063, 1072 (1998). The trial court's second-stage dismissal of a defendant's postconviction petition presents a question of law we review *de novo*. *People v. Cheers*, 389 Ill. App. 3d 1016, 1024, 907 N.E.2d 37, 44 (2009).

¶ 14 Defendant argues the trial court erred by dismissing his amended and supplemental petitions for postconviction relief because he made a substantial showing the DOC citations issued to him for his conduct did not provide sufficient notice the same conduct could expose him to criminal prosecution for aggravated battery. This court has previously addressed and rejected the identical argument based on the same factual scenario presented in this case.

¶ 15 In *Gay*, 2011 IL App (4th) 100009, ¶57 960 N.E.2d at 1286, we found DOC need not include in its disciplinary citation the fact defendant's actions resulting in a disciplinary offense may also be subject to prosecution as a State crime. Defendant has not presented any reason why we should depart from our holding in that case.

¶ 16 With respect to the arguments raised in the *amici* briefs, this appeal of the

dismissal of a postconviction petition is not the proper proceeding in which to raise such issues. Appeals of postconviction proceeding are limited to issues raised in the pleadings in the trial court and new issues may not be raised for the first time on appeal. 725 ILCS 5/122-3 (West 2010); *People v. Jones*, 211 Ill. 2d 140, 148, 809 N.E.2d 1233, 1239 (2004). The issues raised by *amici* were not raised in any of the original, supplemental, or amended postconviction petitions filed by defendant or on his behalf. We do not consider the arguments of the *amici* in this appeal.

¶ 17

III. CONCLUSION

¶ 18 We affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed.