

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).

2012 IL App (4th) 110587-U

Filed 1/23/12

NO. 4-11-0587

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Morgan County
MICHAEL JACKSON,)	No. 87CF121
Defendant-Appellant.)	
)	Honorable
)	Richard T. Mitchell,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirm the trial court's judgment where counsel concludes no meritorious issues could be raised on appeal because defendant does not have grounds for relief under the Post-Conviction Hearing Act where he has completed his sentence.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal because no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 1987, defendant, Michael Jackson, pleaded guilty to residential burglary (Ill. Rev. Stat. 1987, ch. 38, par. 19-3). The State agreed to request a four-year sentence in exchange for defendant's guilty plea, though the trial court was not bound to cap defendant's

sentence at four years. In March 1988, defendant filed a motion to vacate his guilty plea. Though the transcript of defendant's sentencing hearing has been lost, the docket entry indicates the court denied defendant's motion to vacate his plea and sentenced him to four years' imprisonment with two years' mandatory supervised release (MSR). The record contains no direct appeal, though the docket entry from defendant's sentencing hearing indicates his desire to file an appeal. In April 1988, defendant filed a motion to vacate his plea and arrest judgment, but the record does not contain any further information regarding this motion.

¶ 5 In January 2011, defendant filed a motion for writ of error *coram nobis*, alleging his appointed counsel failed to file an appeal after his original plea despite the fact defendant informed counsel of his desire to appeal. In March 2011, the trial court recharacterized defendant's motion for writ of error *coram nobis* as a section 2-1401 motion for relief from judgment and dismissed it as untimely. Defendant did not appeal the court's judgment.

¶ 6 In April 2011, defendant filed a motion for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-7 (West 2010)), alleging he received ineffective assistance of counsel where his appointed counsel failed to file a requested appeal following defendant's sentencing. Also in April 2011, the State filed a motion to dismiss, arguing defendant lacked standing under the Act because he fully served the sentence he received in connection with the underlying case. In June 2011, the trial court dismissed defendant's postconviction petition as untimely.

¶ 7 In July 2011, defendant filed a notice of appeal, and the trial court appointed OSAD as defense counsel. In November 2011, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551

(1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by December 9, 2011. Defendant filed none. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 8

II. ANALYSIS

¶ 9 OSAD argues this appeal presents no meritorious claim upon which defendant could realistically expect to obtain relief.

¶ 10 Section 122-1(a) of the Act (725 ILCS 5/122-1(a) (West 2010)) states: "Any person imprisoned in the penitentiary may institute a proceeding under this Article." The Act provides relief to defendants whose liberty is constrained as the result of a criminal conviction. *People v. Pack*, 224 Ill. 2d 144, 150, 862 N.E.2d 938, 942 (2007) Relief under the Act extends to those who are incarcerated, as well as those who are subject to a period of MSR or probation. *Pack*, 224 Ill. 2d at 151, 862 N.E.2d at 942. However, the Act and its remedies are not available to defendants who have completed their sentences. *Pack*, 224 Ill. 2d at 150, 862 N.E.2d at 942.

¶ 11 Here, defendant admits in his petition he completed the sentence he received in connection with the conviction he is appealing. Thus, the trial court properly dismissed defendant's petition, and we conclude defendant does not have grounds to bring an action for relief under the Act.

¶ 12

III. CONCLUSION

¶ 13 After reviewing the record consistent with our responsibilities under *Finley*, we agree with OSAD defendant failed to raise any meritorious issues in his appeal, and we grant OSAD's motion to withdraw as counsel for defendant and affirm the trial court's judgment.

¶ 14 Affirmed.