

NOTICE

Decision filed 01/12/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100063-U  
NO. 5-10-0063  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 07-CF-562
	)	
DONNIE HELMS,	)	Honorable
	)	Charles V. Romani, Jr.,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Justices Goldenhersh and Stewart concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not improperly dismiss the defendant's postconviction petition. The trial court imposed a void sentence by the way it admonished the defendant of his term of mandatory supervised release.
- ¶ 2 The defendant, Donnie Helms, appeals the order entered by the circuit court of Madison County dismissing his petition for postconviction relief as patently frivolous and without merit. For the following reasons, we reverse and remand.
- ¶ 3 On March 22, 2007, an indictment was filed charging the defendant with two counts of criminal sexual assault (720 ILCS 5/12-13(a)(1), (a)(4) (West 2006)), one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2006)), two counts of indecent solicitation of a child (720 ILCS 5/11-6(a) (West 2006)), and one count of unlawful failure to register as a sex offender (730 ILCS 150/3 (West 2006)). On June 12, 2007, the defendant entered into a negotiated guilty plea to the first count of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2006)) in exchange for the State's agreement to dismiss the remaining

five counts and to recommend a six-year term of imprisonment. The defendant did not file a motion to withdraw his guilty plea or any other posttrial motions.

¶ 4 On November 20, 2009, the defendant filed a *pro se* petition for postconviction relief pursuant to the Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2006)) claiming, *inter alia*, that he was denied the effective assistance of counsel where his counsel failed to investigate the victim and failed to discuss discovery with the defendant. On January 6, 2010, the trial court dismissed the petition as frivolous and patently without merit, noting that the defendant had failed to make the requisite showing that he received ineffective assistance of counsel. The defendant filed a timely notice of appeal on January 28, 2010, and an amended notice of appeal was filed on February 11, 2010.

¶ 5 On appeal, the defendant argues that his postconviction petition should not have been summarily dismissed by the trial court at the first stage of the postconviction proceedings. Specifically, the defendant alleges the following: (1) that his counsel was ineffective for failing to investigate whether the victim had previously made false accusations of sexual assault against other individuals, (2) that his counsel was ineffective for failing to provide and discuss discovery material with the defendant, and (3) for the first time on appeal, he argues that he received a void sentence from the trial court because the trial court improperly admonished him that he would receive two years of mandatory supervised release instead of the statutorily required three years to life of mandatory supervised release.

¶ 6 The Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2006)) provides a mechanism by which defendants can assert that their convictions and sentences were the result of a substantial denial of their federal or state constitutional rights. *People v. Coleman*, 183 Ill. 2d 366 (1998). An action for postconviction relief is a collateral proceeding and not an appeal from the underlying judgment. *People v. Mahaffey*, 194 Ill. 2d 154, 170 (2000). Accordingly, any issues that could have been presented on direct appeal,

but were not, are forfeited. *People v. Rogers*, 197 Ill. 2d 216, 221 (2001). The purpose of a postconviction proceeding is to allow inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal. *People v. Haynes*, 192 Ill. 2d 437, 464 (2000). The petition must clearly at the first stage set forth the gist of a constitutional claim in which the petitioner's rights were violated. *Coleman*, 183 Ill. 2d at 379. The circuit court may dismiss the petition if it determines that the petition is frivolous or patently without merit. *Coleman*, 183 Ill. 2d at 379. A postconviction petition is considered frivolous or patently without merit where the allegations in the petition, taken as true and liberally construed, fail to present the "gist" of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The "gist" of a constitutional claim is a low threshold, and the defendant need only present a limited amount of detail in the petition. *Edwards*, 197 Ill. 2d at 244. A circuit court may summarily dismiss a postconviction petition where the defendant's allegations are contradicted by the record from the original trial proceedings. *Rogers*, 197 Ill. 2d at 222. We review the circuit court's determination regarding the sufficiency of the allegations in a postconviction petition *de novo*. *Coleman*, 183 Ill. 2d at 388-89.

¶ 7 The defendant's first argument is that his counsel was ineffective for failing to investigate whether the victim had falsely accused others of sexual abuse in the past. The defendant argues that his "allegations must be taken as true in considering whether the trial court properly dismissed his petition." The defendant points to only one police record from the defendant's arrest that indicated the victim had tape-recorded statements from the defendant "to collect evidence against [the defendant] for sexually assaulting him." The police report further indicated that the victim recorded the statements without any prompting from a law enforcement officer and that the victim "did so because in the past, he was not believed when he made allegations." Nowhere in the police report does it indicate that the

victim's past allegations were false. Rather, the police report merely indicated that the victim recorded statements from the defendant so that his allegations against the defendant would be taken seriously. The low threshold at the first stage of a postconviction proceeding does not mean that the petitioner is excused from providing any factual detail at all surrounding the alleged constitutional violation. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). The purpose of the affidavits, records, or other evidence requirement is to establish that a petition's allegations are capable of objective or independent corroboration. *Hodges*, 234 Ill. 2d at 10. Accordingly, the police record does not corroborate the defendant's claim that the victim had falsely accused other individuals of sexual assault in the past, and we cannot conclude that the defendant's counsel was ineffective for failing to investigate the victim.

¶ 8 In any event, even if there were a factual basis to reason that the defendant's counsel should have investigated whether the victim had made previous false accusations of sexual assault, there is no legal basis for the defendant's postconviction petition. A postconviction petition alleging ineffective assistance of counsel may not be dismissed at the first stage of the proceedings if: (1) counsel's performance fell below an objective standard of reasonableness and (2) the petitioner was arguably prejudiced as a result. *People v. Brown*, 236 Ill. 2d 175, 185 (2010). Whether a failure to investigate the testimony of a potential witness amounts to incompetence depends on the value of the evidence to the case. *People v. Marshall*, 375 Ill. App. 3d 670, 676 (2007).

¶ 9 The defendant's counsel provided effective assistance considering the potential evidence that would have been presented at a trial of the six charges against the defendant, including the recorded statements from the victim, the victim's testimony, and that of police officers. By negotiating a plea agreement with the State, the defendant pled to only one Class 1 felony and received six years' imprisonment. Considering the abundance of the defendant's charges, and the term of imprisonment that he potentially faced, we cannot

conclude that the defendant received ineffective assistance of counsel.

¶ 10 The defendant's next claim is that his counsel was ineffective for failing to discuss discovery with him so that he could have made an informed decision whether to plead guilty. The defendant's petition fails to provide a factual or legal basis to support his claim. There are no affidavits or references to the record where the defendant corroborates his claim that he made requests for discovery materials or that his trial attorney refused to speak with him about discovery. To the contrary, the record reveals that the defendant acknowledged that no one had forced him into entering his guilty plea, that he was entering a guilty plea freely and voluntarily, that he had discussed his case with his trial attorney, and that he had no further questions. Accordingly, we conclude that the defendant's claim of ineffective assistance of counsel is meritless.

¶ 11 Finally, on appeal the defendant argues that he received a void sentence because the trial court erroneously admonished him that he would receive two years of mandatory supervised release rather than the statutorily required term of three years to life of mandatory supervised release. The defendant argues that the trial court lacked the inherent authority to order that the defendant serve a two-year term of mandatory supervised release, where the statutory term of mandatory supervised release was at least three years. The defendant argues that his sentence is therefore void, his guilty plea and sentence must be vacated, and this cause be remanded for further proceedings. The record reveals that when the trial court accepted the plea agreement, the court asked the defendant if his understanding of the negotiations was "six years Illinois Department of Corrections, upon release there is a two parole term." The defendant responded in the affirmative. Before accepting the defendant's guilty plea, he further admonished the defendant of his rights pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997) and explained that the penalty for a Class 1 felony offense of criminal sexual assault is a term from 4 to 15 years' imprisonment and upon release from

imprisonment, a 2-year term of mandatory supervised release. The court then found that the defendant had made a knowing and voluntary waiver of his right to a jury trial and accepted his guilty plea. The trial court then sentenced the defendant to six years' imprisonment to be followed by a two-year term of mandatory supervised release.

¶ 12 We note that the defendant did not file a motion to withdraw his plea and did not include this issue in his postconviction petition. The defendant raises this issue for the first time on appeal. However, a void sentence issue may be challenged at any time, including on appeal from the dismissal of a postconviction petition. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004). Section 5-8-1(d) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d) (West 2006)) provides that mandatory supervised release terms or ranges are automatically attached to a sentence by statutory directive. A sentence that does not conform to a statutory requirement is void. *People v. Arna*, 168 Ill. 2d 107, 113 (1995). Whether a sentence is void is a question of law subject to *de novo* review. *People v. Hauschild*, 226 Ill. 2d 63, 72 (2007).

¶ 13 The State concedes that the statute in effect at the time the defendant pled guilty required the trial court to admonish him that he would serve a range of mandatory supervised release from three years to natural life. 730 ILCS 5/5-8-1(d)(4) (West 2006). Section 5-8-1(d)(4) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d)(4) (West 2006)) provides that defendants who commit the offense of criminal sexual assault are subject to a term of mandatory supervised release ranging from a minimum of three years to a maximum of the natural life of the defendant. Accordingly, the defendant was subject to a term of mandatory supervised release ranging from a minimum of three years to a maximum of his natural life, which cannot be reduced by a negotiated plea agreement or by the trial court. See *People v. Summers*, 291 Ill. App. 3d 656, 657 (1997). The trial court lacked the inherent authority to order the defendant to serve a term of two years of mandatory supervised release.

¶ 14 For the foregoing reasons, we conclude that the defendant's plea and sentence are void and must be vacated. We reverse and remand the cause to the circuit court of Madison County for further proceedings.

¶ 15 Reversed and remanded.