

¶ 5 On August 18, 2005, the defendant filed a *pro se* postconviction petition and counsel was appointed. The State filed a motion to dismiss the postconviction petition. The court dismissed the petition without prejudice and gave the defendant 90 days to file an amended petition.

¶ 6 The defendant then filed a *pro se* amended postconviction petition. Appointed counsel did not file an amended petition. The State filed a motion to dismiss and the defendant responded. The court dismissed the *pro se* amended petition without prejudice and once again allowed the defendant 60 days to refile an amended petition. On November 17, 2006, the defendant filed a *pro se* notice of appeal. The appeal was dismissed by this court because there was no final appealable order. *People v. Devers*, No. 5-06-0617 (Dec. 31, 2007) (unpublished order pursuant to Supreme Court Rule 23 (eff. July 1, 1994)).

¶ 7 On December 1, 2006, the defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2006)), arguing that the circuit court failed to admonish him that he would be required to serve a three-year term of mandatory supervised release. Subsequently, the defendant filed a motion for default judgment. The State filed a response to the motion for default judgment alleging that the defendant's section 2-1401 petition was frivolous and patently without merit and that it should be dismissed. The court never ruled upon the section 2-1401 petition.

¶ 8 On December 28, 2009, the defendant filed a *pro se* document titled "motion for void judgment *ab initio*." The defendant again sought relief pursuant to section 2-1401 of the Code, arguing that the judgment against him was void. Specifically, the defendant argued that the 3-year term of mandatory supervised release was supposed to be included within his 20-year sentence. The court appointed counsel for the

defendant. On April 28, 2010, defense counsel filed a motion to withdraw alleging that the arguments in support of the motion were frivolous. The motion explained how the defense counsel had come to that conclusion as follows:

"Mr. Hartrich [the defense counsel] has reviewed the motion and common law record on file with the Lawrence County Circuit Clerk's Office, discussed the contentions of error raised by Mr. Devers with him through the mail and in person, and conducted legal research concerning the contentions of error raised by Mr. Devers and other possible errors considered by Mr. Hartrich. Mr. Hartrich's review of these various items has determined that the only arguments in support of this motion are frivolous."

The State filed a motion to dismiss. On August 11, 2010, the court granted the State's motion to dismiss. The defendant filed this timely appeal.

¶ 9

ANALYSIS

¶ 10 On appeal, the defendant argues that the circuit court erroneously granted defense counsel's motion to withdraw because the motion failed to provide an explanation for the allegations that the defendant's claims were frivolous as required by *People v. Greer*, 212 Ill. 2d 192, 212 (2004). Furthermore, the defendant also argues that the circuit court erred in granting the State's motion to dismiss.

¶ 11 In response, the State argues that defense counsel provided ample information for his request to withdraw and that no further explanation was required. Therefore, the State argues that the motion to withdraw was properly granted. The State also argues that the defendant's claims were frivolous, and thus, the motion to dismiss was properly granted as well.

¶ 12 We agree with the State insofar as defense counsel's compliance with the necessary steps to support a motion to withdraw. The *Greer* court reasoned as follows:

"Although we hasten to emphasize that the inability of postconviction counsel to 'properly substantiate' a defendant's claims is *not* the standard by which counsel should judge the viability of a defendant's postconviction claims, and that an attorney moving to withdraw should make some effort to explain *why* defendant's claims are frivolous or patently without merit, it nonetheless appears that counsel fulfilled his duties as prescribed by Rule 651(c), and the record before us supports counsel's assessment that the defendant's postconviction claims were frivolous and without merit. Consequently, though the procedure in the circuit court leaves something to be desired, defense counsel should be allowed to withdraw ***." (Emphases in original.) *Greer*, 212 Ill. 2d at 211-12.

Although *Greer* dealt specifically with postconviction petitions, we find these standards to be comparable to appointed counsel withdrawing in any postjudgment action. We agree that once counsel is appointed the attorney must provide a reasonable level of assistance to the client in any case. See *Greer*, 212 Ill. 2d at 204. Therefore, if the record supports that counsel consulted with his client and that counsel researched and examined all the possible claims and the allegation that the defendant's claims were frivolous then the circuit court did not err in allowing counsel to withdraw.

¶ 13 Therefore, we now turn to examine the defendant's underlying claims in his motion for judgment *ab initio*. In his motion, the defendant argued that section 3-6-3(a)(2)(i) of the Unified Code of Corrections (Code of Corrections) (730 ILCS 5/3-6-3(a)(2)(i) (West 2000)), which requires prisoners convicted of first-degree murder to serve 100% of their sentence, is unconstitutional and that because the statute is unconstitutional his sentence is void. He also argues that an offender who is not allowed to receive good-conduct credit and is also made to serve a term of mandatory supervised release is being held longer than the court- imposed sentence.

¶ 14 "In determining the constitutionality of a legislative enactment or a law passed pursuant to legislative authority, the judiciary is limited to a determination of whether the law is a valid exercise of the State's police power to promote the public comfort, health, safety, morals or welfare." *People v. Gorgis*, 337 Ill. App. 3d 960, 974 (2003) "It is well established that all legislation is presumed to be constitutional and that the party challenging the legislation bears the heavy burden of establishing a clear constitutional violation." *People v. Ruiz*, 342 Ill. App. 3d 750, 762-63 (2003). The court has addressed the constitutionality of the section at hand in *People v. Gorgis*, 337 Ill. App. 3d at 975. The court in *Gorgis* held as follows:

"[T]he truth-in-sentencing law requires that first[-]degree murder defendants serve all of their sentence and that they are not eligible for good-conduct credit. The law, therefore, treats all first[-]degree murder defendants exactly the same and does not distinguish among the different ways that first[-]degree murder can be committed as defendant is suggesting it should. First[-]degree murder is the most serious offense that can be committed, and it is therefore reasonable that the penalty for it also be severe. We can discern no unequal treatment here and no violation of the equal protection clause of either the federal or state constitution. Nor is there a due process violation; this law is reasonably designed to remedy the evil of murderers not serving their complete sentences, and the imposition of the truth-in-sentencing guidelines for such conduct is constitutionally permissible." *Id.*

¶ 15 Therefore, we disagree with the defendant's argument that the original intent was for all offenders to receive good-conduct credits. The intent was to provide harsher sentences for more serious crimes. We agree with the court in *Gorgis* and find section 3-6-3(a)(2)(i) of the Code of Corrections to be constitutional.

¶ 16 Moreover, we do not find this statute to be in conflict with section 5-8-1(d) of

the Code of Corrections that at the time of sentencing stated, "Except where a term of natural life is imposed, every sentence shall include as though written therein a term in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2004). The defendant argues that the two statutes conflict because a prisoner convicted of first-degree murder receives no good-conduct credit pursuant to section 3-6-3(a)(2)(i) of the Code of Corrections and is still required to serve a term of mandatory supervised release pursuant to section 5-8-1(d) of the Code of Corrections. However, we fail to see the conflict between the statutes. Section 3-6-3(a)(2)(i) of the Code of Corrections specifically states that the term is to be served "in addition" to the prison term. Therefore, the defendant will serve his sentence without receiving any good-conduct credit, and then he will serve his three-year mandatory-supervised-release term in addition to his sentence.

¶ 17 Since we find that the defendant's underlying claim has no basis arguable in fact or law, we conclude that the circuit court did not err in allowing defense counsel to withdraw or in granting the State's motion to dismiss. While defense counsel did not include a detailed explanation in his motion to withdraw, he did allege that he met with his client and thoroughly examined the record and all the possible claims. Moreover, the record revealed that the defendant's claims were frivolous, and thus, defense counsel was correctly allowed to withdraw and the case was rightfully dismissed.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the circuit court's granting of defense counsel's motion to withdraw and the State's motion to dismiss.

¶ 20 Affirmed.

