

No. 1-11-3112

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 4111
	)	
CRAIG WALKER,	)	Honorable
	)	Thomas V. Gainer, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant unsuccessfully raised on direct appeal the adequacy of admonitions as to his waiver of counsel, *res judicata* barred his post-conviction claim that his waiver of counsel was not knowing or voluntary; the summary dismissal of defendant's post-conviction petition was affirmed.

¶ 2 Defendant Craig Walker appeals the summary dismissal of his post-conviction petition.

On appeal, defendant contends the petition presented an arguable basis that he did not knowingly and intelligently waive his right to counsel when he chose to represent himself at trial. We affirm.

¶ 3 After a bench trial in which defendant acted as his own attorney, the trial court convicted defendant of a residential burglary that occurred on February 7, 2008, pursuant to section 19-3(a) of the Criminal Code of 1961 (the Code) (720 ILCS 5/19-3(a) (West 2008)). The court noted defendant's criminal background and that he was subject to sentencing as a Class X offender.<sup>1</sup> The court sentenced defendant to 15 years in prison.

¶ 4 On direct appeal, defendant acted as his own counsel. Among the issues raised in defendant's appeal was whether the trial court failed to adequately admonish defendant pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) as to the consequences of waiving his right to counsel. This court noted that "[t]he record does not show a specific admonishment by the court" as to the sentencing range to which defendant was subject due to his prior convictions. However, based on the record as a whole, including the trial judge's repeated inquiries at the beginning of each court date as to defendant's desire to proceed *pro se*, as well as defendant's prior convictions for the same or similar offenses and his familiarity with the legal system, this court concluded the trial judge's admonitions substantially complied with Rule 401(a), "resulting in a knowing and voluntary waiver of counsel." We affirmed defendant's conviction and sentence. *People v. Walker*, No. 1-08-2276, order at 21 (2009) (unpublished order under Supreme Court Rule 23).

¶ 5 On June 7, 2011, defendant filed a *pro se* petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). In the petition, defendant argued his waiver of counsel prior to trial was not knowing or voluntary because he did not know the range of penalties that he faced if he was convicted. Defendant asserted the trial judge "failed to

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<sup>1</sup> Residential burglary is a Class 1 felony (720 ILCS 5/19-3(b) (West 2008)) for which defendant was subject to a sentencing range of between 4 and 15 years. 730 ILCS 5/5-8-1(a)(4) (West 2008). The sentencing range for a Class X offender was between 6 and 30 years in prison. 730 ILCS 5/5-8-1(a)(3) (West 2008).

make certain that he was aware of, and understood, the consequences if found guilty." Defendant said he was not aware that he was subject to sentencing as a Class X offender until after he went to trial acting as his own counsel. The circuit court summarily dismissed defendant's petition.

¶ 6 The Act provides a remedy to criminal defendants who claim that substantial violations of their federal or state constitutional rights occurred in their original trials. 725 ILCS 5/122-1 *et seq.* (West 2010). At the first stage of a post-conviction proceeding, a defendant need only allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). The circuit court may dismiss the petition if the allegations contained therein, taken as true, render the petition "frivolous" or "patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010). Issues barred by *res judicata* or forfeiture are deemed to be frivolous and patently without merit. *People v. Blair*, 215 Ill. 2d 427, 445 (2005). This court reviews *de novo* the summary dismissal of a post-conviction petition. *Hodges*, 234 Ill. 2d at 9.

¶ 7 On appeal, defendant contends the circuit court erred in dismissing his petition at the initial stage of post-conviction review because the petition presented an arguable claim that he did not knowingly and intelligently waive his right to counsel. Defendant asserts he was not made aware that he was subject to a Class X sentence due to his criminal background but that he instead believed the maximum penalty he faced for residential burglary was 12 years, because that was the sentence he had received for a previous residential burglary in 2002. Defendant claims he would not have waived counsel had he known he faced a Class X sentence.

¶ 8 The State responds that defendant raised the issue of his waiver of his right to counsel in his direct appeal and therefore, the doctrine of *res judicata* bars defendant from raising that claim again in a post-conviction petition. We agree with the State.

¶ 9 Defendant contends *res judicata* does not bar his post-conviction claim because that contention is distinct from the argument he raised on direct appeal. Defendant asserts his contention on appeal was that his waiver of counsel was not knowingly or intelligently made because he was not informed of the correct sentencing range. In contrast, he argues his post-conviction petition raised the "broader question of whether the waiver was valid, not just the narrower issue of the judge's admonitions."

¶ 10 We are not persuaded by defendant's attempt to distinguish his post-conviction claim from his previous argument. In his direct appeal, defendant contended his waiver of counsel was of no effect because the trial court did not admonish him, as required by Rule 401(a), as to the range of sentences he faced. The court addressed the merits of that issue, concluding that although the record did not indicate a specific admonition by the trial court regarding a penalty for defendant's prior convictions, the trial court substantially complied with Rule 401(a) and that defendant's decision to proceed without counsel was knowing and voluntary.

¶ 11 In comparison, defendant's post-conviction petition alleged his waiver of counsel "was not knowingly and intelligently made because the trial court failed to make certain that he was aware of, and understood, the consequences if found guilty." Defendant asserted the court did not make him aware of the potential sentence he faced.

¶ 12 The inquiry raised in defendant's post-conviction petition is identical to the issue he raised on direct appeal. In both situations, defendant argued that he was not told he was subject to a greater sentencing range due to his prior convictions. Although defendant argues his claim of inadequate admonitions is different from his claim that his waiver of counsel was not knowing and intelligent, this court has found that defendant was adequately admonished, and when a defendant is admonished in substantial compliance with Rule 401(a), there is a valid waiver of counsel. See *People v. Haynes*, 174 Ill. 2d 204, 236 (1996). Defendant's post-conviction claim

is therefore barred by the doctrine of *res judicata*. See *People v. Barrow*, 195 Ill. 2d 506, 522 (2001) (rephrasing the same issue raised on direct appeal does not merit consideration of issue in post-conviction claim).

¶ 13 Defendant cites *People v. Carballido*, 2011 IL App (2d) 090340, to support his argument that his post-conviction claim should be considered despite the fact that the issue was considered in some manner on direct appeal. In *Carballido*, the defendant's post-conviction claim was that his trial counsel was ineffective for failing to file a motion to suppress the defendant's statements to police. *Carballido*, 2011 IL App (2d) 090340, ¶ 29. Reversing the circuit court's summary dismissal of the petition, this court held *res judicata* did not bar its consideration, in a post-conviction context, of whether the motion to suppress would have succeeded, even though the defendant had raised in his direct appeal the issue of defense counsel's ineffectiveness.

*Carballido*, 2011 IL App (2d) 090340, ¶ 43. The facts of *Carballido* that warranted review in a post-conviction context are distinguishable from those presented here. In *Carballido*, the absence of a motion to suppress prevented the development of the record on direct appeal as to the merits of that claim. Here, in contrast, the record on direct appeal was fully developed, and the same argument is made in each setting.

¶ 14 In summary, because the sole claim in defendant's post-conviction petition is barred by *res judicata*, it is necessarily frivolous and patently without merit. See *Blair*, 215 Ill. 2d at 445. Accordingly, defendant's claim was correctly dismissed at the first stage of post-conviction review.

¶ 15 Affirmed.