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2013 IL App (3d) 120318-U

Order filed December 17, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-12-0318
)	Circuit No. 09-CF-378
)	
JAMES D. WILSON, JR.,)	Honorable
)	F. Michael Meersman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Wright and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court held that the trial court did not err when it summarily dismissed defendant's *pro se* postconviction petition. The appellate court agreed with the trial court that, at the first stage of postconviction review, defendant failed to establish a gist of a constitutional claim that he was denied his right to effective assistance of counsel.

¶ 2 Defendant, James D. Wilson, Jr., was charged with unlawful possession with intent to deliver cocaine (720 ILCS 570/401(a)(2)(A) (West 2008)) and unlawful possession with intent to deliver cannabis (720 ILCS 550/5(d) (West 2008)). Defendant pled guilty to the charges and was

sentenced to 12½ years' imprisonment. Defendant filed a petition for postconviction relief arguing that trial counsel provided ineffective assistance that caused defendant to plead guilty. The circuit court summarily dismissed the petition. Defendant appeals, and we affirm.

¶ 3

FACTS

¶ 4 Defendant was charged with unlawful possession with intent to deliver cocaine (720 ILCS 570/401(a)(2)(A) (West 2008)) and unlawful possession with intent to deliver cannabis (720 ILCS 550/5(d) (West 2008)). A public defender was appointed to represent him. Twelve days later, defendant entered a fully negotiated guilty plea to the cocaine charge. The State provided the following factual basis:

"Judge, this occurred on April 30th of 2009. This is a search warrant case.

Specifically the East Moline police executed a search warrant at 1208-13th Street, in East Moline, Rock Island County, Illinois. Officers located 41.4 grams of a white chunky substance, that field-tested and subsequently lab tested positive for the presence of cocaine. In addition, there were 363 grams of a green leafy substance, that tested positive for cannabis. Also seized at the time was \$4,992 in U.S. Currency, scales and packaging baggies. Defendant resides there, as does the codefendant Anisa Woods. The codefendant, Ms. Woods, did make a statement as far as the drugs and money and things belonging to her."

The court accepted defendant's guilty plea. Pursuant to his plea agreement, defendant was sentenced to 12½ years' imprisonment. Defendant did not file a motion to withdraw his guilty plea or file a direct appeal.

¶ 5 Defendant filed a petition for postconviction relief. See 725 ILCS 5/122-1 *et seq.* (West

2008). In the petition, defendant claimed a denial of his constitutional right to effective assistance of counsel (see U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8), which caused him to enter an involuntary guilty plea. Defendant asserted that while he was awaiting trial, an investigator from the public defender's office met him in jail and claimed to be an attorney. The investigator encouraged defendant to waive his preliminary hearing, telling defendant that the Federal Bureau of Investigation had called and threatened to prosecute defendant on federal charges if he refused to waive his preliminary hearing. Defendant, believing that the investigator was an attorney, accepted the advice and waived his preliminary hearing. Defendant claimed that, had he not waived his preliminary hearing, the State would have been unable to establish probable cause, and his charges would have been dismissed.

¶ 6 In addition, defendant claimed that the attorney later appointed to his case provided ineffective assistance of counsel that caused him to plead guilty rather than proceed to trial. Specifically, defendant argued that counsel failed to investigate the inculpatory statements made to police by Woods and advised defendant that, because of his prior criminal record, he would be found guilty if he proceeded to trial. As a result of this advice, defendant pled guilty involuntarily. Defendant attached two affidavits to the petition, each containing sworn statements from defendant only. The trial court summarily dismissed the petition at the first stage of postconviction proceedings. Defendant appeals.

¶ 7

ANALYSIS

¶ 8 On appeal, defendant argues that the circuit court erred when it summarily dismissed his petition at the first stage of postconviction proceedings. According to defendant, his petition established the gist of a claim that he was denied his constitutional right to effective assistance of

counsel. Defendant asks that we reverse the decision of the circuit court and advance defendant's petition to the second stage of postconviction proceedings.

¶ 9 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) provides a remedy to criminal defendants who have suffered substantial violations of their constitutional rights. *People v. Clark*, 2011 IL App (2d) 100188. The Act establishes a three-stage process for determining whether a substantial violation has occurred. At the first stage, the circuit court must determine whether the defendant's petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 1998). The petition need present only a limited amount of detail, enough to establish the gist of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239 (2001). All well-pleaded facts are to be taken as true. *People v. Coleman*, 183 Ill. 2d 366 (1998). The dismissal of a postconviction petition at the first stage is reviewed *de novo*. *Id.*

¶ 10 To establish a claim of ineffective assistance of counsel in the present context, defendant must show that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) but for counsel's unreasonable performance, defendant would not have pled guilty and would have proceeded to trial. *People v. Rissley*, 206 Ill. 2d 403 (2003).

¶ 11 On appeal, defendant first argues that counsel was deficient for failing to investigate Woods' statement that the contraband was hers. Defendant argues that proper investigation would have uncovered a viable defense, leading defendant to proceed to trial rather than pleading guilty.

¶ 12 Counsel's performance was not deficient. Woods' statement admitting possession of the drugs did not provide defendant with a viable defense. Under the principles of joint possession, both defendant and Woods could be found guilty of possession of the cocaine and cannabis. See

People v. Hill, 226 Ill. App. 3d 670 (1992). Defendant does not explain how further investigation of Woods' statement would have resulted in a viable defense. Nor does defendant claim that the law of joint possession somehow precluded defendant from being prosecuted. Applying existing case law to the facts established by the record, we find that counsel acted reasonably in advising defendant to plead guilty in spite of the statement by Woods.

¶ 13 Defendant next claims that counsel provided ineffective assistance by advising him that he would be found guilty at trial because of his prior criminal history. Defendant claims that he relied on this erroneous evidence when pleading guilty.

¶ 14 Defendant has not established that counsel's advice was erroneous. Evidence of a defendant's prior crimes is generally inadmissible to show propensity. *People v. Allen*, 335 Ill. App. 3d 773 (2002). However, prior drug transactions may be admissible to prove defendant's intent or knowledge in a later prosecution for possession with intent to deliver. *People v. LeCour*, 273 Ill. App. 3d 1003 (1995). In the present case, defendant's prior criminal history is not contained in the record. It is impossible to know whether defendant's prior criminal history would have been admissible at trial. Without more, defendant has not provided an arguable basis that his attorney's performance was deficient.

¶ 15 In addition, defendant has not established that, absent counsel's advice on this matter, defendant would have proceeded to trial. Defendant appears to have had no viable defense available at trial. As mentioned earlier, Woods' statement admitting possession did not provide a defense for defendant. The cocaine and cannabis were found in his residence. Without a defense at trial, we do not find it arguable that defendant would have rejected the State's plea offer and insisted on proceeding to trial.

¶ 16

CONCLUSION

¶ 17 The judgment of the circuit court of Rock Island County is affirmed.

¶ 18 Affirmed.