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2013 IL App (3d) 120375-U

Order filed October 17, 2013

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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 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-12-0375
	)	Circuit No. 08-CF-2721
	)	
STEVEN PODKULSKI,	)	Honorable
	)	Sarah-Marie F. Jones,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Lytton and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Defendant's postconviction petition was properly dismissed as frivolous and patently without merit.
- ¶ 2 Pursuant to a negotiated plea agreement, defendant, Steven Podkulski, pled guilty to theft (720 ILCS 5/16-1(a)(1)(A) (West 2008)), and was sentenced to 10 years' imprisonment. Thereafter, defendant filed a *pro se* postconviction petition, which the trial court summarily dismissed. On appeal, defendant contends that his petition should not have been dismissed



actually receive 180 days of MGT credit. Defendant did not receive MGT credit because the DOC suspended the award of such credit; therefore, defendant requested that the trial court reduce his sentence to 9 years' imprisonment so he would serve a total of 4½ years' imprisonment.

¶ 8 On April 3, 2012, the trial court summarily dismissed defendant's petition as patently without merit. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues that the trial court erred in summarily dismissing his postconviction petition because he presented the gist of a constitutional claim regarding his guilty plea.

Defendant does not contest the validity of his guilty plea, but asserts that he did not receive the benefit of his plea bargain with the State. Specifically, defendant asserts that based on his eligibility for day-for-day sentencing credit and 180 days of MGT credit, he was led to believe he would serve only 4½ years of his 10-year sentence. See 730 ILCS 5/3-6-3(a)(2.1), (a)(3) (West 2008). Based on the DOC's suspension of awarding MGT credit, defendant requests a one-year reduction in his sentence to give him the benefit of his plea bargain.

¶ 11 The Post-Conviction Hearing Act provides for a three-stage review process for the adjudication of postconviction petitions. 725 ILCS 5/122-1 *et seq.* (West 2010); *People v. Hodges*, 234 Ill. 2d 1 (2009). At the first stage, the trial court must independently determine whether the petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010). The petition's allegations, liberally construed and taken as true, need only present the gist of a constitutional claim. *People v. Harris*, 224 Ill. 2d 115 (2007). To state the gist of a constitutional claim, the defendant must plead some facts from which a valid claim can be

discerned. *People v. Edwards*, 197 Ill. 2d 239 (2001). We review the first-stage dismissal of a postconviction petition *de novo*. *People v. Morris*, 236 Ill. 2d 345 (2010).

¶ 12 A defendant may challenge the constitutionality of his guilty plea by claiming that he did not receive the benefit of the bargain. *People v. Whitfield*, 217 Ill. 2d 177 (2005). A defendant's constitutional right to due process and fundamental fairness is violated if he pleads guilty in exchange for a specific sentence, but receives a different, more onerous sentence than the one to which he agreed. *Id.*

¶ 13 Pursuant to *Whitfield*, 217 Ill. 2d 177, defendant requests that we reduce his sentence by one year because he did not receive the benefit of his bargain with the State, namely 180 days of MGT credit. We find defendant's argument without merit and his reliance on *Whitfield* misplaced.

¶ 14 In the instant case, the only agreement made in relation to defendant's sentence was that the State would recommend 10 years' imprisonment in exchange for defendant's guilty plea. Although the parties discussed the amount of days defendant would receive for time served, there was no mention in the record of MGT credit or that defendant was expected to serve only 4½ years of his 10-year sentence. Defendant also confirmed at the plea hearing that no other promises were made to him that were not included in the plea agreement recited in court. See *People v. Torres*, 228 Ill. 2d 382 (2008) (finding that defendant's acknowledgment at a plea hearing that there were no promises regarding his plea served to contradict allegation in petition that he pled guilty in reliance upon an alleged, undisclosed promise by his counsel regarding sentencing). Therefore, *Whitfield* has no application to this case because defendant had no agreement with the State to receive MGT credit as part of his plea agreement.

¶ 15 Moreover, in his petition, defendant did not allege that he was promised MGT credit as part of his plea agreement. Rather, defendant merely stated that he believed he would receive the credit, noting that MGT credit had usually been awarded by the DOC. Despite defendant's reliance on the fact that he would receive MGT credit, the award of such credit is left to the discretion of the DOC, and there is no indication in the record that defendant was advised otherwise. See 730 ILCS 5/3-6-3(a)(3) (West 2008).

¶ 16 Thus, defendant received the benefit of his bargain, and he is not entitled to a reduction of his sentence. Consequently, we hold the trial court properly dismissed defendant's postconviction petition, where the allegations in his petition failed to demonstrate the gist of a constitutional claim.

¶ 17

#### CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 19 Affirmed.