

NOTICE
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2013 IL App (4th) 111086-U

NO. 4-11-1086

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 2, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
JAMAAL C. HAINES,)	No. 05CF1367
Defendant-Appellant.)	
)	Honorable
)	James Coryell,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where any appeal in this case would be without merit, we grant the motion to withdraw as counsel filed by the office of the State Appellate Defender (OSAD). We agree any appeal would be without merit because the statements defendant made to a fellow inmate, who was working with the police, were not subject to suppression.

¶ 2 In May 2006, a jury found defendant, Jamaal C. Haines, guilty of first degree murder. In June 2006, the trial court sentenced him to 55 years in prison. This court affirmed defendant's conviction and sentence. In July 2008, defendant filed a *pro se* petition for postconviction relief, which counsel amended in February 2010. In November 2011, after an evidentiary hearing, the trial court denied the amended petition.

¶ 3 On appeal, OSAD moves to withdraw its representation of defendant pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be

without merit. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5

In May 2006, a jury convicted defendant of first degree murder. At trial, the State presented evidence that on June 18, 2005, defendant shot Christopher Foster in the head at close range with a shotgun upon breaking into Foster's apartment with the intent to steal marijuana. The State also offered the testimony of Bryain Young, who was defendant's cell mate in jail for a time as he awaited trial. Young testified that defendant told him about kicking in Foster's door, seeing Foster jump off the couch, and shooting Foster. Young agreed to participate in an overheard. The taped conversation between Young and defendant was played for the jury. In it, defendant told Young that "you shoot first, ask questions later." Medical evidence suggested that Foster was lying on the couch when he was shot in the forehead. Some witnesses who had been with defendant in the hours leading up to the murder testified he had consumed alcohol and marijuana during that time.

¶ 6

In June 2006, the trial court sentenced defendant to 30 years in prison, plus 25 years as the mandatory firearms add on, for an aggregate sentence of 55 years. This court affirmed defendant's conviction and sentence on direct appeal. *People v. Haines*, No. 4-06-0549 (Oct. 10, 2007) (unpublished order under Supreme Court Rule 23).

¶ 7

In July 2008, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2008)). Defendant argued the State had deliberately conspired to elicit statements from him while he was in jail on a probation violation. He also argued trial counsel was ineffective for failing to call alibi witnesses in the police report and appellate counsel was ineffective for not raising these issues on direct

appeal.

¶ 8 The trial court appointed counsel, and an amended postconviction petition was filed in February 2010. Therein, defendant argued the State illegally obtained evidence against him through the use of an overhear device worn by Young. The admission into evidence of defendant's recorded statements violated his rights under the sixth and fourteenth amendments (U.S. Const., amends. VI, XIV) and article I, section 8 of the Illinois Constitution (Ill. Const. 1970, art. I, § 8)). Defendant also argued trial counsel was ineffective for failing to file a motion to suppress and appellate counsel was ineffective for failing to raise the issue on direct appeal.

¶ 9 In April 2010, the State filed a motion to dismiss the postconviction petition. The State argued defendant was being held in jail on a parole hold when the recordings were made on September 15, 2005. The defendant was not arrested for Foster's murder until September 16, 2005. Since defendant had no sixth-amendment right to counsel at the time of the recordings, any attempt to suppress the statements would have been futile.

¶ 10 In November 2011, the trial court conducted an evidentiary hearing. Bryain Young testified he was in custody in August and September 2005 on the charge of aggravated criminal sexual assault. He shared the same cell with defendant for two to three weeks. At some point, he contacted jail officers and mentioned he might have information related to a murder. Young hoped to make a deal on his charge, and he agreed to wear a wire to record conversations with defendant on September 15, 2005. Defendant made statements about being involved in the murder.

¶ 11 Defendant testified he was in custody in September 2005 on a probation violation. After sharing a cell with Young for a time, Young was moved out before they reunited on

September 15, 2005. After talking about each other's pending charges, the conversation turned to unsolved murders in Decatur. Young asked about details of the Foster murder, and defendant made statements. On cross-examination, defendant admitted talking about his involvement in Foster's murder. The day after defendant spoke with Young, defendant was arrested for murder.

¶ 12 Macon County sheriff's commander Max Austin testified defendant was being held at the Macon County jail on September 15, 2005, for probation and parole violations. Defendant was arrested for the offense of first degree murder on September 16, 2005.

¶ 13 Decatur police detective Cory Barrows testified he met with Young on September 8, 2005, and Young stated defendant had confessed to being involved in Foster's murder. Young agreed to wear a recording device, and Barrows obtained a court order for the device. Young was fitted with the overhear device on September 15, 2005, and placed back in a cell. Barrows later reviewed the recordings and arrested defendant on September 16, 2005.

¶ 14 In December 2011, the trial court issued its written ruling. The court found defendant was not in custody on the murder charge when the statements he made to Young were recorded. Further, defendant was not arrested for the murder until after he made the statements. Since counsel had no basis to file a motion to suppress, the court denied defendant's postconviction petition. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum pursuant to *Finley*. Proof of service has been shown on defendant. This court granted defendant leave to file additional points and authorities on or before January 14, 2013. He has done so, and the State has filed a responsive brief as well. Based on our

examination of the record, we conclude, as has OSAD, that an appeal in this cause would be without merit.

¶ 17 The Act "provides a means for a criminal defendant to challenge his conviction or sentence based on a substantial violation of constitutional rights." *People v. Beaman*, 229 Ill. 2d 56, 71, 890 N.E.2d 500, 509 (2008). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *Beaman*, 229 Ill. 2d at 71, 890 N.E.2d at 509. The defendant bears the initial burden of establishing a substantial deprivation of his federal or state constitutional rights. *People v. Williams*, 209 Ill. 2d 227, 242, 807 N.E.2d 448, 458 (2004).

¶ 18 The Act establishes a three-stage process for adjudicating a postconviction petition. *People v. English*, 2013 IL 112890, ¶ 23, __ N.E.2d __. Here, the trial court dismissed defendant's amended petition following a third-stage evidentiary hearing. "After an evidentiary hearing where fact-finding and credibility determinations are involved, the circuit court's decision will not be reversed unless it is manifestly erroneous." *English*, 2013 IL 112890, ¶ 23, __ N.E.2d __. " 'Manifest error' is error which is clearly plain, evident, and indisputable." *People v. Taylor*, 237 Ill. 2d 356, 373, 930 N.E.2d 959, 970 (2010).

¶ 19 In his postconviction petition, defendant argued his statements to Bryain Young while incarcerated in the county jail should have been suppressed because Young was working with law-enforcement officials. OSAD argues defendant's statements were admissible against him because he was not in custody for Foster's murder and had not been charged with the crime at the time the statements were recorded.

¶ 20 In *Illinois v. Perkins*, 496 U.S. 292, 294 (1990), the defendant was being held

pending trial on a charge of aggravated battery. Upon receiving word from another inmate that the defendant may have been involved in a murder, an undercover agent posed as a jail inmate to get more information about the murder. The defendant ultimately made statements implicating himself. *Perkins*, 496 U.S. at 295. After defendant was charged with murder, he filed a motion to suppress the statements made to the agent in jail. *Perkins*, 496 U.S. at 295.

¶ 21 The United States Supreme Court held "an undercover law enforcement officer posing as a fellow inmate need not give *Miranda* warnings to an incarcerated suspect before asking questions that may elicit an incriminating response." *Perkins*, 496 U.S. at 300. The Court found a conversation between a suspect and an undercover agent did not implicate *Miranda* concerns because of the absence of a coercive atmosphere. *Perkins*, 496 U.S. at 299. The Court also held that the sixth amendment was not implicated when, like this case, no charges had been filed on the subject of the interrogation. *Perkins*, 496 U.S. at 299.

¶ 22 In the case *sub judice*, defendant was not charged with or in custody for Foster's death at the time he made his recorded statements to Young. Defendant made the statements to Young on September 15, 2005. He was arrested for Foster's murder the following day and charged with the crime on September 30, 2005. Thus, no sixth-amendment violation occurred. See *People v. Easley*, 148 Ill. 2d 281, 319, 592 N.E.2d 1036, 1053 (1992) (finding no sixth-amendment violation where the defendant's recorded conversations occurred prior to his indictment on murder charges). As a result, trial counsel cannot be said to have been ineffective for not filing a motion to suppress, and appellate counsel was not ineffective for not raising the issue on direct appeal. Thus, the trial court's decision denying defendant's postconviction petition was not manifestly erroneous.

¶ 23

III. CONCLUSION

¶ 24 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.