



unlawful restraint (720 ILCS 5/10-3.1 (West 2008)), a Class 3 felony. The charges arose from a residential robbery that occurred on June 8, 2009.

¶ 4 On January 25, 2010, the defendant appeared in federal court in the Southern District of Illinois, to face a federal indictment charging him with conspiracy to defraud the United States (count I) and possession of counterfeit United States currency (count II). The defendant pled guilty to both counts. He was sentenced to 30 months in the custody of the U.S. Bureau of Prisons and 3 years' supervised release on each count, to run concurrently, and he was remanded to the custody of the United States Marshal.

¶ 5 On March 31, 2010, the defendant appeared in the circuit court of Jefferson County. Pursuant to a negotiated agreement, the defendant pled guilty to the charges of home invasion and armed robbery, and the State dismissed the remaining charge of unlawful restraint and unrelated criminal charges pending in a separate case in Jefferson County. The defendant was sentenced to 12 years in the Department of Corrections and 3 years' mandatory supervised release on each count. The circuit court noted that the defendant would receive day-for-day good-time credit on those sentences. In the written judgment, the court noted that there is no finding of bodily harm, and ordered that the sentence for home invasion would run concurrent with the sentence for armed robbery, and that the state sentences would run concurrent with the sentences imposed in the federal case.

¶ 6 On June 8, 2011, the defendant filed a *pro se* petition for postconviction relief and therein claimed that his constitutional rights were violated because he was not receiving the benefit of his plea bargain. The defendant alleged that under the terms of the negotiated plea, the State agreed to run his 12-year sentences concurrently with his federal sentences and that because the State is holding him in state prison rather than releasing him back into federal custody, he is unable to receive federal credit for the time he is serving in state prison, in violation of the plea agreement. The circuit court dismissed the *pro se* petition after its initial

review, finding that the written judgment stated that "sentences imposed herein shall run concurrently to Defendant's Federal Sentences" and that the relief the defendant is seeking was ordered in the judgment.

¶ 7 On appeal, the defendant contends that his postconviction petition sets forth the "gist" of a constitutional claim and should not have been summarily dismissed at the initial stage of the postconviction proceedings. The defendant alleges that he was advised his state sentences would run concurrently with his federal sentences and that he was not informed that an Illinois circuit court lacked the power to direct the federal authorities to grant him federal credit for the time he served in a state prison or to return him to federal custody so that he could complete the federal sentences before serving the remainder of his state sentences. The defendant proposes that in order to obtain the benefit of his bargain under the terms of the plea agreement, this court should reverse the order of summary dismissal and order specific performance of the plea agreement or reduce his state sentences by 30 months as an equitable remedy. Alternatively, the defendant asks this court to reverse the order of summary dismissal and to remand the case for the appointment of counsel and second-stage proceedings. The summary dismissal of a postconviction petition is reviewed *de novo*. *People v. Edwards*, 197 Ill. 2d 239, 247, 757 N.E.2d 442, 447 (2001).

¶ 8 Before considering the merits of the appeal, we will address a motion that was taken with the case. The State filed a motion to disregard material appended to the defendant's reply brief and the defendant's arguments based on the appended material. The appended material at issue is a copy of the federal judgment and sentencing order from the defendant's federal criminal case. The federal judgment was not made part of the court record during the plea proceedings and it was not appended to the defendant's *pro se* postconviction petition. A review of the record reveals that the parties and the circuit court knew of and referenced the defendant's federal sentence at the time of the defendant's plea. Additionally, the

defendant referred to the federal sentences and made arguments based upon those federal sentences in his postconviction petition, his appellant's brief, and his reply brief. The accuracy of the content of the federal judgment and sentencing order has not been challenged, and that content may be judicially noticed. The document contains some details of the sentence, but it does not interject new arguments or raise new issues for purposes of this appeal. We will take judicial notice of the document for purposes of this appeal. The State's motion to disregard the federal judgment and sentencing order and the arguments made thereon is denied.

¶ 9 The Post-Conviction Hearing Act provides a means by which any person, who is imprisoned under an Illinois criminal sentence, may assert that he suffered a substantial denial of his constitutional rights during the proceedings which resulted in his conviction and sentence. 725 ILCS 5/122-1(a) (West 2006); *People v. Hodges*, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009). A postconviction proceeding not involving the death penalty is divided into three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996). At the initial stage, the trial court independently examines the petition, and if the court finds that the petition is frivolous or patently without merit, it shall summarily dismiss the petition in a written order, specifying its findings of fact and conclusions of law. 725 ILCS 5/122-2.1(a)(2) (West 2006). A petition is frivolous or patently without merit if the allegations, when taken as true, fail to present the gist of a constitutional claim. *Gaultney*, 174 Ill. 2d at 418, 675 N.E.2d at 106. A petition fails to present the gist of a claim if it lacks an arguable basis in law or in fact. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition has no basis in law when it is based on an indisputably meritless legal theory. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition has no basis in fact if it is based on "fanciful factual allegations," such as those which are fantastic or delusional. *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212.

¶ 10 If a petition survives the initial stage of review, the case proceeds to the second stage. At the second stage, an indigent defendant is entitled to appointed counsel who may review and amend the petition. 725 ILCS 5/122-4 (West 2006). In addition, the State is permitted to file an answer or move to dismiss the postconviction petition. 725 ILCS 5/122-5 (West 2006). If the circuit court finds that the allegations in the petition, when liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation, it may dismiss or deny the petition. *Gaultney*, 174 Ill. 2d at 418, 675 N.E.2d at 106. If the petition is not dismissed or denied, the case advances to the third stage and the court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2006).

¶ 11 In accordance with Supreme Court Rule 402 (eff. July 1, 1997), the trial court must give certain admonishments to a defendant and must determine whether the defendant's plea is knowing and voluntary before accepting his guilty plea. The trial court shall not accept a plea of guilty without first addressing the defendant personally in open court. The trial court is obligated to inform a defendant, and make sure he understands, among other things, the minimum and maximum sentences and penalties to which he may be exposed upon entry of a guilty plea. Ill. S. Ct. R. 402(a) (eff. July 1, 1997). In this case, the defendant's *pro se* petition raises concerns about whether the defendant was admonished and understood that the federal authorities, rather than the Illinois circuit court, would ultimately determine whether he would receive credit for his federal sentence while he was in the custody of the Illinois Department of Corrections. These allegations touch on whether the defendant was adequately admonished about the upper limit of time he would spend in prison upon entering a plea of guilty. After reviewing the defendant's *pro se* postconviction petition, we conclude that it sets forth the "gist" of a constitutional claim and that the circuit court erred in dismissing it at the initial stage of the postconviction proceedings. Accordingly, we reverse the summary dismissal of the defendant's *pro se* postconviction petition, and we remand the

case for second-stage proceedings under the Act.

¶ 12 For the reasons stated, the State's motion to disregard the material appended to the reply brief is denied, and the circuit court's summary dismissal of the defendant's *pro se* postconviction petition is reversed, and the cause is remanded for second-stage postconviction proceedings under the Act.

¶ 13 Reversed and remanded.