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2014 IL App (3d) 120674-U

Order filed July 29, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-12-0674
BRIAN BROADFIELD,)	Circuit No. 09-CF-49
Defendant-Appellant.)	Honorable Scott A. Shore, Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justice O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it dismissed defendant's postconviction petition.

¶ 2 Defendant, Brian Broadfield, was charged with unlawful possession of methamphetamine (720 ILCS 646/60(a) (West 2008)), unlawful possession of methamphetamine with intent to deliver (720 ILCS 646/55(a)(1) (West 2008)), unlawful participation in methamphetamine manufacturing (720 ILCS 646/15(a)(1) (West 2008)), unlawful possession of methamphetamine manufacturing materials (720 ILCS 646/30(a) (West 2008)), and obstructing justice (720 ILCS

5/31-4(a) (West 2008)). Following a stipulated bench trial, defendant was convicted of all counts. On appeal, this court vacated defendant's conviction for unlawful possession of methamphetamine manufacturing material and otherwise affirmed. *People v. Broadfield*, No. 3-10-0215 (2012) (unpublished order under Supreme Court Rule 23). Thereafter, defendant filed a postconviction petition. The trial court dismissed the petition as frivolous and patently without merit. Defendant appeals, contending that the petition stated the gist of a constitutional claim in alleging that he did not knowingly waive his right to a jury trial. We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged with numerous drug offenses. Prior to trial, defendant informed the court that he wished to waive his right to a jury trial and proceed with a stipulated bench trial. Following defendant's request, the trial court admonished defendant of his right to a jury trial. Defendant stated that he had discussed his right to a jury trial with counsel. Defendant understood that he would not receive a second trial if, after the State presented the stipulation, the court determined that the crimes had been proven. The court also informed defendant that he would have a chance to say whether he agreed with the stipulation after it was presented by the State. Defendant signed a jury waiver form, and the cause proceeded to the stipulated bench trial. The State read into the record a summary of the evidence it had obtained. The court then asked defense counsel if he was stipulating to the facts presented by the State. Defense counsel informed the court that he did stipulate to those facts. Defendant remained silent. The trial court found defendant guilty of all counts.

¶ 5

Defendant filed a direct appeal. In the appeal, defendant argued that: (1) he was denied the effective assistance of counsel when his attorney stipulated to the State's facts and failed to challenge the sufficiency of the evidence; (2) his conviction for possession of methamphetamine

manufacturing materials should be vacated under the one-act, one-crime doctrine; and (3) the discussion of certain physical evidence was not admissible because it had been discarded by law enforcement. This court issued an order vacating defendant's conviction for unlawful possession of methamphetamine manufacturing materials and otherwise affirmed the trial court's judgment. *Broadfield*, No. 3-10-0215.

¶ 6 Following the decision by this court, defendant filed a *pro se* postconviction petition. The petition alleged, among other things, that defendant's attorney did not discuss the content of the stipulation prior to defendant's decision to have a stipulated bench trial. The petition further stated that defendant did not hear the stipulation until it was presented at trial, and the court found defendant guilty before he could object to the stipulation. The petition also alleged that defendant agreed to proceed by way of a stipulated bench trial because: (1) he thought the evidence would result in a guilty finding; (2) the trial judge was retiring and defendant felt that he should be tried and sentenced by the same judge in order to receive a minimum sentence; and (3) defendant wanted to preserve issues for his appeal.

¶ 7 After reviewing defendant's petition, the trial court found that its allegations were frivolous and patently without merit. Therefore, the court entered an order dismissing the petition.

¶ 8 ANALYSIS

¶ 9 Defendant contends that his postconviction petition stated the gist of a constitutional claim, and therefore should not have been dismissed. A postconviction petition is a collateral attack on a prior conviction and sentence. *People v. Rissley*, 206 Ill. 2d 403 (2003). The purpose of a postconviction proceeding is to permit inquiry into constitutional issues involved in a defendant's original conviction that have not been adjudicated and could not have been

adjudicated previously. *People v. Blair*, 215 Ill. 2d 427 (2005). As such, a postconviction proceeding is not a substitute for a direct appeal. *People v. Edwards*, 2012 IL 111711.

¶ 10 The Post-Conviction Hearing Act provides a three-step procedure for the adjudication of petitions for postconviction relief. 725 ILCS 5/122-1 *et seq.* (West 2012). At the first stage, the trial court must independently determine whether the petition is frivolous or patently without merit. *People v. Morris*, 236 Ill. 2d 345 (2010). A petition is frivolous or patently without merit if its allegations, when taken as true, fail to present the gist of a constitutional claim. *People v. Brooks*, 233 Ill. 2d 146 (2009). A trial court's dismissal of a postconviction petition at the first stage is reviewed *de novo*. *Morris*, 236 Ill. 2d 345.

¶ 11 In this case, defendant claims that his postconviction petition stated the gist of a constitutional claim where it alleged that he did not knowingly waive his right to a jury trial. Specifically, defendant alleges that his jury waiver was not valid because, at the time it was made, he did not know the evidence the State and defense counsel would stipulate to at trial.

¶ 12 A jury waiver must be knowingly and understandingly made. 725 ILCS 5/103-6 (West 2008); *People v. Bracey*, 213 Ill. 2d 265 (2004). A defendant's waiver cannot be determined by application of a precise formula, but turns on the particular facts and circumstances of each case. *Bracey*, 213 Ill. 2d 265. Generally, a jury waiver is valid if it was made by defense counsel in defendant's presence in open court, without an objection by defendant. *Id.* A defendant's intent may be established by a written jury waiver. *Id.*; see also 725 ILCS 5/115-1 (West 2008)).

¶ 13 Here, the record reveals that defendant made a knowing waiver of his right to a jury trial. At the time defendant elected to proceed to a stipulated bench trial, the court admonished defendant of his right to a jury trial, defendant stated that he had discussed his right to a jury trial with counsel, and defendant executed a written jury waiver. Although defendant alleges the

contents of the trial stipulation were not discussed at the time of the waiver, defendant provided several reasons for his decision to proceed to a stipulated bench trial, including that he thought the evidence was sufficient to establish his guilt of the charged offenses. On such a record, we find that defendant surely knew of the evidence that would be presented at the stipulated bench trial and made a knowing and understanding waiver of his right to a jury trial. Therefore, defendant's petition did not establish the gist of a claim that his right to a jury trial was violated, and the court did not err when it summarily dismissed his postconviction petition.

¶ 14

CONCLUSION

¶ 15

The judgment of the circuit court of Tazewell County is affirmed.

¶ 16

Affirmed.