2015 IL App (1st) 130982-U

FIRST DIVISION
JUNE 29, 2015

No. 1-13-0982

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 00 CR 24940
	)	
TERE MAGEE,	)	Honorable
	)	James B. Linn,
Defendant-Appellant,	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's petition filed pursuant to the Post-Conviction Hearing Act, which asserted that his conviction violated the proportionate penalties clause of the Illinois Constitution, was not frivolous or patently without merit, notwithstanding the existence of an appellate court decision contrary to his position. As the defendant's petition had at least an arguable legal basis, it met the low threshold applicable to such petitions at the first stage of post-conviction proceedings and should not have been summarily dismissed.

¶ 2 This appeal arises from the trial court's summary dismissal of defendant-appellant's petition for relief under the Post-Conviction Hearing Act. 725 ILCS 5/122-1 *et seq.* (West 2012). The defendant contends that his petition should not have been summarily dismissed

because it raised at least an arguable claim that his sentence for aggravated criminal sexual assault was unconstitutional under the proportionate penalties clause of the Illinois Constitution. For the reasons set forth below, we reverse the ruling of the circuit court of Cook County and remand for further proceedings.

BACKGROUND

¶ 3 In May 2007, following a bench trial, the trial court found the defendant guilty of five counts of armed robbery, two counts of aggravated criminal sexual assault, and three counts of aggravated criminal sexual abuse, all pertaining to acts committed against several women at a Chicago beauty salon in August 2000. The defendant was sentenced to five concurrent 10-year terms on the armed robbery counts, to be served consecutively to five concurrent 20-year terms on the aggravated criminal sexual assault and aggravated criminal sexual abuse counts, resulting in an aggregate sentence of 30 years' imprisonment. The trial court ordered that this 30-year sentence would run consecutively to a 50-year sentence previously imposed in a separate case.

¶ 4 In a direct appeal, the defendant argued, and the State conceded, that there was insufficient evidence to uphold his convictions for aggravated criminal sexual abuse, and that one of his two convictions for aggravated criminal sexual assault should be vacated because there was evidence of only a single act of sexual penetration. This court agreed that under the one-act, one-crime doctrine, sentence should be imposed on the "more serious" of the two counts of aggravated criminal sexual assault and the other count should be vacated. Thus, in a summary order, we vacated the convictions on the three counts of criminal sexual abuse and directed the trial court to determine which of the two counts for aggravated criminal sexual assault was "more serious" and which should be vacated. *People v. Magee*, No. 1-09-3229 (order filed

March 31, 2011; modified order filed May 17, 2011). We otherwise affirmed the remaining convictions. On remand, the defendant was sentenced on October 24, 2012[1] to five concurrent 10-year terms for armed robbery, to be served consecutively to a 20-year sentence for a single count of aggravated criminal sexual assault with a firearm, resulting in an aggregate sentence of 30 years.

¶ 5 The defendant, acting *pro se*, filed a post-conviction petition dated January 2, 2013, asserting that his sentence for aggravated criminal sexual assault with a firearm violated the proportionate penalties clause of the Illinois Constitution. In particular, the defendant's petition stated that a person convicted of aggravated criminal sexual assault must serve at least 85% of his sentence pursuant to section 3-6-3(a)(2)(ii) of the Unified Code of Corrections, often referred to as a "truth-in-sentencing" provision, which states that a person convicted of certain specified offenses may "receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment." 730 ILCS 5/3-6-3(a)(2)(ii) (West 2012). On the other hand, the defendant contended, a person convicted of armed violence with a category I weapon predicated on criminal sexual assault—which has "identical elements" to the sexual assault offense—would not be subject to the same "truth-in-sentencing" provision mandating imprisonment for at least 85% of the sentence imposed. Rather, the petition noted that a person convicted of armed violence would be "eligible for day-for-day good conduct credit, unless the court has made a finding that the victim has suffered great bodily harm," (see 730 ILCS 5/3-6-3(a)(2)(iii), (a)(2.1)

[1] On August 1, 2011, the trial court issued a new sentencing order that vacated one of the aggravated criminal sexual assault counts, but failed to vacate the three counts of criminal sexual abuse in compliance with this court's summary order. The defendant subsequently moved to correct the mittimus, and the trial court issued a corrected sentencing order on October 24, 2012.

(West 2012)) and thus such a defendant would be eligible for release from prison prior to serving 85% of the sentence. The defendant's petition asserted that these provisions resulted in different penalties for offenses with identical elements in violation of the proportionate penalties clause.

¶ 6 On February 7, 2013, the trial court summarily dismissed the defendant's petition. The trial court's brief discussion of the petition was as follows:

> Terry Magee *** brings a post-conviction petition saying that his conviction for aggravated criminal sexual assault with a firearm should be vacated, is unconstitutional, because armed violence predicated on aggravated criminal sexual assault carries a lesser penalty.
>
> The fact I think he's got it mixed up. It would be the charge that even though certain conduct may be defined by more than one charge, it is the greater charge that's proven beyond a reasonable doubt that is the charge that he's to be sentenced on. He got a 30-year sentence consecutive to another 50-year sentence on a different case from another courtroom.
>
> I find his pro se post-conviction petition is without merit and it is denied.[2]

[2] The transcript of proceedings suggests that the trial court did not address the substance of the defendant's proportionate penalties challenge. Although the court correctly stated that the petition asserted that "his conviction for aggravated criminal sexual assault with a firearm should be vacated *** because armed violence predicated on aggravated criminal sexual assault carries a lesser penalty," the court's discussion of the petition did not mention the proportionate penalties clause or the applicable truth-in-sentencing provisions of section 3-6-3.

¶ 7 The defendant appealed the summary denial of his petition in a notice of appeal filed on March 5, 2013. The Office of the State Appellate Defender was subsequently appointed to represent the defendant in this appeal.

¶ 8 ANALYSIS

¶ 9 We first note that we have jurisdiction in this case because the defendant filed a notice of appeal within 30 days from the trial court's February 7, 2013 denial of his post-conviction petition. See Ill. S. Ct. R. 651 (eff. April 26, 2012); Ill. S. Ct. R. 606(b) (eff. Feb. 6, 2013).

¶ 10 The Post-Conviction Hearing Act (the Act), 725 ILCS 5/122-1 *et seq.* (West 2012) "provides a method by which persons under criminal sentences in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. [Citations.] A post-conviction action is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings." *People v. Tate*, 2012 IL 112214, ¶ 8. A trial court's dismissal of a post-conviction petition is reviewed *de novo. People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

¶ 11 In a noncapital case, a post-conviction proceeding consists of three stages. *Id.* The first stage concerns the sufficiency of the allegations of the petition. Section 122-2 of the Act requires that a post-conviction petition must "clearly set forth the respects in which petitioner's constitutional rights were violated." 725 ILCS 5/122-2 (West 2012). In a non-capital case, the Act directs that "[i]f *** the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision." 725 ILCS 5/122-2.2(a)(2) (West 2012). Thus, at the first stage of a post-conviction proceeding, the trial court reviews the petition to

"determine whether the petition is frivolous or patently without merit." (Internal quotation marks omitted). *People v. Tate,* 2012 IL 112214, ¶ 9.

¶ 12 If a petition is not summarily dismissed, "the petition advances to the second stage, where counsel may be appointed to an indigent defendant [citation] and where the State, as respondent, enters the litigation." *Id.* At the second stage, if "a substantial showing of a constitutional violation is set forth, the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing." *Id.*

¶ 13 The defendant's petition in this case was dismissed at the first stage. Our supreme court has explained that the "first stage in the [post-conviction] proceeding allows the circuit court to act strictly in an administrative capacity by screening out those petitions which are without legal substance or are obviously without merit." (Internal quotation omitted). *Id.* Thus, a petition is subject to a low threshold of scrutiny at this point. Our supreme court has held that "a defendant at the first stage need only present a limited amount of detail in the petition. [Citations.] Because most petitions are drafted at this stage by defendants with little legal knowledge or training, this court views the threshold for survival as low. [Citations.] In fact, we have required only that a *pro se* defendant allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act. [Citation.]" *Hodges*, 234 Ill. 2d at 9.

¶ 14 Our supreme court in *Hodges* recognized that under the Act, "a petition which is sufficient to avoid summary dismissal is simply one which is *not* frivolous or patently without merit." *Id.* at 11. Noting that the Act does not expressly define the terms "frivolous" or "patently without merit," our supreme court in *Hodges* proceeded to hold that such a petition "may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable

basis either in law or in fact." *Id.* at 11-12. In other words, "[a] petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Id.* at 16.

¶ 15 As the trial court in this case dismissed the defendant's petition at the first stage, we thus review whether the trial court correctly determined that the petition was "frivolous or patently without merit," that is, whether it had "no arguable basis either in law or in fact." *Id.* at 11-12. We need not attempt to resolve any constitutional issues presented, but merely whether the defendant has presented an arguable claim that warrants additional proceedings under the Act.

¶ 16 The defendant asserts that his petition presents at least an arguable claim that the "legislative mandate that those convicted of aggravated criminal sexual assault with a firearm be ineligible for release until serving eighty-five percent of the term of years imposed" violates the proportionate penalties clause of the Illinois Constitution, because "one convicted of the identical offense of armed violence predicated on criminal sexual assault would first be eligible for early release after serving half of the imposed term."

¶ 17 The defendant relies on the proposition that the proportionate penalties clause forbids the imposition of different penalties for offenses with identical elements. Specifically, "[t]he proportionate penalties clause of the Illinois Constitution declares that '[a]ll penalties shall be determined *** according to the seriousness of the offense.' " *People v. Toy*, 2013 IL App (1st) 120580, ¶ 22 (quoting Ill. Const. 1970, art. I, § 11). Our supreme court has reasoned that "[i]f the legislature determines that the exact same elements merit two different penalties, then one of these penalties has not been set in accordance with the seriousness of the offenses." *People v. Sharpe*, 216 Ill. 2d 481, 522 (2005)). Thus, "the proportionate penalties clause is violated where

offenses with identical elements are given different sentences." *Toy*, 2013 IL App (1st) 120580, ¶ 22 (citing *Sharpe*, 216 Ill. 2d at 521).

¶ 18 In this case, there is no dispute that the two offenses that are the basis of the defendant's proportionate penalties argument have identical elements. Our court has explicitly held that "aggravated criminal sexual assault predicated upon the accused having been armed with a firearm [citation] and armed violence with a category I weapon predicated upon criminal sexual assault [citation] have identical elements." *People v. Pelo*, 404 Ill. App. 3d 839, 883 (2010) (vacating sentencing enhancements for aggravated criminal sexual assault as violating proportionate penalties clause); see also *People v. Hampton*, 406 Ill. App. 3d 925, 942 (2010) (enhancements to sentence for aggravated criminal sexual assault with a firearm violated the proportionate penalties clause because they "ma[d]e the sentences disproportionate to the penalty for armed violence predicated on criminal sexual assault [citation], which contains identical elements"). In this appeal, the State concedes that "the offenses of aggravated criminal sexual assault with a firearm and armed violence predicated on sexual assault share the same elements."

¶ 19 The crux of the defendant's proportionate penalties challenge is premised on the different treatment of these offenses under the truth-in-sentencing provisions of section 3-6-3 of the Unified Code of Corrections. Under section 3-6-3(a)(2)(ii), a prisoner serving a sentence for certain enumerated offenses, including aggravated criminal sexual assault, "shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment." 730 ILCS 5/3-6-3(a)(2)(ii) (West 2012). That is, for the enumerated crimes, section 3-6-3 mandates that the prisoner will serve, at the minimum, 85% of the imposed term before being eligible for release.

¶ 20 In contrast, with respect to persons convicted of offenses not specifically enumerated in section 3-6-3(a)(2), section 3-6-3(a)(2.1) provides that "a prisoner *** shall receive one day of sentence credit for each day of his or her sentence of imprisonment," and "[e]ach day of sentence credit shall reduce by one day the prisoner's period of imprisonment." 730 ILCS 5/3-6-3(a)(2.1) (West 2012). In other words, for those offenses *not* specifically subject to the 85% mandatory minimum of section 3-6-3(a)(2), a prisoner may potentially serve as little as 50% of the prison term imposed if he receives one day of sentence credit for each day served. Thus, while section 3-6-3 requires a prisoner convicted of aggravated criminal sexual assault (such as the defendant) to remain imprisoned for at least 85% of the sentence, that minimum is not applicable to one convicted of armed violence predicated on sexual assault—an offense with identical elements.

¶ 21 The State's brief concedes that, had the defendant been convicted of armed violence predicated on sexual assault, rather than aggravated criminal sexual assault, he would not be limited to 4.5 days of sentence credit for each month served pursuant to section 3-6-3(a)(2)(ii), but would be eligible to receive day-for-day credit towards early release. Thus, the parties do not dispute that although the defendant is required to serve at least 85% of his sentence for his aggravated criminal sexual assault conviction, he would have been eligible for earlier release had he been convicted of a different offense with identical elements.

¶ 22 Nevertheless, the State urges "defendant still deserves no relief" in this appeal "as no court has concluded that the proportionate penalties clause is violated where truth-in-sentencing applies to only one of two offenses sharing identical elements" and contends that our court "has rejected this assertion outright in an analogous case," *People v. Harris*, 2012 IL App (1st)

092251. Thus the State urges that the defendant's petition was properly dismissed "because it is based on an indisputably meritless legal theory."

¶ 23 The State urges that our decision in *Harris*, which rejected a similar proportionate penalties argument, is dispositive in establishing that the defendant's petition was frivolous. In *Harris*, a defendant convicted of armed robbery and aggravated kidnapping while armed with a firearm filed a post-conviction petition raising several challenges premised upon the proportionate penalties clause of the Illinois Constitution as well as the equal protection clause of the United States Constitution. *Harris*, 2012 IL App (1st) 092251, ¶¶ 6-8.

¶ 24 The *Harris* defendant's conviction for aggravated kidnapping—similar to the defendant's conviction of aggravated criminal sexual assault in this case— was subject to the truth-in-sentencing provisions of section 3-6-3(a)(2) barring a prisoner from receiving more than 4.5 days of sentence credit per month, effectively mandating imprisonment for at least 85% of the term imposed. *Id.* ¶ 19. The *Harris* defendant asserted that "application of the truth-in-sentencing statute with regard to his conviction for aggravated kidnaping violates the proportionate penalties clause of the Illinois Constitution" because it "require[d] him to serve 85% of his sentence for aggravated kidnaping, while it would allow the Department of Corrections to release him after serving only 50% of his sentence for the identical offense of armed violence predicated on kidnaping." *Id.*

¶ 25 In *Harris*, our court acknowledged that "while the Unified Code of Corrections mandates that a defendant convicted of aggravated kidnapping serve 85% of his sentence in every case," "a defendant convicted of armed violence could be eligible for early release after serving 50% of his prison sentence," absent a finding that his conduct resulted in great bodily harm. *Id.* ¶ 22

(citing 730 ILCS 5/3-6-3(a)(2)(ii-iii), (a)(2.1) (West 2006)). Although our decision acknowledged the "difference between the rules for early release with regard to each offense," our court proceeded to conclude that this was *not* a proportionate penalties violation because "that difference does not pertain to the sentencing range of the two offenses." *Id.* ¶ 23.

¶ 26 The *Harris* decision noted our court had previously held that "whether penalties for offenses with identical elements violate the proportionate penalties clause depends only on whether they have different sentencing ranges, and not the manner in which those sentences are carried out." *Id.* The *Harris* court cited *People v. Hawkins*, 409 Ill. App. 3d 564, 572-73 (2011), in which a defendant unsuccessfully argued that imposition of mandatory consecutive sentences upon his aggravated criminal sexual assault convictions violated the proportionate penalties clause because consecutive sentences were not mandated for an offense with identical elements. In *Hawkins*, we reasoned that "the mandatory consecutive sentencing structure *** affects only the *manner* by which the sentence is carried out, and not the *punishment* itself," and thus imposition of consecutive sentences "did not constitute an increase in penalty." (Emphasis in original). *Id.* at 573-74.

¶ 27 The *Harris* decision further noted that in another case, "this court found that the truth-in-sentencing provision requiring that [a] defendant serve 85% of his sentence does not change the penalty for the underlying offense ***." *Harris*, 2012 IL App (1st) 092251, ¶ 24 (citing *People v. Robinson*, 383 Ill. App. 3d 1065, 1071 (2008) (holding that section 3-6-3(a)(2)'s requirement that a defendant who inflicted "great bodily harm" must serve at least 85% of his sentence "does not change the prescribed maximum penalty of the underlying offense")). Thus, our court in *Harris* rejected the argument that "the truth-in-sentencing law *** is tantamount to the

imposition of a harsher punishment than that which [the *Harris* defendant] would receive for the offense of armed violence because it requires him to serve a higher percentage of his sentence." *Id.* ¶ 25. The *Harris* court concluded that "since the truth-in-sentencing provision does not affect the sentencing range imposed for the offense *** but only the manner in which the sentence is carried out *** it does not violate the proportionate penalties clause." *Id.* (citing *Hawkins*, 409 Ill. App. 3d at 574).

¶ 28 Notably, although the *Harris* decision indicated that the defendant's post-conviction petition in that case had been summarily dismissed by the trial court "as frivolous and patently without merit," *id.* ¶ 7, the decision did not specifically discuss the standard of review applicable to a first-stage dismissal. *Harris* did not cite our supreme court's holding in *Hodges* that a *pro se* petition asserting denial of constitutional rights may be dismissed at the first stage only if it has "no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 11-12. That is, before rejecting the constitutional claim premised on the truth-in-sentencing provisions of section 3-6-3, the *Harris* court did not first address whether the trial court correctly concluded that the argument was "frivolous" or "patently without merit" to warrant summary dismissal. The *Harris* court may have felt such discussion was unnecessary with respect to this particular argument, since the court determined that a separate proportionate penalties argument raised by that defendant (irrelevant to this appeal) was, in fact, meritorious and required resentencing. That is, although *Harris* rejected the defendant's proportionate penalties challenge based on the truth-in-sentencing provisions, it nevertheless determined that "[s]ince the penalties for armed robbery while armed with a firearm and for aggravated kidnaping are harsher than the penalty for armed

violence, defendant's sentences for armed robbery while armed with a firearm and for aggravated kidnapping violate the proportionate penalties clause." *Harris*, 2012 IL App (1st) 092251, ¶ 15.

¶ 29 In this appeal, the State's appellate brief recognizes that, pursuant to our supreme court's holding in *Hodges*, a post-conviction petition may be summarily dismissed only if it has "no arguable basis" in law or fact. Nonetheless, the State asserts that, due to this court's decision in *Harris*, the defendant's petition "has no basis in Illinois law" and thus was subject to summary dismissal.

¶ 30 Although we recognize that *Harris* rejected a similar proportionate penalties challenge, we disagree that *Harris* alone is sufficient to render the defendant's petition "frivolous" and "patently without merit," in light of the low threshold for review of first-stage petitions prescribed by our supreme court in *Hodges*. Importantly, our supreme court has not decided the constitutional question raised by the defendant's petition: whether the truth-in-sentencing provisions of section 3-6-3 implicate the proportionate penalties clause. Although we recognize that *Harris* is adverse to the defendant's position, the standard set forth in *Hodges* does not suggest that a single appellate court decision contrary to the defendant's claim necessarily means that his post-conviction petition "has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 12. Indeed, *Hodges* suggests that a good faith argument, even one adverse to existing precedent, should not be considered frivolous at the summary dismissal stage. In assessing the meaning of the term "frivolous" under the Act, *Hodges* cited the Illinois Supreme Court Rule concerning "frivolous appeals." *Id.* at 11-12 (citing Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)). That rule, in turn, states that an appeal "will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law *or a good-faith argument for the extension,*

modification, or reversal of existing law." (Emphasis added). Ill. S. Ct. R. 375 (b) (eff. Feb. 1 1994). Applying this principle to the defendant's petition in this case, even if the holding of *Harris* is contrary to the defendant's position, a good-faith argument for its reversal is non-frivolous and not subject to summary dismissal under the Act. See *Hodges*, 234 Ill. 2d at 11 ("[L]egal points arguable on their merits are not frivolous.").

¶ 31 Keeping in mind the low threshold for petitions to survive summary dismissal under *Hodges*, we believe that the defendant's petition asserted a non-frivolous argument and should not have been dismissed at the first stage of post-conviction proceedings. As stated in the defendant's reply brief, given the State's concession that the two offenses at issue have identical elements but receive different treatment under the truth-in-sentencing provisions, the "only substantive dispute between Magee and the [S]tate is whether Section 3-6-3 establishes a 'penalty' and is thus cognizable for review under the proportionate penalties clause." In other words, the defendant's claim is that the proportionate penalties clause is implicated not only by statutes governing the sentences initially imposed, but also by statutes governing how much of a particular sentence must actually be *served*.

¶ 32 We find there is at least an arguable legal basis for the defendant's proportionate penalties challenge. As noted by the defendant, our supreme court has indicated that the proportionate penalties clause is applicable "to the criminal process — that is, to direct actions by the government to inflict punishment." See *In re Rodney H.*, 223 Ill. 2d 510, 518-20 (2006) (determining that petition for adjudication of wardship under the Juvenile Court Act did not implicate the proportionate penalties clause). In the absence of a supreme court decision directly on point, we cannot say that it is "frivolous" to argue that the truth-in-sentencing provisions—

which undoubtedly affect the length of a prisoner's incarceration—serve to inflict punishment and thus are subject to scrutiny under the proportionate penalties clause. We are also mindful of the defendant's argument that the legislative history surrounding the truth-in-sentencing provision demonstrates that the legislative intent was punitive in nature. As stated in his appellate briefing, the defendant's position is that "[b]ecause both the purpose and effect of Section 3-6-3 is to keep people in prison longer, that statute is a 'penalty' provision governed by the Proportionate Penalties Clause." We cannot say that this proposition constitutes "an indisputably meritless legal theory." *Hodges*, 234 Ill. 2d at 16. Nor can we say that the defendant's petition is "completely contradicted by the record." See *id.* at 16 ("An example of an indisputably meritless legal theory is one which is completely contradicted by the record."). To the contrary, no facts are in dispute, and the State concedes that if the defendant had been convicted of the offense of armed violence, he could be eligible for release after serving 50% of his sentence, whereas he is currently required to serve at least 85% of his sentence. The only dispute is a legal one unsettled by our supreme court—whether this disparity violates the proportionate penalties clause.

¶ 33 Although we find that the defendant's constitutional challenge is arguable, we emphasize that we do not decide in this appeal whether the truth-in-sentencing provisions at issue inflict punishment or otherwise implicate the proportionate penalties clause. As this appeal arises from a dismissal at the initial stage of a post-conviction proceeding, we need not decide the merits of the constitutional challenge asserted in the petition. Rather, our review at this stage is limited to whether the defendant's petition lacked any arguable basis so as to warrant summary dismissal. As stated in *Hodges*, "[t]he question before us is whether [the] defendant's petition had no

arguable basis either in law or in fact, *i.e.*, whether it was based on an indisputably meritless legal theory or a fanciful factual allegation." *Id.* at 17.

¶ 34 We do not suggest that, upon remand, the defendant should prevail on the merits of his constitutional challenge. Our holding is simply that the defendant's proportionate penalties claim is arguable and not frivolous. That is all that is necessary for the petition to survive the first stage of post-conviction proceedings. See *id.* at 11. We thus conclude that the trial court should not have summarily dismissed the defendant's post-conviction petition, because the petition was sufficient to warrant second-stage proceedings under the Act.

¶ 35 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County and remand for further proceedings.

¶ 36 Reversed and remanded.