

2015 IL App (2d) 141002-U
No. 2-14-1002
Order filed April 28, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In the Interest of MIGUEL C.,)	Appeal from the Circuit Court
a Minor,)	of Winnebago County.
)	
)	No. 10-JD-87
)	
)	Honorable
(The People of the State of Illinois, Petitioner-)	Patrick K. Yarbrough,
Appellee v. Miguel C., Respondent-Appellant).)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justice Zenoff and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The State concedes that the trial court erred in dismissing respondent's postconviction petition finding that respondent lacked standing. Because more than 90 days has elapsed since the petition was filed, the cause must be reversed and remanded for the appointment of counsel and second-stage postconviction proceedings.

¶ 2 Respondent, Miguel C., was sentenced in juvenile court and the court entered an order designating the proceeding as an extended jurisdiction juvenile proceeding (EJJ) (705 ILCS 405/5-810 (West 2012)). Respondent's juvenile sentence was revoked and he was committed to an adult correctional institution with the Illinois Department of Corrections (IDOC). Respondent sought postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et*

seq. (West 2012)). The trial court summarily dismissed respondent's petition for postconviction relief, finding that the Act does not apply to juvenile proceedings. Respondent contends that the plain language of the Act and section 5-810(6) of the EJJ (705 ILCS 405/5-810(6) (West 2012)) support his standing to bring a postconviction petition. The State concedes error. We agree with respondent and thus, we reverse and remand for second-stage proceedings.

¶ 3

BACKGROUND

¶ 4 Respondent was charged in a delinquency petition. The State filed a petition for designation of the case as an EJJ, which the court granted. On October 5, 2010, respondent entered into a fully-negotiated plea of guilty to one count of attempt first-degree murder. Respondent and the State agreed that respondent would serve an indeterminate sentence in the Illinois Department of Juvenile Justice (IDJJ) but if the State proved by a preponderance of the evidence that respondent committed a new offense of a Class C misdemeanor or greater during his juvenile sentence, the court would impose an adult sentence of 26-years' imprisonment, with a 3-year term of mandatory supervised release (MSR).

¶ 5 On March 15, 2012, respondent was released on parole from the IDJJ. Subsequently, the State filed a motion to lift the stay of the adult sentence, alleging that the minor had committed the new offenses of unlawful possession of a firearm, unlawful possession of a controlled substance, and aggravated assault. The court found that the State had met its burden of proof and lifted the stay on the 26-year adult sentence, along with the 3-year term of MSR. We granted the appellate defender's motion to withdraw as counsel and affirmed the conviction. *In re Miguel C.*, 2014 IL App (2d) 131301-U.

¶ 6 Respondent filed a petition for postconviction relief. The trial court summarily dismissed the petition for lack of jurisdiction¹ finding that the Juvenile Court Act of 1987 and the plain language of section 122-1 of the Act “precludes [*sic*] juvenile respondents from pursuing collateral relief *via* the postconviction process prescribed by the Act.” Respondent appeals from the first-stage dismissal.

¶ 7 ANALYSIS

¶ 8 Respondent contends that the plain language of the Act and section 5-810(6) of the EJJ support his standing to bring a petition. Recently, on February 23, 2015, the Fifth District Appellate Court in *In re E.W.*, 2015 IL App (5th) 140341, held in a case of first impression that a similarly situated respondent could bring a postconviction petition because the imposition of the adult prison sentence brought the case within the scope of the Act. The court stated:

“Ordinarily, the Act 725 ILCS 5/122-1 *et seq.* (West 2010) is not applicable in juvenile proceedings and to a juvenile who was adjudicated delinquent in an EJJ prosecution where an adult conditional sentence had also been imposed. *In re Vincent K.*, 2013 IL App (1st) 112915, ¶ 50. However, in the present case, the trial court imposed a sentence of imprisonment, which brought the case within the scope of the Act. See *id.* (petitioner filing a postconviction petition must have conviction prior to seeking postconviction relief). The Act permits a criminal defendant to collaterally attack his conviction and sentence based on violations of his constitutional rights. *People v. Erickson*, 183 Ill. 2d 213, 222 (1998).” *E.W.* 2015 IL App (5th) 140341, ¶ 21.

¹ The trial court improperly conflated a lack of standing with a lack of jurisdiction. See *People v. Vasquez*, 2013 IL App (2d) 120344, ¶ 21 (distinguishing standing from subject matter jurisdiction).

The State concedes that respondent has standing to bring a postconviction petition.

¶ 9 Defendant cites *People v. Vasquez*, 307 Ill. App. 3d 670 (1999), in support of his argument that the cause should be remanded for second-stage proceedings. In *Vasquez*, we held that the 90-day period is not tolled by the filing of a notice of appeal. *Vasquez*, 307 Ill. App. 3d at 673. While the State acknowledges that *Vasquez* is directly on point against its position, it asks us to reconsider our decision on grounds that we find unpersuasive. We deny the State's request. We observe that the State does not argue in the alternative that the petition was frivolous and patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2012).

¶ 10 Accordingly, the trial court erred in finding that respondent lacks standing to file a postconviction petition. This cause must be remanded for the appointment of counsel and further proceedings under the Act, since more than 90 days has elapsed from the filing of the petition. See *Vasquez*, 307 Ill. App. 3d at 673.

¶ 11 CONCLUSION

¶ 12 Based on the preceding, we reverse the summary dismissal of respondent's postconviction petition and we remand the case for the appointment of counsel and second-stage proceedings under the Act.

¶ 13 Reversed and remanded.