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2015 IL App (3d) 140180-U

Order filed January 9, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Henry County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0180
v.)	Circuit No. 08-CF-32
)	
SIRILAK ALLAN,)	Honorable
)	Greg G. Chickris,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting the State's motion to dismiss defendant's postconviction petition.

¶ 2 Defendant, Sirilak Allan, appeals from the second-stage dismissal of her postconviction petition. On appeal, defendant argues that the trial court erred in granting the State's motion to dismiss her petition, as: (1) defendant's liberty was restrained due to her unpaid assessments; and (2) the petition was timely filed because her claim did not arise until long after the judgment.

We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged by information with cannabis trafficking (720 ILCS 550/5.1 (West 2008)), unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(g) (West 2008)), and unlawful possession of cannabis (720 ILCS 550/4(g) (West 2008)).

¶ 5

On January 20, 2009, defendant pled guilty to unlawful possession with intent to deliver cannabis, and the State dismissed the remaining charges. On March 20, 2009, the trial court sentenced defendant to 48 months' conditional discharge and 180 days' incarceration, and imposed a \$30,000 street value fine, \$10,000 fine, and various additional fees and costs. The court ordered defendant to pay \$50 per month toward the assessments until the date they were paid in full.

¶ 6

On February 18, 2010, the State filed a petition for a rule to show cause that alleged defendant had failed to pay \$50 per month towards her fines, fees, and costs. Defendant failed to appear at the hearing on the petition, and the court issued a bench warrant for defendant.

¶ 7

On September 30, 2013, defendant filed a postconviction petition. In the petition, defendant argued that she had received ineffective assistance of guilty plea counsel in that counsel did not advise defendant of the immigration consequences of her plea. On December 6, 2013, defense counsel filed an amended postconviction petition that alleged a due process violation in addition to the ineffective assistance of counsel claim. The State filed a motion to dismiss defendant's petition. After a hearing, the court granted the State's motion to dismiss. Defendant appeals.

¶ 8

ANALYSIS

¶ 9 On appeal, defendant argues that: (1) she was "imprisoned" by virtue of her unpaid fines, fees, and costs and therefore had standing to file a postconviction petition; and (2) her petition was timely because her claim did not arise until long after the judgment.

¶ 10 The Post Conviction Hearing Act (Act) provides limited remedies for constitutional matters that have not been, nor could have been, previously adjudicated. 725 ILCS 5/122-1 *et seq.* (West 2012); *People v. Rissley*, 206 Ill. 2d 403, 412 (2003). To institute a proceeding under the Act, a defendant must be "imprisoned in the penitentiary." 725 ILCS 5/122-1(a) (West 2008). A defendant who has completed his sentence may not use the Act's remedial machinery to purge his criminal records. *People v. Carrera*, 239 Ill. 2d 241, 245 (2010). Only a defendant whose liberty is actually restrained is entitled to the protection afforded by the Act. *Id.* at 245-46. Actual incarceration, however, is not a strict prerequisite. In addition to defendants who are actually incarcerated, the Act applies to defendants who are on mandatory supervised release or probation, or who are released on an appeal bond or parole. *Id.* at 246. In each of these cases, "imprisoned" is broadly construed to include any defendant whose liberty is curtailed to a degree by the state. *Id.* A defendant's liberty interests are paramount when construing the Act. *Id.* A trial court's dismissal of a postconviction petition without an evidentiary hearing is subject to *de novo* review. *Id.* at 245.

¶ 11 Here, defendant concedes that she had completed her conditional discharge sentence by the time she filed her postconviction petition. However, defendant argues that she has standing to bring a postconviction petition because her liberty interests remain curtailed by her outstanding fines, fees, and costs. Specifically, defendant claims that if she does not pay the outstanding assessments, she is subject to civil contempt and imprisonment of up to six months. 730 ILCS 5/5-9-3(a) (West 2012). However, the possibility of a contempt finding and

subsequent prison sentence is entirely speculative at this point in the proceeding. Defendant's current liberty interests are not curtailed. Thus, she does not have standing to bring a postconviction petition. Defendant's lack of standing renders her timeliness issue moot. Therefore, we conclude that the trial court did not err in dismissing defendant's postconviction petition.

¶ 12

CONCLUSION

¶ 13

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

¶ 14

Affirmed.