2015 IL App (5th) 130230-U

NO. 5-13-0230

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Perry County.
	)	
v.	)	No. 05-CF-96
	)	
ROBERT N. QUILLMAN,	)	Honorable
	)	Richard A. Brown,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Appointed counsel's *Finley* motion to withdraw is granted, and the circuit court's summary dismissal of defendant's postconviction petition is affirmed, where the petition was frivolous and patently without merit, and the instant appeal likewise lacks merit.

¶ 2 In the circuit court of Perry County, defendant Robert N. Quillman filed *pro se* a pleading styled a petition for injunctive relief. The court recharacterized the pleading as a petition for postconviction relief and subsequently dismissed it as frivolous and patently without merit. Defendant perfected this appeal from the judgment. Defendant's appointed counsel on appeal, the Office of the State Appellate Defender (OSAD), has filed a motion to withdraw as counsel on the ground that this appeal lacks merit. See

Pennsylvania v. Finley, 481 U.S. 551 (1987). OSAD's motion was accompanied by a memorandum of law describing two potential issues for review and explaining why OSAD considers those issues meritless. This court granted defendant time in which to file a written response to OSAD's motion, but defendant has not filed a response. For the reasons given below, OSAD's *Finley* motion is granted and the circuit court's judgment is affirmed.

¶ 3 BACKGROUND

¶ 4 In July 2005, the State charged defendant with three counts: (I) attempted first-degree murder (720 ILCS 5/8-4(a) (West 2004)), (II) place of worship arson (720 ILCS 5/20-1.3(a) (West 2004)), and (III) arson (720 ILCS 5/20-1(a) (West 2004)). The date of the offenses was July 11, 2005. Defendant was represented by counsel. In March 2007, pursuant to an agreement between the parties, defendant pleaded guilty to attempted first-degree murder and place of worship arson (counts I and II), and the arson charge (count III) was dismissed. In April 2007, also pursuant to the parties' agreement, the court held a hearing in aggravation and mitigation and sentenced defendant to 2 consecutive 10-year terms of imprisonment, to be followed by mandatory supervised release (MSR).

¶ 5 In May 2007, defendant filed by plea counsel a motion to vacate the guilty pleas. In March 2008, the court entered a written order denying the motion. Defendant appealed. This court vacated the denial order and remanded the cause with directions that defendant be granted an opportunity to obtain new counsel and to file a new motion to withdraw the guilty pleas. *People v. Quillman*, No. 5-08-0187 (Dec. 22, 2008) (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 On remand, the circuit court appointed a new attorney to represent defendant. Counsel filed a new motion to withdraw the guilty pleas.

¶ 7 On July 14, 2009, the parties appeared in court and described the terms of an agreement, *viz.*: defendant would be allowed to withdraw his previous guilty pleas; defendant would plead guilty to attempted first-degree murder (count I), and would be sentenced to imprisonment for 16 years, with credit for time served, to be followed by MSR for 3 years; and the other 2 charges (counts II and III) would be dismissed. Defendant indicated that he understood the agreement, his rights, and the consequences of a guilty plea, and further indicated that he was pleading guilty of his own volition. The State provided a factual basis for the plea, the defense had no objection to it, and the court found it sufficient. Pursuant to the parties' agreement, the circuit court allowed defendant to withdraw his previous pleas of guilty, defendant pleaded guilty to attempted first-degree murder, the court sentenced him to imprisonment for a 16-year term and mandatory supervised release for a 3-year term, and counts II and III were dismissed. The court entered a written judgment to that effect.

¶ 8 On August 28, 2012, defendant filed *pro se* a "petition for injunctive relief." He claimed that the truth-in-sentencing law[1] was unconstitutional because it never had been properly codified, and that he therefore should receive one day of good-conduct credit for

[1]The truth-in-sentencing law consists of various provisions codified in sections 3-6-3 and 5-4-1 of the Unified Code of Corrections (730 ILCS 5/3-6-3, 5-4-1 (West 2012)).

each day served in prison, not a mere 4½ days of credit for each month in prison. In a written order entered on October 2, 2012, the circuit court treated defendant's pleading as a petition for postconviction relief, found it frivolous and patently without merit, and summarily dismissed it. Apparently, the court did not notify defendant of its intention to recharacterize the pleading. No appeal ensued.

¶ 9 On February 4, 2013, defendant filed another *pro se* "petition for injunctive relief," again asserting that the truth-in-sentencing law was unconstitutional because it never had been properly codified and that he therefore should receive day-for-day good-conduct credit. He asked the court to order the Department of Corrections to calculate his release date without considering the truth-in-sentencing law.

¶ 10 On March 19, 2013, the circuit court entered an order stating its intention to treat defendant's "petition for injunctive relief" as a petition for postconviction relief, and scheduling the matter for the appearance of defendant, so that he could receive admonishments under *People v. Shellstrom*, 216 Ill. 2d 45 (2005). On April 8, 2013, defendant appeared *pro se* before the court. The court informed defendant of its intention to recharacterize his pleading as a petition for postconviction relief. The court warned defendant that if it recharacterized his pleading, he would need to amend it so as to add claims concerning any other constitutional violations that may have occurred in his case, or else "be barred from later filing another petition" raising those claims. The court asked defendant whether he wanted to withdraw his petition for injunctive relief, or to amend the petition with additional constitutional claims and have it treated as a postconviction petition, or to keep the petition as it was and have the court treat it as a postconviction

petition. The court clarified that if it treated the pleading as a postconviction petition and determined that the petition was frivolous, it would dismiss the petition, but if it determined that the petition was meritorious, it would appoint an attorney to represent defendant. Defendant chose to have the court treat the pleading as a postconviction petition and to rule upon the petition as it was. The court informed defendant that it would inform him of its ruling on the petition and that he would be able to appeal from an adverse ruling.

¶ 11 On April 25, 2013, the court entered a written order finding that defendant's postconviction petition was (1) frivolous and patently without merit and (2) procedurally barred as untimely. Defendant filed a timely *pro se* notice of appeal, thus perfecting this appeal. The court appointed OSAD to represent defendant on appeal.

¶ 12 ANALYSIS

¶ 13 As previously noted, OSAD has filed a *Finley* motion to withdraw as counsel, along with a memorandum discussing two potential issues on appeal. This court has read OSAD's motion and memorandum and has examined the entire record on appeal. Here follows a discussion of the two potential issues identified by OSAD.

¶ 14 The first potential issue is whether the circuit court properly recharacterized defendant's "petition for injunctive relief" as a postconviction petition. This question is reviewed under an abuse-of-discretion standard. *People v. Smith*, 386 Ill. App. 3d 473, 477 (2008). Before recharacterizing a *pro se* pleading as a petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)), a circuit court must observe a few procedural safeguards. Specifically, the court must (1) notify the *pro*

se litigant that the court intends to recharacterize the pleading, (2) warn the litigant that this recharacterization means that any subsequent postconviction petition will be subject to the restrictions on successive postconviction petitions, and (3) provide the litigant an opportunity to withdraw the pleading or to amend it so that it contains all the claims appropriate to a postconviction petition that the litigant believes he or she has. *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005).

¶ 15 As OSAD has noted, the circuit court took each of these three necessary steps when defendant personally appeared before the court on April 8, 2013, as described *supra*. As the circuit court observed, plaintiff's *pro se* pleading alleged a constitutional violation. Given these facts, the court's recharacterization of defendant's pleading was sensible and certainly not an abuse of discretion.

¶ 16 The second potential issue identified by OSAD is whether the circuit court erred in summarily dismissing defendant's postconviction petition. This question is reviewed *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). Summary dismissal is appropriate only when a petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). A petition is frivolous or patently without merit only if it has "no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Defendant's postconviction claim was that the truth-in-sentencing law was unconstitutional because it never had been properly codified, and that he therefore was entitled to day-for-day credit toward his prison sentence. This claim has no arguable basis in law. Indeed, this claim's complete lack of merit has been clear for many years.

¶ 17 The General Assembly first attempted to codify the truth-in-sentencing law by enacting Public Act 89-404 (Pub. Act 89-404, eff. Aug. 20, 1995). However, our Illinois Supreme Court held that Public Act 89-404 violated the single subject clause of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8(d)) and therefore was unconstitutional in its entirety. *People v. Reedy*, 186 Ill. 2d 1, 12 (1999). While *Reedy* was pending before the court, the General Assembly enacted Public Act 90-592 (Pub. Act 90-592, eff. June 19, 1998). As the court in *Reedy* recognized, Public Act 90-592 recodified the entire truth-in-sentencing law. "Public Act 90-592 truly served to cure the effect that [Public Act 89-404's] invalidation had on the truth-in-sentencing law." *Id.* at 17. By virtue of the truth-in-sentencing law, defendant is to receive no more than 4.5 days of sentence credit for each month of his sentence of imprisonment for the attempted first-degree murder he committed in July 2005. See 730 ILCS 5/3-6-3(a)(2)(ii) (West 2004). He plainly is ineligible to receive one day of good-conduct credit for each day served in prison. Any argument to the contrary would have no merit.

¶ 18 For the foregoing reasons, OSAD is granted leave to withdraw as defendant's appointed attorney on appeal, and the judgment of the circuit court is affirmed.

¶ 19 Motion to withdraw granted; judgment affirmed.