2015 IL App (5th) 130270-U

NO. 5-13-0270

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 05-CF-413
	)	
ANTONIO D. FLETCHER,	)	Honorable
	)	James Hackett,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Chapman and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The Office of the State Appellate Defender is allowed to withdraw as the defendant's attorney in this appeal, and the circuit court's judgment dismissing the defendant's postconviction petition is affirmed.

¶ 2 The defendant, Antonio D. Fletcher, is serving a 28-year prison sentence for aggravated kidnapping. He appeals from a judgment dismissing his petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)). His appointed attorney in this appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit. Accordingly, OSAD has filed a motion to withdraw as counsel, along with a supporting memorandum of law, pursuant to

Pennsylvania v. Finley, 481 U.S. 551 (1987). The defendant has filed a written response to OSAD's motion. This court has examined OSAD's motion, the defendant's response, and the entire record on appeal, as well as this court's orders in the defendant's two previous appeals in this case. This court has concluded that OSAD's assessment of this appeal is correct. OSAD is granted leave to withdraw as counsel, and the judgment of the circuit court of Madison County is affirmed.

¶ 3 BACKGROUND

¶ 4 In 2005, the defendant was charged with aggravated kidnapping (720 ILCS 5/10-2(a)(3) (West 2004)). He was accused of knowingly and secretly confining Lindsay Burnett against her will and inflicting great bodily harm upon her by breaking an eye orbit bone. The public defender was appointed to represent the defendant. However, the defendant subsequently asked the circuit court to discharge the public defender and to allow him to proceed *pro se*. After admonishing and questioning the defendant, the circuit court granted his request. The defendant represented himself throughout the trial and sentencing.

¶ 5 In December 2006, the cause proceeded to trial by jury. Here follows a recapitulation of some of the happenings at trial, which will suffice for purposes of this appeal. During *voir dire*, the defendant asked the first four venirepersons for their views on interracial dating. None of the four expressed any hostility toward it. With all the other venirepersons, neither the defendant nor anyone else asked any question about interracial dating. The State asked the venirepersons whether they could be fair and

impartial jurors. The defendant essentially asked them whether they could return a verdict of not guilty if the State failed to prove guilt beyond a reasonable doubt.

¶ 6 During its case in chief, the State called 11 witnesses. Geton Roberson testified that on February 13, 2005, in the early hours of the morning, she was at her home in the Joesting Terrace housing project, lying in bed and watching television. Through a partially opened window, Roberson heard a woman repeatedly yell "no." Roberson walked to her window and peered out. She saw a dark-colored car, with its trunk open, parked on the street. A man and a woman, neither of whom was familiar to Roberson, stood near the trunk. Nobody else was nearby. The man loudly and repeatedly told the woman to get into the trunk, and she repeatedly refused. Eventually, though, the woman said that she would get in, and she climbed into the trunk. The light inside the trunk allowed Roberson to see that the woman was white. The man shut the trunk, got into the car, sat for a minute, and then drove off. In the midst of the altercation, Roberson called 9-1-1. The 9-1-1 operator told her that he would send someone to the scene. The 9-1-1 call ended before the woman got into the trunk. Sometime after the man drove off in the car, someone arrived at Roberson's residence in response to her 9-1-1 call; she informed this person that the woman had gotten into the trunk.

¶ 7 Lindsay Burnett, the complainant, testified that on Saturday evening, February 12, 2005, she drove her mother's automobile to the home of her boyfriend, the defendant, and picked him up. Burnett and the defendant were together for much of the evening and into the night. During this time, Burnett and the defendant smoked marijuana on two occasions. At approximately 3:30 a.m. (February 13), the defendant asked Burnett to

drive him to the Joesting Terrace housing project, and she did so. At the defendant's direction, Burnett parked the car on Joesting Terrace, and the two of them got out of the car. The defendant led Burnett to a nearby wooded area. Once in the woods, the defendant "started hitting [Burnett] in the face" with his fist and either a key or a screwdriver. She tried to resist, but she fell onto the muddy ground. She was "in a lot of pain" and "bleeding all over." The defendant grabbed her hand and pulled her through the woods. Returning to Burnett's car, the defendant opened the trunk and told Burnett to get in. When she refused, he hit her hard. She agreed to get into the trunk, and did so. The defendant slammed the trunk lid shut, started the car's engine, and drove off. A bit later, the defendant stopped the car and opened the trunk. Burnett tried to get out of the trunk, but the defendant hit her again, forcing her to remain there. He again shut the trunk's lid and drove off. During the times that the car was in motion, Burnett surreptitiously called 9-1-1 with her cell phone and provided clues as to her whereabouts. Eventually, the car stopped and a police officer let her out of the trunk. Burnett's head, face, back, arms, chest, and "side" hurt. An ambulance transported her to a hospital.

¶ 8 Dr. Maurice Sonnenwirth testified that on February 13, 2005, he was the attending physician in the emergency room of Alton Memorial Hospital. At approximately 3:50 a.m., Lindsay Burnett was brought in. She was "covered with blood" and her face was "very swollen up." The orbit bone underneath her left eye had been fractured. According to Sonnenwirth, considerable force is required to fracture an orbit bone, and the injury is painful. "Puncture wounds" dotted Burnett's back and arms. Both of her wrists were tender. Sonnenwirth did not recall any sign of injury on Burnett's legs.

¶ 9 The defendant, after admonishment and questioning by the court, chose not to testify. He did not present any evidence.

¶ 10 During closing arguments, the State referred to eyewitness Geton Roberson as "the girl who was in Joesting Projects, the place where you don't call 9[-]1[-]1, and you don't call the police on other people." During a discussion of the victim's injuries, the State remarked that "Dr. Sonnenwirth testified that Lindsay was beaten from head to toe with something and with an object." During the start of his own closing argument, the defendant characterized the State's case against him as "mere speculation" and "a blow to the character of justice." In its rebuttal, the State remarked on this portion of the defendant's argument: "He said it would be a blow to the character of justice that we charged him. I'll tell you what would be a blow to the character of justice, and that's acquitting him or finding him guilty of one of the lesser charges." The court instructed the jury on the charged offense of aggravated kidnapping, as well as kidnapping, aggravated battery, and unlawful restraint. On December 13, 2006, the jury found the defendant guilty as charged, returning a verdict of guilty of aggravated kidnapping.

¶ 11 On January 30, 2007, the court conducted a hearing in aggravation and mitigation. Two witnesses testified for the State, and the State made an argument and recommendation. Then, the defendant asked the judge whether he received the letter that the defendant had sent to him. The judge answered in the negative. The defendant directed the judge to a particular copy of the letter, and stated that he had not prepared a copy for the State. The court gave the State a copy of the letter. The defendant argued that his conduct in relation to Lindsey Burnett was "reckless," that Burnett had not

suffered serious harm or permanent disability or disfigurement, and that he did not secretly confine Burnett. The court sentenced the defendant to imprisonment for 28 years, plus 3 years of mandatory supervised release. Subsequently, the defendant filed a motion to reduce sentence, which the court denied.

¶ 12 The defendant perfected an appeal from the judgment of conviction. OSAD was appointed to represent the defendant in the direct appeal.

¶ 13 On direct appeal, the defendant's sole argument was that his waiver of the right to counsel was invalid. This court did not find any abuse of discretion in the circuit court's determination that the defendant's waiver was valid, and accordingly this court affirmed the judgment of conviction. *People v. Fletcher*, No. 5-07-0186 (May 19, 2009) (unpublished order under Supreme Court Rule 23).

¶ 14 In December 2008, while the direct appeal was pending, the defendant filed *pro se* a petition for postjudgment relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)). In February 2009, he filed *pro se* an amended postjudgment petition, wherein he claimed that (1) the statutory penalty for aggravated kidnapping violated the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), and (2) the State had failed to prove beyond a reasonable doubt that he had "secretly" confined the victim. The State filed a motion to dismiss the defendant's petition. In June 2009, the circuit court granted the State's motion and dismissed the petition. The defendant perfected an appeal, and the circuit court appointed OSAD to represent him. In this court, OSAD filed a *Finley* motion to withdraw as counsel, alleging that the appeal lacked merit. This court allowed OSAD to

withdraw and affirmed the judgment dismissing the defendant's petition. This court concluded that neither of the defendant's postjudgment claims provided an appropriate basis for postjudgment relief, each of the claims was barred by principles of collateral estoppel, and each claim was substantively meritless. *People v. Fletcher*, No. 5-09-0377 (Oct. 22, 2010) (unpublished order under Supreme Court Rule 23).

¶ 15 On April 5, 2010, the defendant filed *pro se* a petition for postconviction relief (725 ILCS 5/122-1 *et seq.* (West 2008)). The circuit court appointed the public defender to represent the defendant. On May 18, 2012, the defendant, by the public defender, filed an amended postconviction petition, which is the subject of this appeal.

¶ 16 The amended postconviction petition presented six claims: (1) during *voir dire*, the circuit court should have questioned the venirepersons about "black on white crimes" and, after hearing the defendant question the first panel of four venirepersons about their views on interracial dating, should have *sua sponte* inquired about this subject with the remaining venirepersons, after the defendant failed to do so; (2) the circuit court failed to advise the defendant about the need to file a posttrial motion; (3) the circuit court erred in failing to treat as a posttrial motion a letter contained in the presentence investigation report; (4) the State failed to prove beyond a reasonable doubt that the defendant had confined the victim "secretly"; (5) the defendant was deprived of a fair trial by certain remarks made by the prosecutor during closing arguments; and (6) direct-appeal counsel provided ineffective assistance by failing to raise the issues raised in the first, fourth, and fifth postconviction claims.

¶ 17 On May 20, 2013, the State filed a motion to dismiss the postconviction petition, arguing that the defendant's first, fourth, and fifth postconviction claims lacked substantive merit. The State's motion did not address the defendant's second, third, and sixth postconviction claims.

¶ 18 On May 22, 2013, after a hearing on the State's motion, the circuit court granted the motion and dismissed the defendant's postconviction petition. The court noted the defendant's failure to file a posttrial motion and his failure to raise any of the postconviction issues in his direct appeal.

¶ 19 The defendant now appeals from the judgment dismissing his postconviction petition.

¶ 20 ANALYSIS

¶ 21 The Post-Conviction Hearing Act provides a method by which a person under criminal sentence may assert that his or her conviction resulted from a substantial denial of his or her rights. 725 ILCS 5/122-1(a)(1) (West 2008); *People v. Tate*, 2012 IL 112214, ¶ 8. A postconviction proceeding has three distinct stages. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The instant appeal is from a second-stage dismissal of a postconviction petition. At the second stage, the circuit court must determine whether the petition and any accompanying documents make a substantial showing of a constitutional violation. *Id.* at 246. The circuit court must accept as true all of the petition's well-pleaded facts. *People v. Coleman*, 183 Ill. 2d 366, 380-81 (1998). If a substantial showing is not made, the petition must be dismissed; if a substantial showing is made, the petition advances to the third stage, where the court conducts an evidentiary hearing. 725

ILCS 5/122-6 (West 2008); *Edwards*, 197 Ill. 2d at 246. The dismissal of a postconviction petition at the second stage of proceedings is reviewed *de novo*. *Coleman*, 183 Ill. 2d at 389.

¶ 22 The defendant's first postconviction claim was that the circuit court, during *voir dire*, should have questioned the venirepersons about "black on white crimes" and interracial dating. The court did not ask the venirepersons about either of these topics, and the defendant did not ask the court to ask them about these topics. The defendant, acting as his own attorney, directly asked the first four venirepersons about interracial dating, but he did not ask any other venirepersons about it. The defendant has not offered any authority that supports the contention that the circuit court had a duty to question the venirepersons *sua sponte* about "black on white crimes" or interracial dating, and this court is unaware of any such authority.

¶ 23 The circuit court has broad discretion in conducting *voir dire* and in determining questions for *voir dire*. Ill. S. Ct. R. 431(a) (eff. May 1, 1997); *People v. Washington*, 104 Ill. App. 3d 386, 390 (1982). As long as the court tested for juror impartiality through means that created a reasonable assurance that prejudice would be discovered if present, no abuse of the court's discretion will be found. *People v. Lanter*, 230 Ill. App. 3d 72, 75 (1992).

¶ 24 At the defendant's trial, the court questioned the venirepersons about their willingness to accept certain fundamental principles of law such as the presumption of innocence, the burden of proof, and a jury's duty to render a verdict of guilty or not guilty based upon the evidence and the law. The court questioned them on whether they were

familiar with the case, with the defendant or his family, with the lawyers, or with any of the witnesses. The court also questioned the venirepersons on whether they or family members ever had been crime victims. Then, the court allowed the parties to inquire of the venirepersons directly. The State asked each venireperson whether he or she could be "a fair and impartial juror." Only one venireperson did not answer this question in the affirmative, and the court immediately excused that venireperson for cause. For his part, the defendant asked each venireperson (except for the one excused for cause) some variation on the question of whether he or she could return a not-guilty verdict if the State failed to present evidence sufficient to prove guilt beyond a reasonable doubt, and each venireperson indicated an ability to do so. The State exercised one peremptory challenge, and the defendant exercised two. (When selecting an alternate juror, who ultimately did not deliberate, two venirepersons were excused for cause, and the defendant exercised his peremptory challenge.) The defendant clearly understood the *voir dire* procedures, including the use of peremptory challenges. The *voir dire* procedures and questions at the defendant's trial were sufficient to test for juror impartiality, and they created a reasonable assurance that prejudice would be discovered if present. The trial transcript makes clear that the circuit court did not abuse its discretion in conducting *voir dire* and certainly did not deprive the defendant of any constitutional right.

¶ 25 The defendant's second postconviction claim was that the court failed to advise the defendant about the need to file a posttrial motion. "[W]here a defendant elects to proceed *pro se*, he is responsible for his representation and is held to the same standards as any attorney." *People v. Richardson*, 2011 IL App (4th) 100358, ¶ 12 (trial court did

not have a duty to instruct the jury *sua sponte* on a lesser offense; *pro se* defendant had the responsibility to raise the issue with the trial court). Here, the defendant elected to represent himself at trial, after the court repeatedly admonished him on the difficulties of self-representation by a nonattorney and on a *pro se* litigant's obligation to follow all the procedural rules. Indeed, the court advised against self-representation in a criminal case, described it as "a bad idea," and flatly told the defendant that the court would not be able to help him or to give advice during any hearing or trial. The defendant unambiguously insisted on proceeding *pro se*. This court concluded in the direct appeal that the defendant's waiver of the right to counsel was valid. See *People v. Fletcher*, No. 5-07-0186 (May 19, 2009) (unpublished order under Supreme Court Rule 23). The circuit court clearly did not have a duty to advise the defendant on the need to file a posttrial motion.

¶ 26 The defendant's third postconviction claim is that the circuit court failed to treat as a posttrial motion a letter contained in the presentence investigation report (PSI). This letter is hand-written, consists of six paragraphs, and is file-stamped January 30, 2007, the date of the hearing in aggravation and mitigation. The salutation reads, "Your Honor". Most of the letter clearly concerns sentencing matters. The defendant summarized his criminal history and described it as neither extensive nor violent; he referenced several statutory factors in mitigation; and he recommended a sentence of six to eight years of imprisonment. In one paragraph in the middle of the letter, the defendant stated that he did not commit aggravated kidnapping but only "aggravated battery or a similar charge", and that he acted "recklessly". At the sentencing hearing, the

defendant drew the judge's attention to this letter, and the judge read it for the first time. The defendant did not ask the judge to treat the letter as a posttrial motion.

¶ 27 The PSI also included a five-page, hand-written document with the salutation "Greetings Komrades [*sic*]". This document was neither dated nor file-stamped. How the document came to be included in the PSI is unclear. In the document, the defendant complained about various aspects of his case and of the criminal justice system in general, and expressed his fear of being "placed in the concentration kamps of the Illinois Department of Korrections prison industrial komplex [*sic*]." The intended recipients of this document are unknown. At the sentencing hearing, the defendant did not refer to this document. However, in his postconviction petition, the defendant stated that the court should have treated it as a posttrial motion.

¶ 28 As discussed above, a *pro se* criminal defendant is obligated to comply with all of the rules of procedure, just like attorneys. *Richardson*, 2011 IL App (4th) 100358, ¶ 12. If the defendant wanted a new trial, he should have filed a motion for new trial in compliance with section 116-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-1 (West 2004)), including the statute's 30-day filing deadline and the requirement that the State be served with reasonable notice of the motion.

¶ 29 The fourth postconviction claim was that the State failed to prove beyond a reasonable doubt that the defendant had confined the victim secretly. Reasonable doubt of a defendant's guilt is not a proper issue for a postconviction proceeding. "It has been repeated many times that it is not the purpose of the [Post-Conviction Hearing] Act to redetermine guilt or innocence." *People v. Frank*, 48 Ill. 2d 500, 504 (1971).

Furthermore, this issue is *res judicata*. The defendant's amended postjudgment petition, filed in February 2009, included this claim. After the circuit court dismissed the amended postjudgment petition, the defendant appealed, and this court concluded, *inter alia*, that the reasonable-doubt argument was substantively meritless. *People v. Fletcher*, No. 5-09-0377 (Oct. 22, 2010) (unpublished order under Supreme Court Rule 23). The defendant has no right to demand that the courts repeatedly adjudicate the same issue. See *People v. Harris*, 224 Ill. 2d 115, 124-25 (2007) (any issue previously decided by a reviewing court is barred by *res judicata*).

¶ 30 The fifth postconviction claim was that the defendant was deprived of a fair trial by certain remarks made by the prosecutor during closing arguments. At trial, the defendant did not object to any of the remarks.

¶ 31 Allegedly improper remarks always must be examined in the context of both parties' entire closing arguments. *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007). A prosecutor has wide latitude during closing argument. *Id.* at 123; *People v. Blue*, 189 Ill. 2d 99, 127 (2000). The prosecutor may comment on the evidence presented and may draw fair and reasonable inferences from that evidence. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). Of course, a prosecutor may not misrepresent the evidence. *People v. Linscott*, 142 Ill. 2d 22, 30-31 (1991). Improper remarks will merit reversal of a conviction only if they resulted in "substantial prejudice" to the defendant "such that it is impossible to say" whether the guilty verdict resulted from them. *Wheeler*, 226 Ill. 2d at 123; *People v. Johnson*, 208 Ill. 2d 53, 64 (2003) (prosecutor's closing remark, though

improper, did not result in substantial prejudice to defendant and was not a material factor in his conviction).

¶ 32 In his postconviction petition, the defendant correctly stated that the prosecutor, during closing argument, described eyewitness Geton Roberson as "the girl who was in Joesting Projects, the place where you don't call 9[-]1[-]1, and you don't call the police on other people." Neither Roberson nor any other trial witness testified that residents of the Joesting Terrace housing project do not call the police. The prosecutor appears to have assumed a fact not in evidence. However, it is difficult to imagine how this remark could have prejudiced the defendant. The remark did not even concern a matter pertinent to the trial.

¶ 33 The defendant also found fault with the prosecutor for remarking that victim Lindsay Burnett had been "beaten from head to toe." This characterization was a bit of an exaggeration. No witness testified that Burnett had been beaten from head to toe or that her legs or feet showed any sign of injury. However, the evidence clearly showed that Burnett had been severely injured across much of her body. The prosecutor's remark did not prejudice the defendant.

¶ 34 The defendant also claimed that the prosecutor argued improperly when he stated that acquitting the defendant would be "a blow to the character of justice." The prosecutor made this remark during rebuttal closing argument, in response to the defendant's argument that the State's case against him was "a blow to the character of justice." In the context of the trial, including the overwhelming evidence of the defendant's guilt, it cannot reasonably be said that this remark was a material factor in the

defendant's conviction, even when combined with the other complained-of remarks. The State's closing argument did not deprive the defendant of any constitutional right.

¶ 35 The sixth postconviction claim was that direct-appeal counsel provided ineffective assistance by failing to raise the issues raised in the first, fourth, and fifth postconviction claims (*i.e.*, the *voir dire* claim, the reasonable-doubt claim, and the improper-argument claim). As discussed above, these three claims lack merit. Therefore, direct-appeal counsel cannot be faulted for not raising them. See *People v. Childress*, 191 Ill. 2d 168, 175 (2000) (unless the underlying issue is meritorious, a postconviction petitioner suffered no prejudice from counsel's failure to raise it on direct appeal).

¶ 36 CONCLUSION

¶ 37 The defendant failed to make a substantial showing of a constitutional violation. Therefore, the circuit court did not err in dismissing the defendant's postconviction petition. Any argument to the contrary would lack merit. Therefore, OSAD is given leave to withdraw as the defendant's attorney on appeal. The judgment of the circuit court is affirmed.

¶ 38 Motion granted; judgment affirmed.