

NOTICE

Decision filed 08/10/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130462-U

NO. 5-13-0462

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 10-CF-580
	)	
EARL LADD, JR.,	)	Honorable
	)	John Baricevic,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE MOORE delivered the judgment of the court.  
Justices Welch and Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the defendant did not raise the gist of a meritorious constitutional claim in his postconviction petition, the circuit court properly dismissed the petition, and OSAD's motion to withdraw as counsel on appeal is granted where there is no meritorious argument to the contrary.

¶ 2 The defendant, Earl Ladd, Jr., appeals the circuit court's dismissal of his petition for postconviction relief. The Office of the State Appellate Defender (OSAD) has been appointed to represent him. OSAD has filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and was granted an extension of time to file briefs, objections, or any other

documents supporting his appeal. He has not filed a response. We have considered OSAD's motion to withdraw as counsel on appeal. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of St. Clair County.

¶ 3

### BACKGROUND

¶ 4 On June 17, 2010, the State charged the defendant with armed robbery, home invasion, aggravated discharge of a firearm, and unlawful use of a weapon. On September 9, 2011, the defendant entered a negotiated plea agreement. Pursuant to the agreement, the defendant pled guilty to armed robbery; in exchange, the State agreed to recommend a 21-year sentence and dismiss the remaining charges. Both parties agreed that, with the 15-year firearm enhancement, the minimum sentence for the conviction was 21 years' imprisonment. The court gave proper Supreme Court Rule 402(a) (eff. July 1, 1997) admonishments, dismissed the other three counts, and convicted the defendant of armed robbery. The court then sentenced the defendant to 21 years in prison and 3 years of mandatory supervised release.

¶ 5 On September 5, 2013, the defendant filed a petition for postconviction relief, arguing that his sentence was void because it violated the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). Citing *People v. Harvey*, 366 Ill. App. 3d 119 (2006), the defendant argued that his 21-year armed robbery sentence violated the proportionate penalties clause because armed robbery with a firearm contained the same elements as armed violence predicated on robbery, yet armed robbery

with a firearm carried a longer sentence. He further argued that Public Act 95-688 (eff. Oct. 23, 2007) had not revived the armed robbery enhancement because it only amended the armed violence statute, and that the armed violence statute was void *ab initio* under the ruling in *Harvey*. Finally, the defendant argued that the enhancement was void even though no court had found the armed robbery statute unconstitutional in its entirety.

¶ 6 The circuit court summarily dismissed the postconviction petition, finding that the defendant did not present the gist of a constitutional claim. The court reasoned that the defendant was properly admonished, pleaded guilty, and received the benefit of his bargain. From that dismissal, the defendant appeals.

#### ¶ 7 ANALYSIS

¶ 8 In its motion to withdraw as counsel on appeal, OSAD lists three possible issues that could be presented on appeal, but contends that those issues are without merit. We review those issues below.

¶ 9 The first potential issue that OSAD identifies is whether the defendant presented the gist of a meritorious constitutional claim when he argued that the holding in *Harvey* had voided his 15-year sentence enhancement for armed robbery. The circuit court rejected this argument on the basis that the defendant received the benefit of his bargain. This is incorrect because a sentence that does not conform to statutory requirements is void even if obtained via a plea bargain. See *People v. Douglas*, 2014 IL App (4th) 120617, ¶ 32, 44. However, when reviewing a postconviction petition that was summarily dismissed, we review the court's conclusion *de novo* (*People v. Dunlap*, 2011 IL App (4th) 100595, ¶ 20) and we may affirm the dismissal of the postconviction

petition on any basis in the record (*People v. Wright*, 2013 IL App (4th) 110822, ¶ 32). The defendant argued that the holding in *Harvey* voided his 15-year sentence enhancement for armed robbery because the court held that armed robbery and armed violence predicated on robbery had disparate sentences. *Harvey*, 366 Ill. App. 3d at 130. He also argued that the later enactment of Public Act 95-688 had not revived the armed robbery enhancement. The supreme court rejected this argument in *People v. Blair*, 2013 IL 114122. In that case, the supreme court held that Public Act 95-688 revived the 15-year armed robbery sentence enhancement and eliminated the disparity with armed violence. *Id.* ¶ 27. Consequently, the defendant's argument that his sentence violated the proportionate penalties clause must fail, his enhanced sentence for armed robbery is constitutional, and the circuit court did not err when it sentenced him to 21 years' imprisonment.

¶ 10 The second potential issue that OSAD identifies is whether the circuit court dismissed the postconviction petition within 90 days. The Post-Conviction Hearing Act requires the circuit court to either dismiss or advance a petition within 90 days of it being docketed. 725 ILCS 5/122-2.1(a) (West 2012). The record reveals that the defendant filed his petition on September 5, 2013, and the circuit court dismissed it on September 10, 2013, well within the 90-day time frame of section 122-2.1(a).

¶ 11 The final potential issue that OSAD identified was whether the defendant received the correct amount of sentence credit. A defendant should receive sentence credit for each day spent in presentence custody, including the day of arrest. *People v. Williams*, 239 Ill. 2d 503, 505-09 (2011). The record reveals that the circuit court granted the

defendant sentence credit for all time served beginning with June 16, 2010, the day he was taken into custody. The court granted the defendant the correct amount of sentence credit, and no meritorious argument could be made to the contrary.

¶ 12

#### CONCLUSION

¶ 13 For the foregoing reasons, the motion of OSAD to withdraw as counsel on appeal is granted, and the judgment of the circuit court of St. Clair County is affirmed.

¶ 14 Motion granted; judgment affirmed.