

FIRST DIVISION
APRIL 25, 2016

Nos. 1-09-3142 and 1-14-1268
Consolidated

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 03 CR 23180
)	
RONNIE JAMISON,)	Honorable
)	John Joseph Hynes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's denial of postconviction relief following an evidentiary hearing was not manifestly erroneous. Defendant's mittimus must be corrected to conform to this court's mandate in his direct appeal.

¶ 2 Defendant Ronnie Jamison appeals from the circuit court's dismissal, following an evidentiary hearing, of his petition for relief pursuant to the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). On appeal, defendant contends that the circuit court abused its discretion when it allowed the State to impeach codefendant Alexander Porter

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with the transcript of codefendant's plea hearing. The stipulated facts at that hearing indicated that defendant took part in the offense while armed with a gun. Defendant's allegation of the circuit court's abuse of discretion asserts that codefendant was under no obligation to correct "collateral" details. Defendant also contends that his mittimus must be corrected to conform to this court's mandate in his direct appeal (see *People v. Jamison*, No. 1-07-1247 (2007) (unpublished order under Supreme Court 23)), vacating one of his convictions pursuant to the one-act, one-crime rule. We affirm in part, dismiss in part, and correct the mittimus.

¶ 3 Following a jury trial, defendant was found guilty of two counts of armed robbery and sentenced to natural life in prison as a habitual offender.

¶ 4 The evidence at defendant's trial established that defendant and codefendant robbed a Marathon gas station on August 10, 2003. Gas station employee Catalina Rivera testified that defendant pointed a gun at the head of Husam Shatat¹ and codefendant told her to open the door of the cashier booth. When Rivera did not open the cash register fast enough, codefendant hit her in the face. After the cash drawers were emptied, defendant and codefendant left. Rivera later identified defendant and codefendant in a line-up.

¶ 5 Husam Shatat testified that he identified the two people that robbed the gas station in a line-up, but at trial he was "not clearly sure" that he saw the person who pointed a gun at him. Shatat testified that the men who robbed the gas station fled in a dark-colored Honda Mitsubishi or Civic with out-of-state plates. He was able to "get" several of the characters from the car's license plate "H 127" and gave this information to detectives.

¹ At some point between the incident and trial, Rivera and Shatat married.

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¶ 6 Officer Ray Jones testified that on August 13, 2003, he and his partner conducted a traffic stop of a 2000 green Mitsubishi mirage with a Mississippi license plate, which included the characters "H 127." Defendant was driving the car and codefendant was in the front passenger seat. As Jones took defendant into custody, he observed the "bunt [*sic*]" of a .25 caliber semiautomatic handgun sticking out from underneath the passenger seat.

¶ 7 Detective Scott Zabloutny testified that Shatat viewed a lineup and indentified codefendant and defendant as the men who robbed the gas station. Rivera also viewed a lineup, and identified codefendant and defendant.

¶ 8 Ultimately, the jury found defendant guilty of two counts of armed robbery. He was sentenced, because of his criminal history, to natural life in prison as a habitual offender.

¶ 9 On appeal, this court vacated one of defendant's convictions pursuant to the one-act, one-crime rule and ordered that the mittimus be corrected to reflect 1,028 days of presentence custody credit. See *People v. Jamison*, No. 1-07-1247 (2007) (unpublished order under Supreme Court 23).

¶ 10 In October 2008, defendant filed a *pro se* postconviction petition alleging, *inter alia*, that he was actually innocent of armed robbery and that he was denied the effective assistance of counsel when, although defendant told counsel that codefendant would testify that defendant was innocent, counsel failed to present codefendant as a witness at trial.

¶ 11 When the circuit court did not rule upon the petition, defendant sent several letters to the court inquiring about the status of his petition. Ultimately, an appeal was filed. Defendant filed a motion in this court seeking an order which would remand the matter to the circuit court for a ruling upon the petition. On November 23, 2010, this court allowed defendant's motion to

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remand the cause to the circuit court for a ruling on defendant's petition. See *People v. Jamison*, No. 1-09-3142 (2010) (Dispositional Order) (remanding the cause to the circuit court for a ruling on the petition and ordering status updates every 30 days).

¶ 12 On remand, the circuit court docketed the petition, and appointed postconviction counsel. In December 2011, postconviction counsel filed a certificate pursuant to Supreme Court Rule 651(c) (eff. Dec. 1, 1984). Although counsel did not file an amended petition, counsel filed two affidavits in support of the *pro se* petition, one from defendant and one from codefendant.

¶ 13 In defendant's affidavit, he averred that trial counsel refused to call codefendant to testify on defendant's behalf. In codefendant's affidavit, he averred that in June 2004, he entered a plea of guilty to the same armed robbery that was the subject of defendant's conviction. Codefendant further averred that he committed the offense on his own and that defendant was not present. He finally averred that he "never implicated" defendant and would have testified on defendant's behalf at defendant's trial, but that defendant's trial attorney never contacted him to determine the details of his likely testimony.

¶ 14 Postconviction counsel subsequently retired and a new attorney was assigned to defendant's case. A second 651(c) certificate was filed in April 2012. The State then filed a motion to dismiss, which the circuit court granted as to all claims except the claim of actual innocence and ineffective assistance of counsel based upon the failure to present the testimony of codefendant at trial.

¶ 15 An evidentiary hearing was held on March 28, 2014. Codefendant testified that he was currently serving a 28-year prison sentence for "multiple" armed robberies, and that he entered a plea of guilty to those charges on June 30, 2004. Codefendant had known defendant for the

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"majority" of codefendant's life. Codefendant testified that defendant was not involved in the robbery at the Marathon Station on August 10, 2003. Rather, codefendant's girlfriend Rochelle Hampton drove him to the gas station in a green Mitsubishi belonging to the aunt of codefendant's other girlfriend Carolyn Hampton. Codefendant testified that these women were not related. The car had out-of-state plates. Codefendant went inside the gas station, looked around and "put a gun" to the gas station employee. There were two other people inside the gas station while codefendant robbed it. Defendant was not there.

¶ 16 Codefendant was later arrested and had cases pending at the Bridgeview courthouse. Although codefendant and defendant went "to court together," they did not discuss codefendant testifying for defendant "at the time." Rather they talked about "a lot of things." Codefendant was not contacted by defendant's attorney while codefendant's case was pending in 2003 and 2004. In fact, he was not contacted by defendant's attorney until 2009 or 2010. The first time that codefendant learned that defendant wanted him to testify was when codefendant received a letter asking that he sign an affidavit regarding defendant's case. The letter was from defendant's postconviction counsel. Codefendant spoke to postconviction counsel and agreed to sign an affidavit. He then signed the affidavit.

¶ 17 During cross-examination, codefendant acknowledged that his plea in June 2004 was to six cases. Although he and defendant were transported to court together on the day of his plea hearing, he could not remember whether they spoke to each other that day. Although they were transported to court together on several different dates, they did not talk about their cases.

¶ 18 Codefendant testified that he was "never told *** exactly" which armed robberies he was charged with; however, at the plea hearing he pled guilty to the armed robbery that occurred at

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the Marathon station on August 10, 2003. At that plea hearing, an assistant State's Attorney (ASA) stated that the evidence would show that on August 10, 2003, defendant and codefendant entered the Marathon station and that defendant held a gun to the Shatat's head.

¶ 19 Postconviction counsel objected, arguing that the State was trying to improperly impeach codefendant because it was codefendant's attorney who stipulated to the facts at the plea hearing, rather than codefendant. The court denied the objection, finding that if codefendant's plea counsel did something wrong and codefendant did not object, that was "potential impeachment."

¶ 20 Codefendant agreed that at the plea hearing the ASA stated that the evidence would show that he fled with defendant after Rivera gave them money from the cash register. Although he was present in court for his guilty plea hearing, heard these facts, and listened to his counsel state "[s]o stipulated," he did not try to correct his lawyer or tell anyone about the error. He explained that he "already took" his prison time. Codefendant acknowledged that when he was arrested, he was in the green car that he drove on the day that he committed the robbery at the gas station. Defendant was in the car at the time of codefendant's arrest.

¶ 21 During redirect, codefendant testified that defendant's postconviction counsel contacted him while he was in prison. He had a telephone conversation with postconviction counsel during which counsel asked him questions about the robbery and he provided certain "details." He then received an affidavit which contained those details. During recross-examination, codefendant testified that he was "trying to help an innocent person" and that he told defendant's postconviction counsel the details that he could remember.

¶ 22 In denying defendant postconviction relief, the circuit court stated that codefendant went into certain "details" about the robbery for the first time that day, and that these details were not

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included in codefendant's affidavit in support of the defendant's postconviction petition. The court then found that codefendant had been impeached by the facts stipulated to at his guilty plea hearing. Specifically, although codefendant listened to his counsel stipulate to the facts, and was admonished by the trial court and asked if he had anything to say, codefendant "did not try to correct anything" or "help his friend out" at that time. The court noted that codefendant never told anyone, between the entry of his plea in 2004 and when he was contacted by defendant's postconviction counsel, that the facts at the plea hearing were wrong.

¶ 23 The court also found that codefendant's testimony that he never talked about the facts of the case with defendant would "collaterally" impeach defendant's postconviction claim that trial counsel failed to call codefendant to testify at defendant's trial because defendant's postconviction claim indicated that defendant and codefendant spoke about the case. The court finally noted that codefendant's version of events was contradicted by eyewitness testimony, *i.e.*, Rivera consistently identified defendant and testified that she had a clear view of defendant as he put the gun to Shatat's head. The circuit court concluded, based upon its observation of codefendant, that codefendant was an unbelievable witness and "[o]ne of the worst liars" that the court had ever seen. Defendant now appeals.

¶ 24 The Act (725 ILCS 5/122-1 *et seq.* (West 2008)), provides a three-step procedural mechanism by which a defendant can assert that there was a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. At the first stage, the circuit court must independently review the petition, taking the allegations as true, and determine whether the petition is frivolous or is patently without merit. *People v. Tate*, 2012 IL 112214, ¶ 9. At the second stage, counsel may be appointed to represent the defendant, the State is allowed

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to file an answer or a motion to dismiss, and the court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. *Id.* ¶

10. If a defendant makes a substantial showing of a constitutional violation the petition advances to the third stage, where an evidentiary hearing is held. *Id.*

¶ 25 At a third-stage evidentiary hearing, the defendant has the burden to make a substantial showing of a deprivation of constitutional rights. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). During the hearing, the circuit court acts as the finder of fact, determining witness credibility and the weight to be given particular testimony and evidence, and resolves any conflicts in the evidence. *People v. Domagala*, 2013 IL 113688, ¶ 34. The denial of postconviction relief following an evidentiary hearing will only be overturned if the circuit court's decision was manifestly erroneous. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). A decision is manifestly erroneous if it contains an error that is clearly evident, plain, and indisputable. *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 152.

¶ 26 A plea of guilty "constitutes an admission of every fact alleged in an indictment," as long as each fact admitted is "an ingredient of the offense charged." *People v. Henderson*, 95 Ill. App. 3d 291, 296 (1981). However, a plea does not constitute an admission as to any collateral matters. *Id.*

¶ 27 Here, defendant contends that circuit court abused its discretion when it permitted the State to impeach codefendant with the transcript of his plea hearing. See *People v. Jones*, 2012 IL App (1st) 093180, ¶ 52 (the admission of evidence during an evidentiary hearing on a postconviction petition rests within the sound discretion of the postconviction court). Defendant argues that the transcript of codefendant's plea hearing cannot be used for impeachment purposes

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because codefendant did not affirmatively adopt the factual basis of his plea, he only failed to correct it. Defendant further argues that because any facts regarding defendant's actions were collateral to codefendant's plea, codefendant was under no duty to correct any of those facts, and the failure to do so cannot be held against codefendant or his credibility.

¶ 28 Defendant relies on *People v. Henderson*, 95 Ill. App. 3d 291 (1981). In that case, the State prosecuted Henderson and several other individuals for a theft from a hardware store. Ricky Hurt, who pled guilty to the theft, testified at Henderson's trial that Henderson was not the passenger that fled from Hurt's car on the day of the offense. During cross-examination, the State impeached Hurt with the fact that when the State presented a factual basis for Hurt's guilt at his plea hearing, he did not disagree with the portion of the facts that stated that a witness would say Henderson was present as a passenger in Hurt's car and fled when the car was stopped. Hurt testified that he disagreed with that portion of the facts, but admitted that he did not say anything at his plea hearing to correct those facts.

¶ 29 On appeal, the court found that Hurt did not admit the accuracy of what a witness would say because the rule that a guilty plea constitutes an admission of every fact alleged in the indictment is limited to those facts which "constitute an ingredient of the offense charged." *Id.* at 296. Because Hurt's guilty plea could not be characterized as "embracing" the collateral matter of the identity of the person in his car, the court found the impeachment was prejudicial because it implied the codefendant had inculpated the defendant. *Id.* 296-97.

¶ 30 We are unpersuaded by defendant's reliance on *Henderson* for several reasons. First, unlike *Henderson*, this was a postconviction proceeding rather than a trial. A postconviction proceeding is not an appeal from a judgment of conviction; rather, it is a collateral attack on the

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trial court proceedings. *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010). Unlike the defendant in *Henderson*, defendant has already been found guilty of the offense at issue. In other words, codefendant's testimony did not create the possibility that a trier of fact would find defendant guilty of the offense based upon codefendant's testimony, and therefore, the prejudice that existed in *Henderson* did not exist in the case at bar.

¶ 31 Second, the impeachment in *Henderson* was prejudicial because it was the only testimony in a case entirely based on circumstantial evidence that implied that the defendant was present. Here, the case against defendant was based upon the identification of defendant by two witnesses as one of the two men who took part in the robbery at the gas station. Accordingly, unlike in *Henderson*, there was no possibility that codefendant's testimony would improperly sway the circuit court into concluding that defendant committed the offense.

¶ 32 Third, and most importantly, the facts of codefendant's plea hearing were not admitted in order to prove defendant guilty of any offense; rather, they were used to attack codefendant's credibility. We therefore reject defendant's contention that the trial court abused its discretion when it permitted the State to impeach codefendant with the transcript of his guilty plea hearing. See *Jones*, 2012 IL App (1st) 093180, ¶ 52.

¶ 33 Ultimately, this court cannot say that the circuit court's denial of postconviction relief following the evidentiary hearing was manifestly erroneous. See *Pendleton*, 223 Ill. 2d at 473. Here, codefendant testified at the evidentiary hearing that defendant was not present at the gas station and that the factual basis for his guilty plea contained the erroneous fact that defendant was involved. Codefendant further testified that he did not correct his attorney at the plea hearing or tell anyone about the error because he "already took" his prison time. The circuit court, as trier

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of fact, found codefendant's explanation for his failure to take any action to "help his friend out" to be incredible (see *Domagala*, 2013 IL 113688, ¶ 34), and we cannot say that this credibility determination was an indisputable error (*Tyler*, 2015 IL App (1st) 123470, ¶ 152).

¶ 34 Defendant next asks this court to order to circuit court to comply with this court's previous mandate in *People v. Jamison*, No 1-06-2214 (2007) (unpublished order under Supreme Court Rule 23), and vacate one of defendant's convictions for armed robbery.

¶ 35 A circuit court is required to obey the clear and unambiguous directions in a mandate issued by a reviewing court. When, as in this case, the directions of the reviewing court are specific, a positive duty devolves upon the circuit court on remand to act in accordance with the directions contained in the mandate. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982).

¶ 36 This court's mandate in appeal number 1-06-2214 was clear, one of defendant's convictions for armed robbery must be vacated pursuant to the one-act, one-crime rule. See *Jamison*, No 1-06-2214, Order at 11-12. Therefore, pursuant to our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we order the clerk of the circuit court to correct defendant's mittimus by vacating defendant's conviction for armed robbery pursuant to count 2.

¶ 37 Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's mittimus by vacating defendant's conviction for armed robbery pursuant to Count 2. We affirm the circuit court's denial of postconviction relief in appeal number 1-14-1268.

¶ 38 We dismiss appeal number 1-09-3142 as moot because our mandate in that appeal ordered the circuit court to rule on defendant's postconviction petition and the State Appellate

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Defender to file status updates every 30 days. The circuit court complied with the mandate in appeal number 1-09-3142, and defendant was afforded the relief he sought, *i.e.*, a ruling and hearing on his postconviction petition. In an order dated July 15, 2014, we also relieved the State Appellate Defender of its obligation to file status reports with this court. Therefore, because the issue raised by defendant in appeal number 1-09-3142 has ceased to exist, we dismiss that appeal as moot. See *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007) (an appeal is considered moot when intervening events occur that make it impossible for the appellate court to grant effectual relief to the complaining party).

¶ 39 No. 1-09-3142, Appeal dismissed.

¶ 40 No. 1-14-1268, Affirmed; mittimus corrected.