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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 07 CR 8407
)	
RONNIE WATTS,)	The Honorable
)	Thomas Fecarotta,
Defendant-Appellant.)	Judge, presiding.
)	

JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

ORDER

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

¶ 2 **BACKGROUND**

¶ 3 In 2007, Watts was convicted after a bench trial of predatory criminal sexual assault, and was sentenced to 25-years of imprisonment. In December 2009, he filed a *pro se* petition for postconviction relief. The petition raised a number of claims involving ineffective assistance by his trial and direct appeal counsels and denial of the right to a fair trial.

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¶ 4 One of the ineffective-assistance claims contended that "trial counsel told Fern Watts, Jackie Watts and myself that I would not get a fair impartial trial by this judge. And to just get this case over with. To wave [sic] jury trial because the case would be overturned by the appellate courts. Trial counsel was ineffective for misleading myself and family and having me wave [sic] my rights." Watts did not include his own affidavit in this petition, and stated that he had tried and failed to obtain affidavits from Fern and Jackie Watts.

¶ 5 Though the record is a bit fuzzy on this point, it appears that the trial court did not review the petition until more than the allowed 90 days elapsed. 725 ILCS 5/122-2.1. The petition advanced to the second stage automatically without any finding that the petition raised the gist of a constitutional claim. *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006). In April 2010, the trial court appointed the public defender to represent Watts at the second stage of postconviction proceedings.

¶ 6 In 2012, Watts moved to discharge his appointed postconviction counsel. According to Watts, his appointed counsel disagreed with him as to the potential merits of his postconviction claims. The trial court allowed Watts to proceed *pro se*. In 2013, Watts filed a 29-page *pro se* document entitled "amended petition for postconviction relief."

¶ 7 In the amended petition, Watts again argued that his trial and appellate counsels had provided ineffective assistance. Some of these claims were identical to those raised in the original *pro se* petition. But Watts did not repeat the claim that trial counsel had provided ineffective assistance in encouraging him to waive his right to a jury trial, though he did mention the waiver in the context of other ineffective assistance claims. Watts attached affidavits from himself, Fern Watts, and Jackie Watts. None of the affidavits discussed the conversation in which trial counsel allegedly had encouraged Watts to waive his right to a jury trial.

¶ 8 The State moved to dismiss the amended petition. The motion did not address the jury-waiver claim from the original petition. The trial court re-appointed the public defender to represent Watts. At argument on the motion to dismiss, the State addressed the claims in the amended petition but not the jury-waiver claim. The public defender argued that the State's motion covered both the original and the amended petitions (which it did not), but didn't address the jury-waiver claim. The trial court stated that it was dismissing both the original and the amended petition without discussing the jury-waiver claim in explaining its decision. Watts filed a timely notice of appeal.

¶ 9 STANDARD OF REVIEW

¶ 10 We review the trial court's dismissal of a second-stage postconviction petition *de novo*. *Pendleton*, 223 Ill. 2d at 473.

¶ 11 ANALYSIS

¶ 12 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.*) provides a three-step process for a defendant to collaterally attack his or her conviction based on a substantial denial of constitutional rights during the proceedings that led to the conviction. *People v. Walker*, 2015 IL App (1st) 130530, ¶ 11. At the first stage of the proceeding, we focus on whether the petition sets forth the "gist" of a constitutional claim. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). At the second stage, the trial court may appoint counsel to consult with the defendant, examine the record, and, if necessary, amend the petition to ensure that the contentions are adequately presented. *Pendleton*, 223 Ill. 2d at 472. After appointed counsel has performed these duties, the State may move to dismiss the petition. *Id.*

¶ 13 The State argues that the jury-waiver claim—the only claim raised in this appeal—cannot be reviewed because it was not included in the amended petition which replaced the original

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petition. Watts argues that this is a "novel proposition" without authority. But, when an amended petition drops an issue that was raised in the original *pro se* petition, the issue is no longer properly before the reviewing court. *People v. Phelps*, 51 Ill. 2d 35, 38 (1972). As the Supreme Court explained, "[w]here an amended pleading is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be part of the record for most purposes and is effectively abandoned and withdrawn." *Barnett v. Zion Park Dist.*, 171 Ill. 2d 378, 384 (1996). The jury-waiver claim was not included in the amended petition; we cannot review it.

¶ 14 Watts cites section 122-5 of the Act as grounds for his argument that the original petition was still in play despite the filing of an amended petition. But section 122-5 merely says that the trial court, in its discretion, may allow a party to amend pleadings or file further pleadings. It does not bear on whether an amended pleading replaces an original pleading. And the record does not indicate that the trial court applied its discretion to allow Watts's amended petition to be in addition to, rather than a replacement of, the original petition.

¶ 15 Further, the record does not support Watts's argument that the jury-waiver claim should be considered. Typically, a second-stage amended petition has been filed by appointed counsel. On occasion counsel will disagree with the client over the merits of potential issues such that the amended petition might not include claims from the original petition. When this happens, a defendant might have an equitable argument that the original petition's claims should still be considered so that the claims will not be defaulted through no fault of the defendant.

¶ 16 But Watts alone was responsible for both petitions. Many of the claims in the original petition were included in the amended petition, so we can infer that Watts decided not to include the jury-waiver claim in the amended petition. The repetition of some claims in both petitions

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indicates that Watts intended his amended petition to replace the original, not exist in addition to it. Finally, Watts attached affidavits to the amended petition from himself, Jackie Watts, and Fern Watts—the very persons he alleged had witnessed the jury-waiver conversation with his attorney. None of the affidavits discussed the jury-waiver claim. This all indicates that Watts meant the amended petition replace the original.

¶ 17 Watts incorrectly argues that the parties agreed the State moved to dismiss both the original and the amended petitions. But, the motion only addresses the amended petition and the State never argued otherwise. Further, Watts's appointed postconviction counsel admitted that the amended petition had replaced the original petition (before stating the opposite at the next court hearing), and did not argue this claim at the motion hearing. And, while the trial court stated that it was dismissing both petitions, it never addressed the original petition or the jury-waiver claim. No one—not the State, not the trial court, not Watts's counsel, and not even Watts himself—treated the jury-waiver claim as though it were part of the second-stage proceedings.

¶ 18 In many postconviction proceedings, parties do proceed as though the original petition and further filings (be they titled "amended," "supplemental," or otherwise) remain viable at the second stage. Those further filings sometimes incorporate the original petition by reference, or the State and trial court will address the original petition's claims as though they were included in the amended petition. But neither of those happen here. And as discussed, Watts had no excuse for having failed to bring this claim in his amended petition.

¶ 19 The only claim raised in this appeal is the jury-waiver claim, and we cannot review it. The record provides no reason for us to overlook this waiver. Because we can dispose of this appeal on this ground, we need not address the State's other procedural arguments.

¶ 20 Affirmed.