2016 IL App (2d) 140996-U
No. 2-14-0996
Order filed December 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MATTHEW REIMANN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 86-CF-182 Honorable Robbin J. Stuckert, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motion to reconsider the grant of the State's motion to dismiss his postconviction petition: defendant's claim that the State had agreed to waive the petition's untimeliness in exchange for his testimony in another case was effectively raised for the first time in his motion to reconsider, and in any event it was barred by his judicial admission in that case that he had received no promise in exchange for his testimony.

¶ 2 Defendant, Matthew Reimann, appeals from the judgment of the circuit court of De Kalb County denying his motion to reconsider the dismissal, based on untimeliness, of his postconviction petition. He contends that the trial court improperly denied him the opportunity to present evidence on his claim that the State, in another case, agreed to waive the timeliness

defense. Because defendant, despite having been given ample opportunity to do so, did not specify the waiver claim until his motion to reconsider, the court did not abuse its discretion in denying the motion to reconsider. Thus, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant pled guilty to one count of first-degree murder (Ill. Rev. Stat. 1985, ch. 38, ¶ 9-1(a)(1)) and one count of home invasion (Ill. Rev. Stat. 1985, ch. 38, ¶ 12-11) and was sentenced to natural life imprisonment and 30 years' imprisonment, respectively. We affirmed his convictions and sentences on direct appeal. See *People v. Reimann*, No. 2-88-0645 (1990) (unpublished order under Supreme Court Rule 23).

¶ 5 On April 12, 2010, defendant filed a *pro se* motion for leave to file a late petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 (West 2010)). He alleged that, because he never received our mandate, or was otherwise notified of the final disposition of his direct appeal, he failed to timely pursue his postconviction remedies.

¶ 6 Defendant subsequently filed a *pro se* supplemental postconviction petition, a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), and a second supplemental postconviction petition.

¶ 7 While defendant's various petitions were pending, he testified in the murder case of Jack McCullough. See *People v. McCullough*, 2015 IL App (2d) 121364. Defendant was identified as "John Doe" in the McCullough case. He testified as to various statements that McCullough made to him when they were incarcerated. *McCullough*, 2015 IL App (2d) 121364, ¶¶ 59-61. When asked on cross-examination, defendant denied that he had been promised anything in exchange for his testimony, but he added that he had a pending petition asking for a reduction in his sentence. *McCullough*, 2015 IL App (2d) 121364, ¶ 61.

¶ 8 Following the McCullough trial, defendant was appointed counsel in this case. On April 26, 2013, appointed counsel filed an amended postconviction petition. The amended petition added several claims, including that his trial counsel was operating under a conflict of interest when he simultaneously represented defendant and a witness who testified at his sentencing hearing.

¶ 9 On June 10, 2013, the State filed a motion to dismiss defendant's postconviction petition and section 2-1401 petition. In its motion to dismiss, the State asserted, among other things, that the postconviction petition was untimely. The State further asserted in paragraph 19 that "[i]n light of the State expressly not waiving the untimeliness defense as [to] the filing of the Post Conviction Petition in this case, defense counsel is required to inquire of the defendant as to any excuse for the delay in filing. *** [T]he State presumes that [defense counsel] made such an inquiry of the defendant and there was no excuse for the delay in filing the Petition for Post Conviction Relief."

¶ 10 On March 5, 2014, defendant's attorney filed a response to the motion to dismiss. Although the response identified several justifications for defendant's late postconviction petition, it did not refer to any promise by the State not to object to the late filing of the postconviction petition.

¶ 11 On April 16, 2014, defendant filed, *pro se*, a "motion to impound and seal record" and to "stay proceedings pending a hearing regarding 'promises' made in [the McCullough case] as it relates to these post-conviction proceedings." The motion sought, among other things, a stay pending a hearing on " '[p]romises made' as it *** directly relates to the [McCullough case] and promises made in exchange for testimony."

¶ 12 Also on April 16, 2014, defendant filed a *pro se* motion to supplement his response to the motion to dismiss. In that response, defendant, expressly referring to paragraph 19 of the State's motion to dismiss, asserted that paragraph 19 was "contested as the State Did expressly 'Waive' the defense of Timeliness, As this Court should take into consideration the previously 'Sealed' Motion filed herein."

¶ 13 On March 5, 2014, the trial court conducted a hearing on the State's motion to dismiss. Initially, defendant's attorney asked the court to "address an issue that [had] been brought to [his] attention [that day]." Defendant's attorney explained that defendant had spoken to his former attorney that morning, but because of "issues regarding privilege and confidentiality," defendant's attorney was not "fully informed as to what [defendant's former attorney had] to offer before the judge in regards to the State's motion to dismiss."

¶ 14 The trial court responded that it was "not sure what other matters before the Court you're indicating." Defendant's attorney stated that he was referring to defendant's involvement in a "different case with a different defendant." When the court commented that it assumed that the other case was one in which it had recused itself, defendant's attorney agreed. Defendant's attorney added that the issue involved matters that defendant and his former attorney could not discuss with him but that "both of them want[ed] it addressed with the Court." At that point, the prosecutor interrupted and said that defendant wanted "consideration for what he may or may not have done in connection with another matter. That is not relevant at all to the post-conviction petition."

¶ 15 The trial court responded that it did not see "any of that in the post-conviction petition," and asked if that was the basis for filing the postconviction petition. Defendant's attorney answered that he understood that "there were communications made between [defendant], certain

individuals in law enforcement and members of the De Kalb County State's Attorney's office that are directly related to this post-conviction petition." When the court asked defendant's counsel if there had been an agreement with the State that "something would happen on the post-conviction relief should [defendant] testify in the other case," defendant's counsel answered that he was not privy to that information, because of confidentiality and privilege between defendant and his former attorney, but that he was being led to believe so. He added that he understood that "what was done by [defendant] in the other particular matter was done under seal." The court commented that it did not "really understand how that plays in what we are here for today, unless there had been some promises made to [defendant] or some kind of agreement that was made to him that there would be some kind of relief as to the post-conviction relief with his testimony." Defendant's attorney responded that he believed that defendant's former attorney would get into that, because the former attorney had been appointed after the original postconviction petition was filed and had been involved in "discussions with law enforcement and [the State's Attorney's office]."

¶ 16 The trial court commented that, if defendant was promised something for testifying as John Doe in the other case and did not receive what was promised, then "that's another motion that comes before either the judge who heard the case or comes before [it] in some other manner" but that it did not "see how the two [were] interrelated." The court explained that, if defendant wanted to "file some sort of motion," he must do so before it issued a written ruling on the motion to dismiss. The court added that, if defendant believed that there was an agreement that was not fulfilled, perhaps he should seek relief before the judge in the other case. Defendant's attorney responded that he understood and that he "just wanted to bring it to the Court's attention."

¶ 17 After hearing arguments, the trial court stated that it would take the matter under advisement and told defendant that he could file "any other motions," but reminded defendant's attorney that the court had recused itself in the other case and that, although it could hear anything related to the postconviction petition, it was not the proper court to hear any other matters.

¶ 18 In considering when to set the matter for decision, the trial court asked defendant's attorney how much time he needed to speak to defendant's former attorney, or anyone else, and to prepare any motion. When defendant's attorney asked for 30 days for possibly filing a motion, the court agreed, but reiterated that it wanted something filed before it issued its ruling on the motion to dismiss. The court reminded defendant's attorney that it did not "quite understand the nexus" between this case and the case in which defendant had testified and that he should put "something in writing."

¶ 19 On April 24, 2014, the trial court conducted a hearing on the motion to dismiss, at which defendant was not present. The court noted that defendant had filed a *pro se* motion to impound and seal and a motion to supplement his response to the State's motion to dismiss. The court commented that defendant had not "filed any motions to enforce any alleged agreement" and that he "just makes innuendo through the motions that he files." The court could not understand how "that [had] anything to do with the motion to dismiss for not being timely filed." The court emphasized that it would be prepared to rule on the motion to dismiss without addressing any other issues "unless there's some motion that's filed that would indicate that [it] should proceed differently." The court continued the matter to June 26, 2014, for a decision on the motion to dismiss. Before then, defendant never filed any motion related to any promise in the other case.

¶ 20 At the June 26, 2014, hearing, defendant was present. The trial court referred to its written decision granting the motion to dismiss. The court dismissed both the postconviction petition and the section 2-1401 petition.

¶ 21 Defendant's attorney filed a motion to reconsider. The motion did not mention any agreement or promise made in the other case. However, defendant filed a *pro se* motion to reconsider, in which he asserted that the State had entered into a "Stipulation of Agreement" that granted " 'Concessions' as it relate[d] to these post-conviction proceedings *** that waived the State's right to assert" a timeliness defense to his postconviction petition.

¶ 22 On September 23, 2014, the trial court conducted a hearing on the motions to reconsider. In referring to the *pro se* motion to reconsider, defendant's attorney noted that there were some allegations regarding "agreements and/or arrangements that were made between [defendant] and the State's Attorney's Office in 2012." Counsel added that he believed that defendant had "filed on his own behalf several motions *** in front of another judge that deals specifically with the issue of agreements or understandings or bargains that were made between [defendant] and the State's Attorney's Office back in 2012." He explained that it was "our position that this post-conviction petition was left to be pending for several years directly as a response [to] the agreement made between [defendant] and the State's Attorney's Office." Defendant's attorney suggested that the postconviction petition was "kind of left hanging in the balance in order for the State's Attorney's Office to get what they needed out of [defendant]." According to defendant's attorney, after a change of administration, there was no agreement between the new administration and defendant. Counsel explained that that was why defendant was asserting that the State had gone "back on [its] word to allow him at least the opportunity to argue the merits of his post-conviction petition without filing a second-stage motion to dismiss."

¶ 23 The trial court responded that it wanted clarification, because "this is not anything that's been before the Court prior to today." The court elaborated that, if defendant was saying that there was an agreement with the State in the McCullough case—that in exchange for defendant's testimony the State would not file a motion to dismiss—this was "the first [the court was] hearing of [it]." Defendant's attorney answered that that was what he had been told and that defendant's former attorney was familiar with the agreement.

¶ 24 The trial court reiterated that "[t]his [was] the first time [it was] hearing of this." The court reminded the parties that it "specifically had inquired as to [whether there was] going to be any evidence or testimony regarding any promises that had been made to [defendant]" and that the only thing that it was told was that there had been an agreement related to defendant testifying anonymously. The court added that it was "not quite sure where this [was] coming up from now." When the State commented that defendant's filings never identified the purported agreement, the court responded "[n]ever" and that there was "nothing until now." The court added that, with all the various pleadings filed by defendant, both *pro se* and through counsel, "there never [had] been an indication that he was offered anything *** regarding his post-conviction petition and that the State would not file a motion to dismiss it for being filed untimely because of some promises that were made to him." The court noted that it was hearing it "for the first time [that] afternoon on a motion to reconsider." When the court asked defendant's attorney to clarify for the record that defendant's position was that there was an agreement with the prior administration that it would not move to dismiss defendant's postconviction petition, counsel answered, "Yes, your Honor."

¶ 25 The trial court further noted that, even though it had asked defendant to clarify that issue, he had not done so previously. The court added that it had nothing to indicate what kind of relief

defendant had been promised or that the court would have been obligated to provide it. Defendant told the court that, if the court would permit an evidentiary hearing, he could prove that the former State's Attorney agreed to waive a timeliness defense to his postconviction petition. The court repeated that there had "never been any allegation that [defendant was] made any promises by the former administration that they would not pursue a second-stage dismissal in return for [his] testimony in [the McCullough case]." The court elaborated that, although defendant had referred to concessions and promises in his postconviction pleadings, those were related to his remaining anonymous and that this was the first time the court had heard of any promise to waive the timeliness defense. The court denied the motions to reconsider, and defendant filed a timely appeal.

¶ 26 II. ANALYSIS

¶ 27 On appeal, defendant contends that the trial court erred in denying him the opportunity to prove that the State agreed to waive a timeliness defense to his postconviction petition in exchange for his testimony in the McCullough case. The State responds that defendant waived the issue, because he failed to raise it in either his original or his amended postconviction petition. Alternatively, the State, relying on *People v. Collins*, 202 Ill. 2d 59 (2002), contends that defendant never supported his allegations with affidavits or other evidence, or explained why such evidence was not submitted. In reply, defendant asserts that he could not have raised the issue in his postconviction pleadings, because the State did not seek to dismiss for untimeliness until after he filed his original and amended postconviction petitions.

¶ 28 The purpose of a motion to reconsider is to bring to the court's attention changes in the law, errors in the court's previous application of existing law, or newly discovered evidence that was not available when the court issued the challenged ruling. *People v. Bravo,* 2015 IL App

(1st) 130145, ¶ 23. The denial of a motion to reconsider that is based on new matters, such as additional facts, new arguments, or new legal theories that were not presented during the course of the proceedings leading to the issuance of the order being challenged, is reviewed for abuse of discretion. *People v. Pollitt*, 2011 IL App (2d) 091247, ¶ 18. In determining whether the trial court abused its discretion, the question is not whether the reviewing court agrees with the trial court, but whether the trial court acted arbitrarily, without exercising conscientious judgment, or, in view of all of the circumstances, exceeded the bounds of reason and ignored recognized principles of law such that substantial prejudice resulted. *Pollitt*, 2011 IL App (2d) 091247, ¶ 18.

¶ 29 In this case, defendant never raised specifically, until his motion to reconsider, the issue of any agreement with the State to waive a timeliness defense to his postconviction petition. Although he alluded to an agreement several times before the court ruled on the motion to dismiss, he never specified that the agreement included a promise by the State to waive the timeliness defense. As the court noted, defendant's pleadings included only "innuendo" as to what the agreement entailed.

¶ 30 The closest defendant came to raising the issue was in his *pro se* motion to supplement his response to the motion to dismiss, wherein he asserted that the State waived the defense of timeliness. That barebones assertion, however, did not identify the particulars of such a waiver or refer to any agreement related to the McCullough case.

¶ 31 More importantly, the trial court repeatedly advised defendant that it was not clear what he was alluding to in terms of any agreement and that he would need to file a motion explaining, or otherwise spell out for the court, what promises or concessions were made that might apply to the postconviction petition. The court gave defendant ample opportunity to do so, continuing the

motion to dismiss for several months. Indeed, the court emphasized that any such motion must be filed before the court ruled on the motion to dismiss. Yet, in the face of that explicit direction and ample opportunity provided by the court, defendant failed to file such a motion, or otherwise describe to the court the actual nature of the agreement or promise. Nor did he ever seek, before the court ruled on the motion to dismiss, to have an evidentiary hearing in that regard. Instead, he waited until after the court granted the motion to dismiss to elucidate that the State had agreed to forgo any timeliness defense in exchange for his testimony in the McCullough case.

¶ 32 Defendant's failure to explain the precise nature of the agreement before the trial court ruled on the motion to dismiss prevented the court from considering the impact of the agreement. Indeed, defendant's inaction was a classic example of waiting for a court to rule before raising an issue that could have been raised beforehand. In rejecting the motion to reconsider on that basis, the trial court went to great lengths to point out how it had urged defendant numerous times to file a motion regarding, or otherwise describe to the court, the nature of the agreement with the State. As the court noted, it had asked defendant if there would be any evidence regarding any promise that the State had made, and all it was told was that there was an agreement regarding defendant testifying anonymously. Under those circumstances, we cannot say that the court's decision to deny the motion to reconsider was arbitrary or without the exercise of conscientious judgment.

¶ 33 Nor did the trial court's ruling exceed the bounds of reason and ignore recognized principles of law such that substantial prejudice resulted. A judicial admission is a deliberate, clear, unequivocal statement by a party of a fact within the party's personal knowledge. *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). Judicial admissions are binding on the party making them, and they may not be controverted later. *Rennick*, 181 Ill. 2d at 406-07.

Accordingly, a party cannot create a factual dispute by contradicting his prior judicial admission. *Burns v. Michelotti*, 237 Ill. App. 3d 923, 932 (1992). The rule removes the temptation to commit perjury. *Rennick*, 181 Ill. 2d at 407.

¶ 34 Here, defendant testified unequivocally during the McCullough trial that he had received no promise in exchange for his testimony. That constituted a judicial admission. Accordingly, defendant could not later claim that he had in fact been promised something for his testimony. Therefore, even had he properly presented his waiver claim before the trial court ruled on the motion to dismiss, it would have been barred by his prior judicial admission to the contrary. Thus, he suffered no substantial prejudice from being denied the opportunity to raise the issue for the first time in his motion to reconsider.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 37 Affirmed.