

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).

2016 IL App (4th) 140886-U

NO. 4-14-0886

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 3, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
ANTONIO T. CUSHSHON,)	No. 12CF603
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw and affirm the trial court's summary dismissal of defendant's postconviction petition.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the reasons below, we grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In June 2012, the State charged defendant, Antonio T. Cushshon, by indictment with unlawful possession with the intent to deliver 100 grams or more but less than 400 grams of heroin (count I) (720 ILCS 570/401(a)(1)(B) (West 2012)), unlawful possession with the intent to deliver 15 grams or more but less than 100 grams of heroin (count II) (720 ILCS 570/401(a)(1)(A) (West 2012)), and unlawful possession of 15 grams or more of heroin (count

III) (720 ILCS 570/402(a)(1) (West 2012)).

¶ 5 On January 31, 2013, defendant entered a negotiated guilty plea to unlawful possession of 15 grams or more of heroin (count III) (720 ILCS 570/402(a)(1) (West 2012)). In exchange for defendant's guilty plea, the State nol-prossed counts I and II and agreed to a sentence of nine years' imprisonment. The trial court sentenced defendant in accordance with the plea agreement, sentencing him to nine years' imprisonment, followed by a two-year term of mandatory supervised release. Defendant did not file a motion to withdraw his plea or an appeal.

¶ 6 On June 10, 2014, defendant filed a *pro se* postconviction petition, arguing (1) the trial court erred when it denied his motion to suppress contraband seized by police because it was discovered after an illegal search and seizure and (2) his guilty plea was involuntary. On September 2, 2014, the trial court summarily dismissed defendant's petition, stating defendant cannot "raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea" and defendant waived any challenge to the voluntariness of his plea because he failed to file a motion to withdraw his plea or file a direct appeal.

¶ 7 On October 8, 2014, defendant appealed the trial court's summary dismissal of his postconviction petition. On October 14, 2014, this court appointed OSAD to represent defendant. In May 2016, OSAD filed a motion to withdraw, alleging no meritorious issues could be raised on defendant's behalf. The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by June 2, 2016, but defendant has not done so. After examining the record, we grant OSAD's motion and affirm the trial court's summary dismissal of defendant's postconviction petition.

¶ 8 II. ANALYSIS

¶ 9 OSAD contends the record shows no meritorious issues that can be raised on ap-

peal. Specifically, OSAD argues both defendant's (1) challenge of the trial court's denial of his motion to suppress and (2) claim his plea was involuntary have no basis in law, as "his failure to file a post-plea motion or to take a direct appeal has rendered his claims forfeited." We agree.

¶ 10 The Post-Conviction Hearing Act (Act) permits a defendant to argue the denial of constitutional rights resulted in his conviction. 725 ILCS 5/122-1(a)(1) (West 2014). A postconviction petition proceeds in three stages. At the first stage, the trial court reviews the defendant's petition and determines whether the claim is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2014); *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996). To avoid dismissal at this stage, the defendant need only present the gist of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001). All well-pleaded allegations in the petition are taken as true and liberally construed in favor of the petitioner. *People v. Brooks*, 233 Ill. 2d 146, 153, 908 N.E.2d 32, 36 (2009). Dismissal at the first stage is reviewed *de novo*. *People v. Harris*, 224 Ill. 2d 115, 123, 862 N.E.2d 960, 966 (2007).

¶ 11 Defendant first claimed that the denial of his motion to suppress violated his due-process rights. "It is well established that a voluntary guilty plea waives all nonjurisdictional errors or irregularities, including constitutional ones." *People v. Townsell*, 209 Ill. 2d 543, 545, 809 N.E.2d 103, 104 (2004). On January 31, 2013, defendant pleaded guilty to unlawful possession of 15 grams or more of heroin (count III) (720 ILCS 570/402(a)(1) (West 2012)). Additionally, defendant did not file a motion to withdraw his plea or a direct appeal. Accordingly, we agree with OSAD that this claim is frivolous.

¶ 12 Defendant also claims his guilty plea was involuntary and violated his due process rights. He specifically contends he was illegally compelled to plead guilty by the trial court's denial of his motion to suppress, which he argues foreclosed any favorable outcome at a potential

trial. Defendant is unable to provide citation to legal authority supporting this position. Thus, this claim is forfeited. See *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 521-22 (2001).

¶ 13 Moreover, our supreme court has held that the scope of postconviction review is limited to constitutional matters which have not been, and could not have been, previously adjudicated. *People v. Evans*, 186 Ill. 2d 83, 91-92, 708 N.E.2d 1158, 1163 (1999). In this case, defendant entered a fully negotiated plea on January 31, 2013. The trial court admonished defendant regarding the consequences of his plea and asked defendant if his plea was voluntary. Defendant answered in the affirmative. Subsequent to his plea, defendant did not file a motion to withdraw his plea or a direct appeal. Defendant's failure to file a post plea motion or to take a direct appeal also renders this claim forfeited. Accordingly, we agree with OSAD that this claim is frivolous.

¶ 14 III. CONCLUSION

¶ 15 In sum, we grant OSAD's motion to withdraw as counsel on appeal and affirm the trial court's summary dismissal of defendant's postconviction petition.

¶ 16 Affirmed.