2016 IL App (4th) 150535-U

NO. 4-15-0535

FILED
March 4, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
CHARLES KEVIN HAMILTON,	)	No. 11CF989
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court dismissed the appeal for failure to comply with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013).

¶ 2 In June 2015, the trial court entered an order dismissing defendant Charles Kevin Hamilton's *pro se* "[p]etition for [p]ostconviction or [*h*]*abeus* [*c*]*orpus* [r]elief." Defendant, proceeding *pro se*, has filed as his opening brief the same postconviction petition filed in the trial court. We dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 In March 2013, following a jury trial, defendant, who proceeded *pro se*, was found guilty of unlawful possession of cannabis with intent to deliver (more than 5,000 grams) (720 ILCS 550/5(g) (West 2010)) (count I), unlawful possession of cannabis (more than 5,000 grams) (720 ILCS 550/4(g) (West 2010)) (count II), and cannabis trafficking (more than 2,500

grams) (720 ILCS 550/5.1(a) (West 2010)) (count III). In April 2013, the trial court sentenced defendant to 22 years in the Illinois Department of Corrections.

¶ 5 On direct appeal, defendant argued the trial court erred during sentencing by relying on a disputed prior felony conviction listed in the presentence investigation report as a factor in aggravation. In February 2015, this court found, because defendant filed a posttrial motion to reconsider his sentence but later moved to strike the motion, he had waived this claim, and we affirmed the trial court's judgment. *People v. Hamilton*, 2015 IL App (4th) 130612-U (unpublished order under Supreme Court Rule 23).

¶ 6 In May 2015, the supreme court denied defendant's petition for leave to appeal this court's decision on direct appeal but, pursuant to its supervisory authority, directed this court to vacate its judgment and remand the matter to the circuit court of McLean County. *People v. Hamilton*, No. 119018, 32 N.E.3d 670 (2015). In July 2015, this court remanded the matter to the trial court with directions to make a factual determination of whether the disputed prior felony conviction was attributable to defendant and whether the sentence imposed remained the appropriate sentence for defendant. According to the McLean County circuit court's webpage, this matter is still pending. See Hamilton, Charles Kevin, McLean County, Illinois: Public Access Criminal/Traffic Search System, http://webapp.mcleancountyil.gov/webapps/PublicAccess/PubAC_searchcriminal.aspx (search by "Case Number"; enter "2011CF000989") (last visited Feb. 11, 2016).

¶ 7 In March 2015, defendant filed the postconviction petition which is the subject of the instant appeal. The petition and attachments are 305 pages, including several miscellaneous motions and affidavits by defendant. Defendant's allegations include: (1) ineffective assistance of appellate counsel for failure to raise a number of sentencing issues on appeal, specifically (a)

use of a prior felony conviction from Alabama was improper aggravation because the offense was not a felony, (b) use of a prior conviction from Florida to enhance the conviction in Alabama to a felony was improper double enhancement, and (c) the "third prior" conviction considered by the trial court as aggravation was committed by a person other than defendant because it was committed by a person of a different race than him; (2) defendant was improperly convicted of driving while license suspended despite proof he presented he had a valid driver's license from the state of Texas; (3) the trial court erred in a number of rulings, including (a) ruling to admit a Texas driver's license report and then reversing that ruling mid-trial and refusing to allow the jury to see the report; (b) on September 25, 2012, denying defendant's motions and then striking them from the record; and (c) denying defendant's motion to suppress and refusing to allow him to argue that motion on October 16, 2012; (4) the grand jury was misled by testimony defendant did not have a valid Texas driver's license; (5) video/audio recordings of the traffic stop and subsequent search were improperly admitted into evidence for a number of reasons, including (a) an improper chain of custody because the digital video disc (DVD) was taken from the squad car to the home of the arresting state trooper, (b) the "time-text" data was intentionally removed from the original recording, (c) erroneous rulings by the trial court relating to the recordings, including (i) improperly determining the DVD player's timer rectified the "missing" time-text data; (ii) admitting the "tampered with" recording, which had 20 minutes of data/recording removed from the first 38 minutes of the recording by the trooper; (iii) denying defendant the right to an independent forensic analysis of the DVDs; (iv) admitting the DVD recording despite it missing 15 minutes when the trooper said he was not aware the disc had run out and needed to be replaced; and (v) more evidence of tampering in that the second trooper's arrival time shows an hour is missing from the recording; (6) the DVD recordings are all forgeries, and defendant

has proof of same but will not disclose it at this time; (7) the trial court erred by holding part of the suppression hearing after defendant left the courtroom, during which the court "struck" 12 of defendant's motions; (8) on August 18, 2012, the trial court said defendant had "rested" when he had not, thus denying him his right to a hearing; and (9) defendant was denied his right to a speedy trial on the driving charge.

¶ 8 In June 2015, the trial court dismissed the postconviction petition as frivolous and patently without merit because (1) on direct appeal, appellate counsel raised the issue of improper consideration at sentencing of the "third prior" conviction; (2) the other allegations of ineffective assistance of appellate counsel regarding sentencing issues were without merit; and (3) the remaining issues were barred by *res judicata* and waiver.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 As he did in the trial court, defendant proceeds *pro se* in this appeal.

¶ 12 *Pro se* appellants are held to the same standards as attorneys on appeal. *In re A.H.*, 215 Ill. App. 3d 522, 529-30, 575 N.E.2d 261, 266 (1991). Supreme court rules governing the contents of appellate briefs are not mere suggestions. *Niewold v. Fry*, 306 Ill. App. 3d 735, 737, 714 N.E.2d 1082, 1084 (1999). " 'The purpose of the rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved. [Citation.] Where an appellant's brief fails to comply with the rules, this court has inherent authority to dismiss the appeal for noncompliance with its rules.' " *La Grange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876, 740 N.E.2d 21, 32 (2000) (quoting *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095, 618 N.E.2d 771, 776 (1993)); see also *Niewold*, 306 Ill. App. 3d at

737, 714 N.E.2d at 1084 (stating the appellate court has "discretion to strike the plaintiffs' brief and dismiss the appeal for failure to comply with Rule 341").

¶ 13 In the case *sub judice*, defendant's *pro se* filing in this court fails to adhere to Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013) pertaining to appellate briefs (made applicable to criminal cases by Illinois Supreme Court Rule 612(i) (eff. Feb. 6, 2013)). The 58-page document is entitled "[p]etition for [p]ost [c]onviction or [*h*]*abeas* [*c*]*orpus* [r]elief." It is essentially a carbon copy of the postconviction petition defendant filed in the trial court. The document contains no points and authorities, no recitation of the nature of the judgment appealed from, and no statement of jurisdiction. Although defendant sets forth his version of the facts in this case, he does not support his facts with *any* citations to the record. Additionally, his arguments are not supported by *any* legal authority or citations to the record. There is also no conclusion or prayer for relief. Defendant's filing is not a brief; quite simply, it is a refiling of the petition he filed in the trial court. He does not address the trial court's ruling in the postconviction proceeding, does not tell us how the trial court erred, or provide us with citations to support any error on the part of the trial court.

¶ 14 Where a record is short and the issues simple, we will, at times, decline to penalize an appellant for an inadequate brief and consider the issues. *People v. Johnson*, 192 Ill. 2d 202, 206, 735 N.E.2d 577, 580 (2000). Here, however, the record consists of 29 volumes, including a report of proceedings for a two-day jury trial. Defendant has alleged numerous issues he argues were errors. Therefore, defendant's failure to provide a statement of facts with citations to the record, as well as his failure to provide supporting legal authority in his argument, "is not an inconsequential matter." *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 478, 825 N.E.2d 1246, 1253 (2005). The appellate court "is not

simply a depository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1. We are not required to do an appellant's work for him and decline to do so here.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we dismiss the appeal. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 17 Appeal dismissed.