2018 IL App (1st) 160127-U

No. 1-16-0127

Order filed November 28, 2018

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 2896
	)	
DARNELL BONNER,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's challenge to the summary dismissal of his *pro se* petition for post-conviction relief is moot. The circuit court did not err in imposing fees and costs against defendant for filing a frivolous petition.

¶ 2 In this appeal, defendant Darnell Bonner challenges separate orders of the circuit court's (1) summarily dismissing his petition for post-conviction relief and (2) assessing $105 in costs and fees for making a frivolous filing. We affirm.

¶ 3 BACKGROUND

¶ 4 In February 2014, defendant was indicted on three counts of escape. 720 ILCS 5/31-6(a) (West 2012). The gist of the indictment was that defendant (1) was convicted of a felony and (2) "knowingly failed to return from furlough or from work or day release to a penal institution, to wit: crossroads adult transition center, of the Illinois Department of Corrections."

¶ 5 In September 2014, defendant informed the court he intended to plead guilty in exchange for a sentence of two and a half years. The factual basis for defendant's plea to which the parties stipulated was as follows: Defendant was convicted of manufacture and delivery of a controlled substance and was placed on a work release program. Defendant was subsequently placed at Crossroads Adult Transition Center. On July 2, 2013, defendant signed out of Crossroads, but never returned.

¶ 6 The court accepted the factual basis and proceeded to sentencing. The court sentenced defendant to two and a half years on the escape conviction and one year of supervised release, to be served consecutive to a sentence defendant was serving in case No. 11 CR 5652 (it is unclear whether case No. 11 CR 5652 was the drug offense for which defendant was on work release, or some other unspecified crime). The court determined that defendant was entitled to 398 days of pretrial credit.

¶ 7 Defendant did not file a postplea motion or a notice of appeal. Instead, in February 2015, defendant filed a motion for order *nunc pro tunc*, seeking a corrected mittimus to reflect a presentence custody credit of 398 days. The circuit court denied the motion, noting that defendant received credit for 398 days and that it was without power to determine how the Department of Corrections calculated his sentence.

¶ 8 In September 2015, defendant filed a *pro se* petition for post-conviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1, *et seq*. (West 2014)), alleging that IDOC gave him a worksheet calculating his projected release date which did not reflect defendant's entitlement to 398 days of pre-sentence credit. Defendant claimed that the terms of his plea agreement were that he would receive 398 days of sentencing credit to be applied against his 30-month sentence. Defendant also claimed that he "was informed that he was not receiving the agreed upon 398 days of pre-sentence credit because he is currently receiving a credit against the sentence imposed on an earlier case (11 CR 0565201)." Defendant maintained that his due process rights were violated because the 398 days of presentence credit was part of the consideration for his plea of guilty and that he is entitled to the benefit of his bargain. Defendant requested that the court modify the sentencing order and reduce his sentence to reflect credit for the 398 days.

¶ 9 In November 2015, the circuit court summarily dismissed defendant's petition as frivolous and patently without merit. The court noted that defense counsel stated the terms of the agreement, which were that defendant "would plead guilty to a single count of Class 3 escape, and the State would request a sentence of two and a half years imprisonment." Relying on *People v. Reeves*, 2015 IL App (4th) 130707, which held that the terms of a plea agreement are set at the plea hearing, not at sentencing (see *id*. ¶ 14), the court further observed that the question of whether defendant would receive pre-sentence credit was not addressed until the sentencing phase. The court also pointed out that defendant's 398 days of presentence credit overlaps with the time he spent in custody for No. 11 CR 5652 and that he "is not entitled to

receive double sentence credit in the instant case because the record does not reflect that the parties contemplated double credit as part of the agreement."

¶ 10 In addition to dismissing defendant's petition, the court entered a separate written order pursuant to section 22-105 of the Code of Civil Procedure (Code) (735 ILCS 5/22-105 (West 2014)) finding that (1) defendant's petition lacked an arguable basis in law or in fact, (2) the allegations and other factual contentions in the petition did not have evidentiary support, and (3) the petition was presented to hinder, cause unnecessary delay, and needlessly increase the cost of litigation. The order assessed $105 in costs and fees against defendant.

¶ 11 ANALYSIS

¶ 12 Defendant argues that the circuit court's order summarily dismissing his petition should be reversed because the petition stated an arguable claim that he was denied the benefit of his plea bargain when he did not receive credit for the 398 days he spent in presentence custody. The State responds that because defendant "is no longer incarcerated and has completed the period of mandatory supervised release, any challenge to his sentence is now moot." In his reply brief, defendant acknowledges that he has completed his sentence and mandatory supervised release (MSR), and agrees with the State that a challenge to the summary dismissal of his petition is moot. However, defendant maintains that we "should vacate the trial court's order imposing fees and costs for filing a frivolous post-conviction petition, and order the refund of any such fines and fees he actually paid."

¶ 13 We agree with the parties that defendant's challenge to the dismissal of his petition is moot. An issue is moot if, due to intervening events, it is "impossible for the reviewing court to grant effectual relief to the complaining party." *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003).

Here, defendant has already served his sentence and MSR, and as a result, we cannot provide the requested relief of crediting 398 days against his sentence. See *People v. Roberson*, 212 Ill. 2d 430, 435 (2004) (finding defendant's appeal, seeking sentence credit, was moot as "we are unable to render any sort of effectual relief to defendant because he has served his sentence and completed his mandatory supervised release").

¶ 14 We next consider defendant's challenge to the court's order imposing $105 in costs and fees pursuant to section 22-105 of the Code. Our review is *de novo*. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13 ("We review the propriety of a trial court's imposition of fines and fees *de novo*").

¶ 15 Section 22-105(a) of the Code provides:

> "If a prisoner confined in an Illinois Department of Corrections facility files a pleading, motion, or other filing which purports to be a legal document in a case seeking post-conviction relief under [725 ILCS 5/122-1 *et seq.*]* * *and the Court makes a specific finding that the pleading, motion, or other filing which purports to be a legal document by the prisoner is frivolous, the prisoner is responsible for the full payment of filing fees and actual costs." 735 ILCS 5/22-105(a) (West 2014).

Section 22-105(b) contains the following definition of "frivolous":

> "a pleading, motion or other filing which purports to be a legal document filed by a prisoner in his or her lawsuit meets any or all of the following criteria:
>
> (1) it lacks an arguable basis either in law or in fact;

> (2) it is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> * * *
>
> (4) the allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]" 735 ILCS 5/22-105(b) (West 2014).

In *People v. Alcozer*, 241 Ill. 2d 248 (2011), the supreme court explained that because the definition of "frivolous" under section 122-2.1 of the Ac is "included in the statutory definition of a 'frivolous' " under section 22-105(b), "a postconviction petition summarily dismissed as frivolous or patently without merit under section 112-2.1 of the Post-Conviction Hearing Act is subject to imposition of fees and costs under section 22-105(b) of the Code." *Id*. at 258.

¶ 16 The court did not err in finding defendant's petition frivolous and imposing the fees under section 22-105 because defendant's claim lacked an arguable basis in law—and was thus frivolous—under section 122-2.1 of the Act. The record is unambiguously clear that the 398 days of presentence custody credit were not a part of defendant's plea agreement. When the parties presented the agreement to the circuit court, the only aspect of defendant's sentence which was discussed was that defendant would be sentenced to two and a half years incarceration; pre-sentence credit was never mentioned. See *People v. Lenoir*, 2013 IL App (1st) 113615, ¶¶ 12-13 (finding defendant entitled to 309 days' sentence credit where it was undisputed that his plea agreement included 309 days' credit); see also Ill. S. Ct. R. 402(b) (eff. July 1, 2012) ("If the

tendered plea is the result of a plea agreement, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the plea agreement").

¶ 17 As the court pointed out in dismissing defendant's petition, defendant confirmed before he pleaded guilty that his understanding of the agreement was that the State had offered a sentence of two-and-a-half years. At no point during the guilty plea hearing did defendant object or seek clarification that the terms of his plea agreement were to include sentence credit. See *McDermott*, 2014 IL App (4th) 120655, ¶ 29-30 (finding that the terms of the defendants' plea agreements included specified amounts of sentence credit, in part, because, "during the plea hearings in both cases, defendant attempted to 'stress' or 'clarify' that his sentence credit was 'part of the sentence' or 'part of the plea.' "). Rather, sentencing credit was mentioned only after the terms of the agreement were confirmed. As such, the record positively rebuts defendant's claim that sentencing credit comprised part of the bargained-for consideration defendant was to receive in exchange for his guilty plea. See *People v. Whitfield*, 217 Ill. 2d 177, 200 (2005); *People v. Clark*, 2011 IL App (2d) 091116 (2011), ¶ 11 ("[F]or purposes of identifying the terms of the plea agreement, *Whitfield* precludes any inquiry into conversation or negotiations that took place out of court."). Under these circumstances, defendant's allegations have no arguable basis in law or in fact and are therefore frivolous. Thus, the court did not err in imposing $105 of court costs and fees under section 22-105.

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.