

**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).

**FILED**  
April 16, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2018 IL App (4th) 150988-U  
NO. 4-15-0988

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
ROBERT MATHEWS,	)	No. 11CF649
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Harris and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* We grant the office of the State Appellate Defender’s motion to withdraw and affirm the trial court’s summary dismissal of defendant’s postconviction petition where defendant’s petition fails to state a claim that his postconviction petition was improperly dismissed or that he was denied effective assistance of counsel.

¶ 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 that follow, we grant OSAD’s motion and affirm the trial court’s judgment.

¶ 3 I. BACKGROUND

¶ 4 On August 10, 2011, the State charged the defendant, Robert Mathews, with two counts of predatory criminal sexual assault (720 ILCS 5/11-1.40 (West 2010)) and one count of criminal sexual assault (720 ILCS 5/11-1.20 (West 2010)) against his daughter, E.M, born in

1995. Count I charged defendant with committing predatory criminal sexual assault against E.M. from approximately January 1, 2006, through December 31, 2006, while E.M. was under 13 years old. Count II charged defendant with committing predatory criminal sexual assault against E.M. from approximately January 1, 2007, through January 1, 2008, while E.M. was under 13 years old. Count III charged defendant with committing criminal sexual assault against E.M., who is a family member and was under 18 years old, from approximately January 1, 2005, through December 31, 2005.

¶ 5 Eventually, the parties reached a partially negotiated plea agreement. Defendant pleaded guilty to counts I and III. The State agreed to dismiss count II and recommended a sentencing cap of 30 years' imprisonment. The trial court accepted the agreement and set the matter for sentencing.

¶ 6 Following an August 27, 2012, sentencing hearing, the trial court sentenced defendant to consecutive terms of 10 years for predatory criminal sexual assault and 6 years for criminal sexual assault, and ordered that defendant serve 85% of his 16-year sentence.

¶ 7 On August 26, 2015, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2014)). In the petition, defendant argued that the indictment was filed outside the statutory limitations period and that pretrial counsel provided ineffective assistance for failing to move to dismiss the indictment.

¶ 8 On November 17, 2015, the trial court dismissed defendant's petition finding the petition frivolous and patently without merit. The trial court held the indictment included allegations establishing the basis for application of the extended statute of limitations period under section 3-6 (j) of the Criminal Code of 1961 (720 ILCS 5/3-6(j) (West 2006)). Thus, the court concluded defense counsel lacked any basis to challenge the timeliness of the filing of the

indictment.

¶ 9 This appeal followed. On appeal, OSAD, appointed counsel for defendant, has filed a motion for leave to withdraw as defendant's counsel and attached a memorandum of law, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63, 621 N.E. 2d 287 (1993). On its own motion, this court granted defendant leave to file additional points and authorities by October 18, 2017. Defendant has not done so.

¶ 10 II. ANALYSIS

¶ 11 OSAD indicates it has thoroughly reviewed the record and concluded any request for review would be without merit. OSAD argues that because the trial court dismissed defendant's petition within 90 days of its filing and docketing without any input from the State as to dismissal, the trial court's summary dismissal of defendant's petition was procedurally proper. OSAD further asserts that defendant's ineffective assistance of counsel claim fails because, at the time of the indictment of defendant, the statute of limitations had not expired.

¶ 12 A. Defendant's Claim that the Trial Court Violated the Procedural Requirements of the Act by Summarily Dismissing His Petition

¶ 13 The Act provides a three-stage process by which a defendant may obtain a remedy for the substantial denial of his constitutional rights at trial. *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). During the first stage, within 90 days of the filing of the petition, the trial court must make a determination as to whether the petition states an arguable claim. 725 ILCS 5/122-2.1 (West 2014). The trial court considers the petition independently, without input from either side. *Edwards*, 197 Ill. 2d at 244. To survive dismissal at the first stage, a petition need only present the gist of a constitutional claim. *Id.* The petition must have an arguable basis either in law or in fact. *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1202 (2010). If the trial court does not dismiss the petition pursuant to section

122-2.1 (725 ILCS 5/122-2.1) (West 2014) the petition is docketed for further consideration and proceeds to stage two of the postconviction process. *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E. 102, 106 (1996).

¶ 14 The clerk filed defendant’s petition on August 31, 2015. The trial court dismissed defendant’s petition on November 17, 2015, which was within 90 days of the filing pursuant to section 122-2.1. The State refrained from providing any motions, responsive pleadings, or input as to whether the petition should be dismissed. Thus, we agree with OSAD that no procedural error occurred in the trial court’s summary dismissal of defendant’s petition.

¶ 15 B. Defendant’s Ineffective Assistance of Counsel Claim

¶ 16 Defendant next argues that counsel provided ineffective assistance for failing to move to dismiss the indictment. OSAD contends that defendant fails to state an arguable claim that his trial counsel was ineffective for failing to move to dismiss the indictment on the ground that the statute of limitations had expired. The trial court held the indictment properly established the basis for the application of an extended statute of limitations period under section 3-6 (j) of the Criminal Code (720 ILCS 5/3-6(j) (West 2006)). Thus, the court found defendant’s counsel was not ineffective for failing to challenge the indictment as having been untimely filed. We agree with OSAD that defendant’s ineffective assistance of counsel claim fails.

¶ 17 “[T]he right to counsel is the right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Generally, to demonstrate ineffective assistance of counsel, defendant must show counsel’s (1) performance fell below an objective standard of reasonableness; and (2) deficient performance resulted in prejudice to the defendant such that, but for counsel’s errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 688, 694. If a defendant fails to prove either prong of the *Strickland* test,

his claim for ineffective assistance of counsel must fail. *People v. Sanchez*, 169 Ill. 2d 472, 487, 662 N.E.2d 1199, 1208 (1996). “[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

¶ 18 In the context of first-stage postconviction proceedings, “ a petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel’s performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced.” *People v. Hodges*, 234 Ill. 2d 1, 17, 912 N.E. 1204, 1212 (2009).

¶ 19 1. *The Statute of Limitations Periods Applicable to the Charges Against Defendant Had Not Expired When the State Indicted Him*

¶ 20 An extended limitation period applies in certain sexual offense cases. When defendant committed his offenses, section 3-6 (720 ILCS 5/3-6 (West 2006)) allowed for two bases to extend the statute of limitations for predatory criminal sexual assault and criminal sexual assault against a victim under 18 years old. The first basis is under section 3-6(c) (720 ILCS 5/3-6(c) (West 2006)), which states that “a prosecution for any offense involving sexual conduct or sexual penetration, as defined in Section 12-12 of this Code, \*\*\* may be commenced within one year of the victim attaining the age of 18 years.” 720 ILCS 5/3-6(c) (West 2006). Basis two is under section 3-6(j) (720 ILCS 5/3-6(j) (West 2006)), which provides that when the victim is under 18 years old at the time of the offense a prosecution for criminal sexual assault or predatory sexual assault of a child may be commenced within 20 years of when the child victim attains 18 years of age. 720 ILCS 5/3-6(j) (West 2006).

¶ 21 E.M. was born in 1995. E.M turned 18 years old in 2013. Thus, under section 3-6(c) (720 ILCS 5/3-6(c) (West 2006)), the State was required to commence prosecuting defendant by 2014, which was when E.M. would turn 19 years old. Under section 3-6(j) (720

ILCS 5/3-6(j) (West 2006)), the State was required to commence the prosecution of defendant by 2033, no later than 20 years after E.M. turned 18 years old.

¶ 22 The State filed indictments against defendant on August 10, 2011, which was five years before E.M. turned 18 years old and well before the applicable limitations periods expired. Thus, we agree with OSAD that the statute of limitations period applicable to the charges against defendant had not expired at the time of the indictment of the defendant.

¶ 23 *2. The State's Indictment Properly Set Forth the Basis for An Extended Limitations Period*

¶ 24 OSAD also argues that the State's indictment properly set forth the basis for application of an extended limitations period. Under section 3-5(b) (720 ILCS 5/3-5(b) (West 2006)), a prosecution for any felony offense must be brought within three years following the commission of the offense. On August 10, 2011, the State indicted defendant. The indictment indicated that E.M. was under 18 years old at the time of the defendant's sexual assault offenses. Thus, the State could invoke the extended statute of limitations under sections 3-6(c) and (j) (720 ILCS 5/3-6(c), (j) (West 2006)). Under section 3-6(c) (720 ILCS 5/3-6(c) (West 2006)), the State could file charges until E.M. turned 19 years old. Under section 3-6(j) (720 ILCS 5/3-6(j) (West 2006)), the State could file charges within 20 years of E.M.'s eighteenth birthday.

¶ 25 Further, under section 3-8 of the Criminal Code (720 ILCS 5/3-8 (West 2006)), the statute of limitations for an offense based on a series of acts performed at different times begins to run when the last act in the series was committed. Count I of the indictment charged defendant with committing predatory sexual assault against E.M., who was under the age of 13, on or about January 1, 2006, through December 31, 2006. Count III of the indictment charged defendant with committing criminal sexual assault against E.M., who was under 18 years old and a family member, on or about January 1, 2005, through December 31, 2005. Thus, the

indictment contained the necessary allegations to establish the application of the extended statute of limitation periods.

¶ 26 As it relates to his obligation under the first prong of Strickland, defendant cannot establish that it is arguable counsel's performance fell below an objective standard of reasonableness. Thus, his ineffective assistance of counsel claim fails.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we grant OSAD's motion to withdraw as counsel on appeal and affirm the trial court's order dismissing defendant's postconviction petition.

¶ 29 Affirmed.