2018 IL App (4th) 160206-U

NO. 4-16-0206

FILED
March 28, 2018
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.	)	Logan County
ROBERT W. SANDERSON,	)	No. 14CF28
Defendant-Appellant.	)	
	)	Honorable
	)	William G. Workman,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred by dismissing defendant's *pro se* postconviction petition at the first stage of the proceedings.

¶ 2 In April 2014, the State charged defendant, Robert W. Sanderson, by information with one count of unlawful methamphetamine conspiracy (720 ILCS 646/65(a) (West 2014)), one count of aggravated unlawful participation in methamphetamine manufacturing (720 ILCS 646/15(b)(1)(G) (West 2012)), one count of unlawful participation in methamphetamine manufacturing (720 ILCS 646/15(a)(2)(A) (West 2012)), one count of unlawful possession of methamphetamine precursors (720 ILCS 646/20(a)(1) (West 2014)), and one count of unlawful possession of methamphetamine manufacturing materials (720 ILCS 646/30(a) (West 2014)). On October 14, 2014, the parties entered into a fully negotiated plea agreement, under which defendant would plead guilty to aggravated unlawful participation in methamphetamine

manufacturing, the State would ask for the dismissal of the other four charges, and defendant would receive a sentence of 12 years' imprisonment. At the plea hearing on the same date, the Logan County circuit court accepted defendant's guilty plea and sentenced him in accordance with the plea agreement. The court also entered a written sentencing judgment that provided defendant would serve his sentence at 75%. See 730 ILCS 5/3-6-3(a)(2)(v) (West 2012) (75% truth-in-sentencing statute).

¶ 3 In January 2016, defendant filed a *pro se* petition for postconviction relief, claiming ineffective assistance of counsel and asserting his "mittimus" incorrectly stated he had to serve 75% of his sentence. He claimed the 75% truth-in-sentencing statute did not apply to his conviction and his fully negotiated plea agreement provided he was to serve 50% of his sentence. The next month, the circuit court summarily dismissed defendant's postconviction petition, finding it was frivolous and patently without merit. Defendant appeals that dismissal, asserting this court should amend his mittimus to show he is entitled to day-for-day credit against his sentence because the 75% truth-in-sentencing statute does not apply, or, in the alternative, his case should be remanded for further postconviction proceedings. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 The State's charges against defendant in this case stem from his actions on April 17, 2014. The aggravated unlawful participation in methamphetamine manufacturing charge alleged, in pertinent part, defendant knowingly participated in the manufacture of less than 15 grams of methamphetamine. The aforementioned offense is a Class X felony. See 720 ILCS 646/15(b)(2)(A) (West 2012).

¶ 6 On October 14, 2014, the parties filed a written plea agreement that was fully negotiated. Under the agreement, defendant would plead guilty to aggravated unlawful

participation in methamphetamine manufacturing, the State would seek dismissal of the other four charges, and defendant would receive a 12-year prison sentence. The written plea agreement did not address the sentencing credit under section 3-6-3 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3 (West 2012)). That same day, the circuit court held the plea hearing. The court asked defense counsel to explain the plea agreements in this case and on a petition to revoke probation in a separate case (People v. Sanderson, No. 11-CF-96 (Cir. Ct. Logan County)). As to this case, defense counsel explained defendant would be pleading guilty to aggravated unlawful participation in methamphetamine manufacturing, a Class X felony, carrying a mandatory 75% sentence. The other four counts against defendant would be dismissed, and defendant would be sentenced to an agreed term of 12 years in prison with 3 years of mandatory supervised release. Defense counsel further addressed the fines and sentence credit for pretrial detention. The court admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012), and the State gave a factual basis for the plea. The State noted that, during the execution of a search warrant at defendant's house, the police found 3 1/2 grams of a substance that appeared to be finished methamphetamine. The court accepted defendant's guilty plea and sentenced him to 12 years in prison, noting the sentence was at 75%. The written sentencing judgment also provided defendant was to serve the sentence at 75%.

¶ 7 In December 2014, defendant filed a *pro se* motion to reduce his sentence, asserting his sentence was excessive. The State filed a motion to dismiss defendant's motion to reduce his sentence. In September 2015, the circuit court made a docket entry, stating it lacked jurisdiction to hear defendant's motion because it was filed more than 30 days after the date of defendant's sentencing. Defendant did not file a direct appeal.

¶ 8 On January 19, 2016, defendant filed his petition for relief under the Post-

Conviction Hearing Act (Postconviction Act) (725 ILCS 5/art. 122 (West 2016)). In the beginning of the petition, he set out the case law for an ineffective assistance of counsel claim. Defendant then asserted his plea agreement provided for a 12 year sentence at 50%. He explained why the 75% truth-in-sentencing statute did not apply to him and noted his mittimus incorrectly stated he was to serve 75% of his sentence. Defendant contended his sentence was void, and if left uncorrected, he would serve more time than he agreed to in the plea agreement. Defendant did not want to withdraw his guilty plea but wanted the mittimus corrected. Attached to the petition was defendant's written sentencing judgment, the written plea agreement, the sworn statement of the arresting officer, and the information.

¶ 9 On February 29, 2016, the circuit court entered a written order, dismissing defendant's postconviction petition as frivolous and patently without merit. The court found the 75% truth-in-sentencing statute did apply to defendant's conviction, and thus his argument was meritless. The court also noted defendant's attachments did not show the parties agreed to a specific sentence credit under section 3-6-3.

¶ 10 On March 21, 2016, defendant filed a notice of appeal from the dismissal of his postconviction petition with incorrect information on it. On March 29, 2016, defendant filed a timely amended notice of appeal in compliance with Illinois Supreme Court Rules 606 (eff. Dec. 11, 2014) and 303(b)(5) (eff. Jan. 1, 2015). Accordingly, this court has jurisdiction of defendant's appeal under Illinois Supreme Court Rule 651(a) (eff. Feb. 6, 2013).

¶ 11 II. ANALYSIS

¶ 12 In this appeal, defendant challenges the dismissal of his postconviction petition at the first stage of the proceedings, contending he is entitled to day-for-day sentencing credit in accordance with the statutory provisions and his plea agreement. The State concedes defendant's

pro se postconviction petition states the gist of a constitutional claim of ineffective assistance of counsel but contends defendant cannot unilaterally repudiate the 75% service term of his fully negotiated plea agreement. In reply, defendant contends the sentencing credit was not part of the plea agreement.

¶ 13 The Postconviction Act "provides a mechanism for criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitutions." *People v. Morris*, 236 Ill. 2d 345, 354, 925 N.E.2d 1069, 1075 (2010). A proceeding under the Postconviction Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights. *People v. Caballero*, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008).

¶ 14 The Postconviction Act establishes a three-stage process for adjudicating a postconviction petition. *English*, 2013 IL 112890, ¶ 23. Here, defendant's petition was dismissed at the first stage. At the first stage, the circuit court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). To survive dismissal at this initial stage, the postconviction petition "need only present the gist of a constitutional claim," which is "a low threshold" that requires the petition to contain only "a limited amount of detail." *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996). Our supreme court has held "a *pro se* petition seeking postconviction relief under the [Postconviction] Act for a denial of constitutional rights may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209

(2009). A petition lacks an arguable legal basis when it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition lacks an arguable factual basis when it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Hodges*, 234 Ill. 2d at 16-17, 912 N.E.2d at 1212. "In considering a petition pursuant to [section 122-2.1 of the Postconviction Act], the court may examine the court file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding and any transcripts of such proceeding." 725 ILCS 5/122-2.1(c) (West 2016); see also *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). Our review of the first stage dismissal of a postconviction petition is *de novo*. *People v. Dunlap*, 2011 IL App (4th) 100595, ¶ 20, 963 N.E.2d 394. Additionally, we review *de novo* an issue of statutory construction. *People v. Smith*, 2014 IL 115946, ¶ 21, 21 N.E.3d 1172.

¶ 15 Section 3-6-3(a)(2)(v) of the Unified Code (730 ILCS 5/3-6-3(a)(2)(v) (West 2012)) provides the following:

> "that a person serving a sentence for gunrunning, narcotics racketeering, controlled substance trafficking, methamphetamine trafficking, drug-induced homicide, aggravated methamphetamine-related child endangerment, money laundering pursuant to clause (c) (4) or (5) of Section 29B-1 of the Criminal Code of 1961 or the Criminal Code of 2012, *or a Class X felony conviction for* delivery of a controlled substance, possession of a controlled substance with intent to manufacture or deliver, calculated criminal drug conspiracy, criminal drug conspiracy, street gang criminal drug conspiracy, participation in methamphetamine manufacturing, aggravated participation in methamphetamine

manufacturing, delivery of methamphetamine, possession with intent to deliver methamphetamine, aggravated delivery of methamphetamine, aggravated possession with intent to deliver methamphetamine, methamphetamine conspiracy *when the substance containing the controlled substance or methamphetamine is 100 grams or more* shall receive no more than 7.5 days sentence credit for each month of his or her sentence of imprisonment." (Emphases added.)

¶ 16 The circuit court's written order indicates it found "when the substance containing the controlled substance or methamphetamine is 100 grams or more" language applied only to the last offense listed, which is methamphetamine conspiracy. Thus, the court concluded the 100 gram provision did not apply to defendant's offense and he was subject to the 75% truth-in-sentencing statute. Defendant contends the language applies to all the drug offenses listed after the "or a Class X felony conviction for" language, which would include aggravated participation in methamphetamine manufacturing. The State agrees and concedes section 3-6-3(a)(2)(v) of the Unified Code does not apply to defendant's conviction because he pleaded guilty to participating in the manufacturing of less than 15 grams of methamphetamine.

¶ 17 The fundamental rule of statutory construction requires courts to ascertain and give effect to the legislature's intent. *People v. Bradford*, 2016 IL 118674, ¶ 15, 50 N.E.3d 1112. The statutory language, given its plain and ordinary meaning, best indicates the legislature's intent. *Bradford*, 2016 IL 118674, ¶ 15. When the statutory language is clear and unambiguous, a court must give effect to the statute's plain meaning without resorting to extrinsic statutory construction aids. *Bradford*, 2016 IL 118674, ¶ 15. Courts must construe the statute's words and phrases in light of other relevant provisions and not in isolation. *Bradford*, 2016 IL 118674, ¶ 15. Moreover, "[e]ach word, clause, and sentence of a statute must be given a

reasonable meaning, if possible, and should not be rendered superfluous." *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 25, 72 N.E.3d 323. Additionally, they "may consider the reason for the law, the problems to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Bradford*, 2016 IL 118674, ¶ 15.

¶ 18 We agree with the parties the "when the substance containing the controlled substance or methamphetamine is 100 grams or more" language applies to all of the offenses listed after "or a Class X felony conviction for" language. To hold otherwise would render "the controlled substance" language meaningless as the last listed offense, methamphetamine conspiracy, involves only methamphetamine. Thus, that offense standing alone would not require "the controlled substance" language. The entire list of offenses at issue includes those specific to methamphetamine, as well as other offenses that apply to any controlled substance. Accordingly, under the plain language of section 3-6-3(a)(2)(v) of the Unified Code, the 75% truth-in-sentencing statute only applies to the offense of aggravated participation in methamphetamine manufacturing when the offense involves more than 100 grams of methamphetamine. In defendant's case, the amount of methamphetamine was less than 15 grams. Thus, defendant was not subject to the 75% truth-in-sentencing statute.

¶ 19 Since he was not subject to the 75% truth-in-sentencing statute, defendant contends we should amend his mittimus to reflect he is able to receive day-for-day sentencing credit pursuant to section 3-6-3(a)(2.1) of the Unified Code (730 ILCS 5/3-6-3(a)(2.1) (West 2014)). The only case law defendant cites for this proposition is the statement in *People v. Harper*, 387 Ill. App. 3d 240, 244, 900 N.E.2d 381, 384 (2008), that a reviewing court has the authority to correct the mittimus at any time without remanding the case to the circuit court.

Defendant does not provide any analysis as to why or cite any authority showing he is entitled to such relief. Defendant appears to base his request for an amended mittimus on the void sentence rule, which had provided a sentence that did not conform to a statutory requirement was void. See *People v. Castleberry*, 2015 IL 116916, ¶ 1, 43 N.E.3d 932. A void judgment can be challenged " 'at any time or in any court, either directly or collaterally.' " *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 862 (1945)). Thus, in the past, a reviewing court could have vacated an unauthorized portion of a defendant's sentence on appeal from the dismissal of a defendant's postconviction petition. See *People v. Thompson*, 209 Ill. 2d 19, 24-27, 805 N.E.2d 1200, 1203-05 (2004). However, our supreme court abolished the void sentence rule in *Castleberry*, 2015 IL 116916, ¶ 1. After the *Castleberry* decision, the improper application of the 75% truth-in-sentencing statute in this case is merely voidable and not subject to collateral attack. See *Castleberry*, 2015 IL 116916, ¶ 11. Accordingly, we find defendant has failed to show he is entitled to an amended sentencing judgment.

¶ 20 In his postconviction petition, defendant did claim ineffective assistance of counsel. Claims of ineffective assistance of counsel are evaluated under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Enis*, 194 Ill. 2d 361, 376, 743 N.E.2d 1, 11 (2000). A defendant raising a claim of ineffective counsel "must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). At the first stage of postconviction proceedings, "a petition alleging ineffective assistance of counsel 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."

Petrenko, 237 Ill. 2d at 497, 931 N.E.2d at 1203 (citing *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212). The State concedes defendant's *pro se* postconviction petition "barely contains the gist of an arguably meritorious claim of ineffective assistance of counsel." We accept the State's concession and agree with its description of defendant's argument in his *pro se* postconviction petition, as defendant provides a very limited amount of detail as to how his counsel's performance was deficient.

¶ 21 Accordingly, we find defendant's *pro se* postconviction petition presents the gist of a constitutional claim of ineffective assistance of counsel and should proceed to the second stage of the postconviction proceedings. Since defendant has yet to establish he is entitled to postconviction relief, the State's arguments about the proper form of relief are premature, and we decline to address them.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we reverse the Logan County circuit court's summary dismissal of defendant's *pro se* postconviction petition at the first stage and remand the case for further postconviction proceedings.

¶ 24 Reversed; cause remanded.