

**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).

2018 IL App (4th) 160373-U

NO. 4-16-0373

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 30, 2018

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee	)	Circuit Court of
v.	)	Champaign County
JONATHAN E. BRUMFIELD,	)	No. 09CF87
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Cavanagh and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel’s motion to withdraw because no meritorious issues could be raised on appeal.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel. In February 2016, defendant, Jonathan E. Brumfield, filed a post-conviction petition arguing his counsel was ineffective. The trial court summarily dismissed the petition for lack of standing, and defendant appealed.

¶ 3 In January 2018, OSAD filed a motion to withdraw. In its brief, OSAD contends that appeal of this case presents no potentially meritorious issues for review. We agree, grant OSAD’s motion to withdraw as counsel, and affirm the trial court’s judgment.

¶ 4 I. BACKGROUND

¶ 5 A. Procedural History

¶ 6 In January 2009, the State charged defendant with two counts of unlawful use of a weapon by a felon (UUWF). 720 ILCS 5/24-1.1(a), (e) (West 2008). Count I charged a Class 2 felony UUWF because defendant was a convicted felon and on mandatory supervised release when he was arrested and found to be in possession of a handgun. Count II charged a Class 3 felony UUWF because defendant had a prior felony conviction for possession of a stolen motor vehicle.

¶ 7 In May 2009, defendant entered a guilty plea as to count 1, the Class 2 form of UUWF, as part of a negotiated plea. The trial court accepted the plea and, in June 2009, sentenced defendant to 5 years in prison to be served at 50% with credit for 166 days served and 2 years of mandatory supervised release. Defendant took no direct appeal.

¶ 8 B. The Postconviction Petition

¶ 9 In February 2016, defendant filed a postconviction petition in which he asserted his trial counsel was ineffective for advising him to plead guilty to the Class 2 felony even though he should have been charged with just a Class 3 felony. Defendant contended that the statute provided for a Class 3 felony when committed “by a person not confined in a penal institution.” 720 ILCS 5/24-1.1(e) (West 2008). According to defendant, because he was not in a penal institution when he was arrested for possessing a firearm, he could not have been charged with a Class 2 felony.

¶ 10 In March 2016, the trial court dismissed defendant’s petition. The court found defendant had served his period of imprisonment and his term of mandatory supervised release and therefore lacked standing.

¶ 11 C. The Current Appeal and OSAD’s Motion To Withdraw

¶ 12 In April 2016, defendant filed a notice of appeal. OSAD was appointed to repre-

sent defendant. In January 2018, OSAD filed a motion to withdraw and served a copy on defendant. On its own motion, this court granted defendant until February 22, 2018, to file a response. Defendant has not filed a response.

¶ 13 In its brief, OSAD contends that appeal of this case presents no potentially meritorious issues for review. We agree, grant OSAD’s motion to withdraw as counsel, and affirm the trial court’s judgment.

¶ 14 II. ANALYSIS

¶ 15 A. The Standard of Review and Applicable Law

¶ 16 The United States Supreme Court has set forth the procedures to be followed for an appellate attorney to withdraw as counsel. *Anders v. California*, 386 U.S. 738 (1967); *People v. Mares*, 2018 IL App (2d) 150565, ¶ 6. Counsel’s request to withdraw must be accompanied by a brief referring to anything in the record that could support an appeal. *People v. Meeks*, 2016 IL App (2d) 140509, ¶ 10, 51 N.E.3d 1109. After identifying issues that counsel could conceivably raise, counsel must then explain why these potential arguments are without merit. *Id.* A copy of this motion must be provided to the client, who will then be given an opportunity to respond to the motion to withdraw. *Id.* The appellate court will then review the record to determine whether the potential arguments are wholly without merit. *Id.*

¶ 17 B. Defendant’s Standing

¶ 18 In its motion to withdraw, OSAD argues that defendant lacks standing under the Post-Conviction Hearing Act (Act) because he is not “imprisoned in the penitentiary.” 725 ILCS 5/122-1(a) (West 2016). We agree.

¶ 19 “Any person imprisoned in the penitentiary may institute a proceeding under” the Act. *Id.* “A defendant is ‘imprisoned in the penitentiary’ for the purposes of the Act when his

liberty is actually constrained by the State.” *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 6, 955 N.E.2d 664. “Generally, when a defendant has fully served his underlying sentence before filing a postconviction petition, he no longer has standing to file a petition.” *Id.* (citing *People v. Carerra*, 239 Ill. 2d 241, 253, 940 N.E.2d 1111, 1118 (2010)). The Act provides a remedy “only to persons who are actually deprived of their liberty and not to those who have completely served their sentences and wish merely to purge their criminal records of past convictions.” *People v. Stavenger*, 2015 IL App (2d) 140885, ¶ 8, 36 N.E.3d 1011.

¶ 20 Here, defendant was sentenced on June 29, 2009, to 5 years in prison to be served at 50% with credit for 166 days served and 2 years of mandatory supervised release. Defendant’s sentence was scheduled to terminate on July 16, 2013. Even assuming defendant served his five-year prison sentence at 100%, his period of mandatory supervised release would have expired on January 16, 2016. Defendant filed his postconviction petition in February 2016. Accordingly, defendant lacks standing to challenge his conviction pursuant to the Act.

¶ 21 C. Defendant’s Ineffective Assistance of Counsel Claim

¶ 22 In the alternative, OSAD argues that defendant’s contention that he could only have been sentenced for a Class 3 felony under the UUWF statute is meritless, and therefore, his postconviction petition was properly dismissed even if he had standing. We agree.

¶ 23 Paragraph (e) of the UUWF statute delineates specific sentences which are applicable depending on certain enumerated conditions. 720 ILCS 5/24-1.1(e) (West 2016). For instance, the statute states “[v]iolation of this Section by a person not confined in a penal institution shall be a Class 3 felony.” *Id.* Defendant argues that because he was not in a penal institution when he was arrested for being a felon in possession of a firearm, he could not have been charged with a Class 2 felony.

