2019 IL App (1st) 133979-U

FIFTH DIVISION
September 27, 2019

No. 1-13-3979

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	No. 99 CR 28100
	)	
HENRY WATSON,	)	Honorable
	)	Michele M. Simmons,
Petitioner-Appellant.	)	Judge, presiding.

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JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court did not err in dismissing defendant's *mandamus* petition.

¶ 2 Following a bench trial in 2002, defendant[1] Henry Watson was convicted of first degree murder and aggravated vehicular hijacking. Before sentencing, defendant waived his right to have a jury determine his eligibility for the death penalty, and the circuit court determined that

[1] Although Henry Wilson is technically a petitioner for purposes of this appeal, we will refer to him as "defendant" for consistency with our prior orders.

defendant was eligible for a death sentence based upon the cold, calculated nature of the offense. After a hearing, the court sentenced defendant to death for the murder, but did not impose a sentence on the aggravated vehicular hijacking conviction.

¶ 3 Defendant appealed directly to our supreme court, arguing that the State failed to prove that the murder was "cold and calculated" beyond a reasonable doubt. In January 2003, while the direct appeal was pending, Governor George Ryan commuted defendant's death sentence to a sentence of natural life imprisonment without the possibility of parole. Consequently, our supreme court transferred the case to this court in April 2003. We ruled that defendant's challenge to his death sentence was moot, but stated that, had we considered his argument, we would have found the evidence sufficient to qualify him for the death penalty. *People v. Watson*, 347 Ill. App. 3d 181, 182, 192-93 (2004). Defendant filed a petition for leave to appeal to our supreme court, which was denied in October 2004. *People v. Watson*, 211 Ill. 2d 611 (Oct. 6, 2004) (*Watson I*).

¶ 4 While defendant's direct appeal was still pending, he filed an initial *pro se* postconviction petition in which he alleged that his rights to due process and the effective assistance of counsel were violated in various ways. The circuit court summarily dismissed the petition, and this court affirmed. *People v. Watson*, No. 1-04-0892 (2005) (unpublished order under Illinois Supreme Court Rule 23) (*Watson II*).

¶ 5 In February 2011, defendant filed a motion seeking leave to file a successive postconviction petition. In that petition, defendant claimed that he was unable to understand the trial proceedings against him due to a previously undetected brain tumor, and that he could have raised a *bona fide* doubt about his fitness to stand trial had he known about the tumor at the time. The circuit court denied leave to file the successive petition. On appeal, defendant argued for the

first time that his case should be remanded for sentencing on the aggravated vehicular hijacking count. In March 2013, this court affirmed, finding that the circuit court's judgment with respect to the unsentenced aggravated vehicular hijacking conviction was merely voidable, not void, and therefore could not be attacked in a postconviction proceeding. This court also corrected the mittimus to reflect both defendant's murder conviction and his conviction for aggravated vehicular hijacking. *People v. Watson*, 2013 IL App (1st) 111768-U, ¶¶ 12-17 (*Watson III*). Although the Illinois Department of Corrections website indicates that the defendant is serving a life sentence for the aggravated vehicular hijacking, the record on appeal does not include an amended mittimus reflecting a sentence on the conviction for aggravated vehicular hijacking, as ordered by this court in *Watson III*.

¶ 6 In August 2013, defendant filed a motion for leave to file a petition for *mandamus* in the circuit court. The proposed petition raised the same issue regarding the alleged voidness of his conviction and sentence because of the unsentenced vehicular hijacking conviction. The circuit court denied defendant leave to file the petition. Defendant then filed a supplement to his petition, which appears to be cut-and-pasted portions of his 2004 petition for leave to appeal in *Watson I*. Upon consideration of the supplement, the circuit court ruled that leave to file the *mandamus* petition was "still denied." Defendant now appeals.

¶ 7 The office of the Public Defender of Cook County, which represents defendant on appeal, has filed a motion for leave to withdraw, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Counsel has submitted a memorandum in support of the motion, stating that counsel has reviewed the record and concluded that there are no issues of arguable merit on appeal. Copies of the motion and memorandum were sent to defendant, who was advised that he may submit any points in support of his appeal. Defendant filed a response, again arguing that the circuit

court's judgment was void because the court had jurisdiction to impose a sentence for aggravated vehicular hijacking, but failed to do so. Defendant also alleges that counsel filed her *Finley* motion in retaliation for his filing of a complaint against her with the Attorney Registration and Disciplinary Commission, which raised a claim of lack of communication with him and attention regarding this appeal.

¶ 8 After carefully reviewing the record, counsel's memorandum, and defendant's response, we agree with counsel's conclusion. In *Watson III*, we rejected defendant's claim that his murder conviction was void due to the unsentenced aggravated vehicular hijacking conviction. That is the only issue raised in the pending *mandamus* petition. Thus, the motion of the office of the Public Defender of Cook County for leave to withdraw is allowed, and the judgment of the circuit court is affirmed.

¶ 9 That being said, we must comment on the age of this case and its meandering history. The circuit court denied defendant's *mandamus* petition in December 2013. A notice of appeal was promptly filed and docketed in this court. Following usual practice, the presiding judge of the Sixth Municipal District appointed the State Appellate Defender to represent the defendant on appeal. However, this appointment was improper, because *mandamus* is a civil remedy and the State Appellate Defender is not statutorily empowered to represent *mandamus* petitioners. See *Alexander v. Pearson*, 354 Ill. App. 3d 643, 647 (2004).

¶ 10 In March 2014, this court allowed the State Appellate Defender to withdraw pursuant to *Alexander*. The defendant promptly moved for appointment of counsel, and this court appointed the Cook County Public Defender to represent him. The Public Defender filed the docketing statement in May 2014, shortly after the appointment. A certificate in lieu of record was filed in September 2014. In November 2014, the Public Defender filed the first of a series of motions

for extensions of time to file a brief. These extensions ran until March 2015, when this court granted the last extension and marked it "FINAL." No brief was filed by the March 2015, deadline, and the case became dormant for nine months. Rather than file any additional motions for extensions of time, the Public Defender filed a motion to file a status report in December 2015, explaining that it still could not prepare a brief due to its workload. Status report motions were filed and processed for almost another year, until October 2016.

¶ 11 The case then became dormant yet again, this time for almost three years. Nothing in this court's records or the filings explains why this occurred. In June 2019, the Public Defender filed a motion to withdraw pursuant to *Finley*. That motion triggered an internal process under which the case was assigned to an authoring justice and panel for the first time in its six-year lifespan.

¶ 12 Knowing the heavy workload of the State Appellate Defender and Public Defender, this court has a practice of not dismissing criminal appeals for want of prosecution. But we expect attorneys who practice in this court to keep abreast of their pending cases and proceed diligently. This was not a complicated case, and the record is but a few pages long. It should have been resolved years ago. If, due to budgetary constraints, the Public Defender cannot adequately handle its caseload, it should so advise this court and also solicit a law school clinic or *pro bono* attorney to take up the slack. Similarly, if a case goes dormant without explanation, counsel for the appellee should notify the court and seek appropriate relief.

¶ 13 We further remand this matter to the circuit court for sentencing on the aggravated vehicular hijacking conviction—if such a sentence has not already been imposed—consistent with this court's prior decision in *Watson III*.

¶ 14 Affirmed and remanded with directions.