2019 IL App (4th) 160321-U

NO. 4-16-0321

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 7, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
ERIC D. WILLIAMS,	)	No. 14CF402
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's summary dismissal of defendant's *pro se* postconviction petition.

¶ 2 In July 2015, a jury convicted defendant, Eric D. Williams, of two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(1), (2) (West 2012)). The trial court ordered the two counts merged and sentenced him to 39 years in prison. In April 2016, while defendant's direct appeal was pending, he filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2014)), which the trial court summarily dismissed.

¶ 3 In March 2018, during the pendency of this appeal, this court affirmed defendant's conviction and sentence on direct appeal. *People v. Williams*, 2018 IL App (4th) 150745-U, ¶ 2.

¶ 4 In this appeal, defendant argues the trial court erred by failing to recharacterize a letter he wrote to the trial court as a motion to reconsider the dismissal of his postconviction petition, and therefore this court should remand for a ruling on defendant's motion. Alternatively, defendant argues the trial court erred by failing to determine whether there was a *bona fide* doubt as to his fitness to participate in postconviction proceedings. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In August 2014, the State charged defendant with three counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(1), (a)(2), (a)(3) (West 2012)) (counts I, II, and III), one count of aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2012)) (count IV), and one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)). In July 2015, the matter proceeded to a jury trial on counts I and II, which were based on allegations that defendant committed an act of sexual penetration upon the victim, L.M., and (1) displayed, threatened to use, or used a dangerous weapon other than a firearm (count I) (720 ILCS 5/11-1.30(a)(1) (West 2012)) or (2) used force or the threat of force and caused L.M. bodily harm (count II) (720 ILCS 5/11-1.30(a)(2) (West 2012)). The jury found defendant guilty of both counts of aggravated criminal sexual assault, and the trial court sentenced him to 39 years in prison on count I (based on aggravated criminal sexual assault with a dangerous weapon) and 30 years in prison on count II (based on aggravated criminal sexual assault causing bodily harm). The court also ordered the two counts merged. In December 2015, defendant filed a late notice of appeal, which this court allowed.

¶ 7 On April 13, 2016, while his direct appeal was pending, defendant filed a *pro se* petition for postconviction relief under the Act, alleging he was deprived of his constitutional rights at trial because "the State allowed perjured testimony of its witness to stand uncorrected."

¶ 8 On April 18, 2016, the trial court summarily dismissed defendant's petition in a written order. On April 19, 2016, defendant sent a letter to the trial court requesting to withdraw his postconviction petition. On April 26, 2016, defendant sent a letter to the trial court asking to file a notice of appeal and requesting that counsel be appointed. On April 29, 2016, defendant sent another letter to the trial court, stating:

> "I sent a hurried version of my post conviction [petition] to the circuit clerk on April 13, 2016[.] April 18 I wrote a letter to the circuit clerk asking to withdraw my post conviction [petition] due to me being misguided by the jailhouse lawyer here, I am illiterate and incompetent of the law. I am on ps[y]ch meds for hearing voices[.] I did not [k]no[w] what I was doing[.] I'm in no position to waive anything concerning my direct appeal. I would like to speak to someone about this error."

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred when it failed to recharacterize his April 29, 2016, letter as a motion to reconsider the summary dismissal of his *pro se* petition for postconviction relief and therefore, this court should remand for a ruling on defendant's motion. Alternatively, defendant argues the trial court erred when it failed to determine whether there was a *bona fide* doubt as to defendant's fitness to participate in postconviction proceedings.

¶ 12 A. Standard of Review

¶ 13 The Act "provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both." *People v. Tate*, 2012 IL 112214, ¶ 8, 980 N.E.2d 1100. At the first stage of postconviction proceedings, the trial court may summarily dismiss a petition upon a determination that it is frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10, 912 N.E.2d 1204, 1208-09 (2009); 725 ILCS 5/122-2.1(a)(2) (West 2014)). A *pro se* petition for postconviction relief is frivolous or patently without merit only when it "has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 11-12. We review the court's summary dismissal of a postconviction petition *de novo*. *Tate*, 2012 IL 112214, ¶ 10. This court also reviews *de novo* whether a trial court complied with applicable procedures in postconviction proceedings. *People v. Smith*, 371 Ill. App. 3d 817, 819, 867 N.E.2d 1150, 1152 (2007).

¶ 14 B. Characterization of Defendant's Letter

¶ 15 Here, defendant sent three separate letters to the trial court on April 19, 2016, April 26, 2016, and April 29, 2016, respectively. In the first, defendant asked the court to withdraw his postconviction petition; in the second, he asked the court to file a notice of appeal; and in the third, he requested to speak to someone at the court regarding his "error" in filing a "hurried" version of his postconviction petition. Defendant asserts that despite asking the court to file a notice of appeal on April 26, the court should have recharacterized his April 29 letter as a motion to reconsider its summary dismissal of his *pro se* postconviction petition. According to defendant, the court was therefore required to rule on his motion rather than directing the filing of a notice of appeal. Defendant asks us to remand the case for the court to rule on the alleged motion to reconsider.

¶ 16 First, defendant cites no authority recognizing a duty exists on the part of the trial court to recharacterize his letter in these circumstances. While it is true that trial courts are permitted to construe a *pro se* petition, however labeled, as a postconviction petition where it raises constitutional claims cognizable under the Act, we find no duty exists here that required the recharacterization of defendant's letter as a motion to reconsider. See *People v. Johnson*, 352 Ill. App. 3d 442, 446, 816 N.E.2d 636, 640-41 (2004) (citing *People ex rel. Palmer v. Twomey*, 53 Ill. 2d 479, 484, 292 N.E.2d 379, 382 (1973)). Even presupposing the court possessed the discretion to characterize defendant's letter as a motion to reconsider, "[i]t cannot be error for a trial court to fail to do something it is not required to do." *People v. Stoffel*, 239 Ill. 2d 314, 324, 941 N.E.2d 147, 154 (2010) (holding the trial court's decision not to recharacterize a defendant's *pro se* pleading as a postconviction petition was not reviewable).

¶ 17 Second, we find the trial court in this case correctly declined to recharacterize defendant's April 29 letter as a motion to reconsider because defendant's letter was not akin to such a motion. This court has previously held that a motion's content, rather than its title or label, determines its character. *Smith*, 371 Ill. App. 3d at 821. At no point in his April 29 letter did defendant argue that his petition stated the gist of a constitutional claim entitling him to postconviction relief and thus, the court should reconsider its summary dismissal of the petition. Instead, defendant reiterated his desire to withdraw his petition because it was "hurried," he was illiterate, he was on psychotropic medications, and he did not want to waive any potentially meritorious arguments that he neglected to include in his initial petition.

¶ 18 Accordingly, we find no error in the trial court's decision not to recharacterize defendant's letter as a motion to reconsider.

¶ 19 C. Determination of Defendant's Fitness

¶ 20 Alternatively, defendant argues a remand is required because the trial court failed to determine whether there was a *bona fide* doubt as to his fitness to participate in postconviction proceedings.

¶ 21 Defendant relies on our supreme court's decision in *People v. Owens*, 139 Ill. 2d 351, 564 N.E.2d 1184 (1990), which interpreted Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013). Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) outlines the duties of postconviction counsel, including:

> "[T]he attorney has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions."

In interpreting this rule, the *Owens* court held that Rule 651(c) is "not satisfied where appointed counsel cannot determine whether a post-conviction petitioner has any viable claims, because the petitioner's mental disease or defect renders him incapable of communicating in a rational manner." *Owens*, 139 Ill. 2d at 359-60. "If the trial court determines that a *bona fide* doubt exists as to the petitioner's mental ability to communicate with counsel, the court may order that a psychological evaluation be conducted and consider the matter in an evidentiary hearing." *Id.* at 365. "A post-conviction petitioner *** will be considered unfit only if he demonstrates that he, because of a mental condition, is unable to communicate with his post-conviction counsel in the manner contemplated by section 122-4 of the Code of Criminal Procedure and Supreme Court Rule 651." *Id.* at 363.

¶ 22 Defendant's reliance on *Owens* is misplaced. Here, defendant's petition was dismissed at the first stage of proceedings and the trial court never appointed counsel. Accordingly, Rule 651(c) is not implicated. Defendant cites no authority indicating fitness is implicated at the first stage of postconviction proceedings. Moreover, we agree with the State that the contents of defendant's April 29, 2016, letter to the court did not raise a *bona fide* doubt as to his fitness. At most, it informed the court defendant was taking medication "for hearing voices." This was insufficient to raise a *bona fide* doubt. Accordingly, we do not find that remand is necessary for a determination of defendant's fitness.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 25 Affirmed.