2019 IL App (4th) 170344-U

NO. 4-17-0344

FILED
August 15, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
CHRISTOPHER DAVIS,	)	No. 15CF1442
Defendant-Appellant.	)	
	)	Honorable
	)	Scott D. Drazewski,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holder White and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in summarily dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 2 Defendant, Christopher Davis, pleaded guilty to unlawful possession of between 15 and 100 grams of heroin with the intent to deliver. As part of the negotiated plea agreement, the State dismissed three remaining charges and recommended the trial court sentence defendant to six years in prison, which the court did. Defendant did not file a direct appeal but later filed a *pro se* postconviction petition alleging his counsel was ineffective for failing to pursue dismissal of his case on speedy-trial grounds. The court dismissed defendant's petition as frivolous and patently without merit. Defendant appeals the court's dismissal, claiming his allegations were sufficient to state the gist of a constitutional claim. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 10, 2015, defendant was a passenger in a vehicle traveling on Interstate 55 in McLean County. A traffic stop of the vehicle yielded approximately 112 grams of a substance suspected to be cocaine. The drugs had been packaged in two separate bags and concealed in the center console of the vehicle. Defendant was arrested for possession of the suspected cocaine and was taken to the McLean County jail. Twelve days later, he was sent to the Illinois Department of Corrections for violating his parole and thereafter remained in custody.

¶ 5 On December 14, 2015, defendant was charged by information with four counts. Counts I and II involved charges related to between 100 and 400 grams of cocaine. Count I charged defendant with unlawful possession with the intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2014)) and count II charged defendant with simple possession (720 ILCS 570/402(a)(2)(B) (West 2014)). Counts III and IV involved charges related to between 15 and 100 grams of cocaine. Count III charged defendant with unlawful possession with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2014)) and count IV charged defendant with simple possession (720 ILCS 570/402(a)(2)(A) (West 2014)). On December 30, 2015, a grand jury returned superseding indictments on all four counts.

¶ 6 Initially, the public defender was appointed to represent defendant. However, on January 15, 2016, private counsel, Mark Wykoff, entered his appearance and filed a motion for discovery. On February 2, 2016, laboratory results revealed the substance found in the center console was actually heroin, not cocaine. Thereafter, according to the trial court's docket entries, Wykoff requested continuances at the following status hearings: February 24, 2016; March 4, 2016; and April 26, 2016.

¶ 7 On May 5, 2016, Wykoff filed a motion to quash the indictment and dismiss the case on the basis that the substance found was not cocaine as alleged. In response, the State filed a motion to amend the indictment on all counts, changing the controlled substance from cocaine to heroin. The State alleged the amendment was not substantive and would result in no surprise to defendant. After hearing argument on these pending motions, the trial court took the matter under advisement, noting in a docket entry the anticipated date of its ruling and that "[s]peedy trial not tolled."

¶ 8 On May 25, 2016, the State filed amended indictments on all four counts. Like the prior indictments, Counts I and II involved charges related to between 100 and 400 grams of heroin. Count I charged defendant with unlawful possession with the intent to deliver (720 ILCS 570/401(a)(1)(B) (West 2014)) and count II charged defendant with simple possession (720 ILCS 570/402(a)(1)(B) (West 2014)). Counts III and IV involved charges related to between 15 and 100 grams of heroin. Count III charged defendant with unlawful possession with the intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2014)) and count IV charged defendant with simple possession (720 ILCS 570/402(a)(1)(A) (West 2014)).

¶ 9 On May 27, 2016, the trial court arraigned defendant on the amended charges and scheduled a status hearing for June 17, 2016, noting "speedy trial was not tolled." At the June 17, 2016, status hearing, the court noted in its docket entry that "speedy trial tolled" and scheduled a subsequent status hearing for July 15, 2016. The court advised defendant of his "right to a speedy trial within 120 days." The court explained that any continuances he requested would not count toward those 120 days. Defendant said he understood. These continuances continued in a similar manner until August 2016, when Wykoff moved to withdraw from representation. The court appointed the public defender to represent defendant.

¶ 10 On December 5, 2016, attorney Phil Finegan filed an entry of appearance. On December 16, 2016, Finegan asked for the next available jury trial. The court noted "speedy trial not tolled," warned the State that the "clock [was] ticking as far as defendant's right to speedy trial as of today's date," scheduled the case for trial on January 9, 2017, and set a final status for January 5, 2017.

¶ 11 On January 5, 2017, Finegan filed a motion to dismiss on speedy-trial grounds, claiming more than 120 days had elapsed since defendant was taken into custody on December 12, 2015. The trial court scheduled a hearing on defendant's motion for January 9, 2017.

¶ 12 On January 6, 2017, the parties convened to inform the trial court they had reached a fully negotiated plea agreement. Pursuant to this agreement, defendant pleaded guilty to count III (unlawful possession with intent to deliver between 15 and 100 grams of heroin (720 ILCS 570/401(a)(1)(A) (West 2014)) in exchange for the State's dismissal of the three remaining counts and a recommendation of a six-year sentence. The court admonished defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). Accepting the terms of the fully negotiated plea agreement, the court sentenced defendant to six years in prison. Defendant did not file any post-plea motions.

¶ 13 On March 17, 2017, defendant filed a *pro se* postconviction petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2016)), alleging Wykoff was ineffective for failing to raise a speedy-trial issue prior to defendant's guilty plea. On March 29, 2017, the trial court summarily dismissed defendant's petition as frivolous and patently without merit. The court reasoned that although Wykoff did not file a motion to dismiss on speedy-trial grounds, Finegan did though defendant "elected not to pursue the motion and instead accepted a plea offer from the State." On these facts, the court concluded, defendant

cannot demonstrate prejudice because (1) he forfeited his speedy-trial claim by pleading guilty, (2) he was subject to the provisions of the Detainers Act, not the speedy trial statute, and (3) the record refutes any violation of his constitutional right to a speedy trial.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 In this appeal, defendant claims the trial court erred by summarily dismissing his postconviction petition alleging ineffective assistance based on counsel's failure to move to dismiss the charges against him on speedy-trial grounds. Our review of the trial court's dismissal of defendant's postconviction petition is *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 8-9 (2009).

¶ 17 The Act allows an incarcerated defendant to challenge his conviction if he claims to have suffered a substantial denial of his rights under the United States Constitution, the Illinois Constitution, or both. See 725 ILCS 5/122-1 *et seq*. (West 2014). Proceedings under the Act begin with the filing of a petition in the trial court in which the original proceeding took place. *People v. Rivera*, 198 Ill. 2d 364, 368 (2001). Section 122-2 of the Act requires that a postconviction petition must, among other things, "clearly set forth the respects in which petitioner's constitutional rights were violated." 725 ILCS 5/122-2 (West 2014). With regard to this requirement, a defendant at the first stage need only present a limited amount of detail in the petition. *Hodges*, 234 Ill. 2d at 9. Because most petitions are drafted at this stage by *pro se* defendants, our supreme court has held the threshold for survival is low. *Id*. In fact, the court has required only that a *pro se* defendant allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act. *Id*.

¶ 18 We agree with the trial court that defendant's guilty plea prevents him from claiming Wykoff was ineffective for failing to raise the speedy-trial issue. A voluntary guilty

plea waives all non-jurisdictional errors, including constitutional ones. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). Because a guilty plea "represents a break in the chain of events that had preceded it," a defendant who has pleaded guilty may not claim his constitutional rights were violated before he entered his plea. *People v. Wendt*, 283 Ill. App. 3d 947, 956-57 (1996) (citing *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)).

¶ 19 In *Tollett*, the United States Supreme Court stated that when a "defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett*, 411 U.S. at 267. A defendant may only attack the voluntary and intelligent character of the guilty plea by showing that counsel's advice was not within the range of competence demanded of attorneys in criminal cases. *Tollett*, 411 U.S. at 266-67.

¶ 20 Here, at the guilty-plea hearing, the trial court admonished defendant, found he entered the plea knowingly and voluntarily, and accepted his plea. At that point, defendant forfeited any claims related to the deprivation of constitutional rights due to trial counsel's ineffectiveness occurring prior to the entry of the guilty plea and not related to the plea itself.

¶ 21 This waiver rule even bars constitutional claims in the postconviction context—proceedings which are normally reserved for constitutional claims including claims of ineffective assistance. For example, in *People v. Ivy*, 313 Ill. App. 3d 1011, 1017 (2000), this court held the defendant was barred from raising a claim in his postconviction petition that his trial counsel was ineffective for failing to file a motion to suppress when he subsequently pleaded guilty. See also *People v. Smith*, 383 Ill. App. 3d 1078, 1086 (2008) ("All the errors that defendant contends her trial counsel committed relate to claims she voluntarily relinquished when she pled guilty, and

we will not consider her attorney's alleged deficient performance on issues that defendant waived.").

¶ 22 Defendant claimed no connection between his alleged ineffective assistance argument and the voluntariness of his guilty plea. As the trial court noted in its order, "[t]here is nothing of record, nor does [defendant] allege, that [his] plea was anything but knowing and voluntary." In his brief, defendant argues he knew nothing about the speedy-trial issue and therefore, he could not have knowingly forfeited the issue. The record clearly indicates Finegan made an oral motion to dismiss on speedy-trial grounds in defendant's presence in open court. The court instructed Finegan to file a written motion. At this point, defendant was put on notice about this potential grounds for dismissal and the fact that Wykoff had not raised such a claim. Nevertheless, the next day, defendant entered into a fully negotiated plea agreement, admitting he committed the offense. *Cf. People v. Bivens*, 43 Ill. App. 3d 79, 82 (1976) (the appellate court considered the defendant's ineffective-assistance argument because the defendant alleged he did not know of the potential right to a discharge on speedy-trial grounds before he pleaded guilty).

¶ 23 In this case, defendant knew or reasonably should have known about the potential of raising a speedy-trial issue since Finegan raised the issue in court in defendant's presence. When defendant pleaded guilty, he effectively forfeited any claim challenging Wykoff's failure to raise it himself. Because defendant did not allege any connection between Wykoff's ineffective assistance and the voluntariness of his guilty plea, the trial court did not err in summarily dismissing defendant's petition.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment.

¶ 26 Affirmed.