

2019 IL App (4th) 170389-U

NO. 4-17-0389

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 26, 2019

Carla Bender

4th District Appellate
Court, IL

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
THOMAS W. CAMPBELL,)	No. 11CF907
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Defendant’s appeal presents no meritorious issues for review. We grant OSAD’s motion to withdraw and affirm the trial court’s judgment.

¶ 2 Defendant, Thomas W. Campbell, was convicted of three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)). The trial court sentenced defendant to natural life in prison. On direct appeal, this court affirmed defendant’s conviction. See *People v. Campbell*, 2014 IL App (4th) 130177-U.

¶ 3 Defendant subsequently filed a postconviction petition. On appeal, the Office of the State Appellate Defender (OSAD) was appointed to represent him. OSAD has filed a motion to withdraw as appellate counsel “[c]onsistent with *Pennsylvania v. Finley*, 481 U.S. 551 (1987),

and pursuant to Illinois law” asserting that no meritorious issue can be raised. We grant OSAD’s motion and affirm the trial court’s judgment.

¶ 4

I. BACKGROUND

¶ 5 In October 2011, the State charged defendant with three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)) with respect to three separate victims all under the age of 12 at the time.

¶ 6 Following a jury trial on October 9, 2012, defendant was found guilty of all six offenses. The trial court sentenced defendant to natural life in prison on one count and various terms of years on the other counts.

¶ 7 On direct appeal, defendant claimed that (1) the State failed to prove him guilty beyond a reasonable doubt and (2) he was denied a fair trial when the prosecutor “misled” the jury during closing argument. This court affirmed defendant’s convictions. See *People v. Campbell*, 2014 IL App (4th) 130177-U.

¶ 8 In August 2016, defendant filed a postconviction petition, alleging that (1) he was convicted pursuant to an unconstitutional statute and (2) his right to a speedy trial was violated. The trial court summarily dismissed defendant’s petition, finding the petition frivolous and without legal merit.

¶ 9 This appeal followed. OSAD was appointed to represent defendant. OSAD subsequently filed a motion to withdraw as appellate counsel. The record shows defendant was served with the motion to withdraw. Although defendant was given the opportunity to file a response, he has not done so. After examining the record, we grant OSAD’s motion and affirm

the trial court's judgment.

¶ 10

II. ANALYSIS

¶ 11 On appeal, OSAD argues no colorable argument can be made that the trial court erred in summarily dismissing defendant's postconviction petition. Specifically, the following potential issues have been identified for review: whether (1) defendant was convicted pursuant to an unconstitutional statute that violated the single-subject rule and (2) defendant's right to a speedy trial was violated.

¶ 12 The Post-Conviction Hearing Act (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). The Act establishes a three-stage process for adjudicating a postconviction petition. *People v. Harris*, 224 Ill. 2d 115, 125-26, 862 N.E.2d 960, 967 (2007). At the first stage, the trial court reviews the defendant's petition for postconviction relief and dismisses the petition if it determines the claims are frivolous or without merit. *Id.* To survive dismissal at the first stage, a postconviction petition need only present the "gist" of a constitutional claim. *People v. Anderson*, 375 Ill. App. 3d 121, 132, 872 N.E.2d 581, 592 (2007). Our review is *de novo*. *People v. Collins*, 202 Ill. 2d 59, 66, 782 N.E.2d 195, 198 (2002).

¶ 13

A. The Single-Subject Rule

¶ 14 OSAD contends no colorable argument can be made that defendant presented the gist of a constitutional claim that he was convicted pursuant to an unconstitutional statute that violated the single-subject rule.

¶ 15

Here, as stated, defendant contends his conviction for predatory criminal sexual

assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)) was based on an unconstitutional statute. In dismissing defendant's petition, the trial court noted that defendant's petition "jumps back and forth between the history of various public acts, some of which are relevant and some of which are not" and the court "spent a considerable amount of time" "trying to comprehend the gist of [defendant's] argument on the alleged single[-]subject violation." We agree that defendant's postconviction petition is difficult to decipher. It appears that the crux of his argument is that the statute reenacting the offense of predatory criminal sexual assault of a child is unconstitutional because a *different* statute with a provision regarding mandatory life sentences for child murderers was found unconstitutional. Specifically, defendant's petition states as follows: "[P]ublic Act 89-462 [containing the statutory provision regarding predatory criminal sexual assault of a child] did not cure the single subject rule infirmity of Public Act 89-203 [the unconstitutional statute with a provision mandating life sentences for child murderers]." Defendant concludes that this "clearly offend[s] 'all' sense of due process under both the Federal and State Constitution."

¶ 16 While a former version of the predatory criminal sexual assault statute was found unconstitutional in *Johnson v. Edgar*, 176 Ill. 2d 499, 517, 680 N.E.2d 1372, 1380 (1997), the General Assembly subsequently enacted legislation that again addressed the offense of predatory criminal sexual assault of a child in Public Act 89-462 (Pub. Act 89-462 (eff. May 29, 1996)). Our supreme court recognized in *People v. Tellez-Valencia*, 188 Ill. 2d 523, 526, 723 N.E.2d 223, 225 (1999), that the later enactment of legislation pertaining to the offense of predatory criminal sexual assault of a child "had the effect of creating an entirely new criminal statute." In that case, the State charged the defendants with the offense of predatory criminal sexual assault

of a child *before* the newly enacted statute became effective. *Id.* The court reversed each defendant's conviction because the charging instrument was invalid. *Id.* Although the court did not specifically address whether the prior law's single-subject-rule defect had been corrected, the court found that the subsequent enactment had the effect of creating an entirely new criminal statute with respect to the offense of predatory criminal sexual assault of a child. *Id.*

¶ 17 In support of his position, defendant cites authority regarding a different statute that makes no reference to the offense actually charged in this case. See, e.g., *People v. Wooters*, 188 Ill. 2d 500, 513–14, 722 N.E.2d 1102, 1110 (1999) (finding that Public Act 89-203, containing a statutory provision mandating natural life prison sentences for adult murderers of children, violated the Illinois constitution because the provisions within that statute did not have a logical connection to a single subject.) The authority defendant relies upon pertains to Public Act 89-203 and a provision regarding mandatory life sentences for child murderers, not the statutory provision at issue here in Public Act 89-462 regarding predatory criminal sexual assault of a child. Defendant fails to identify the provisions within the statute he was charged under that allegedly violate the single subject rule. Accordingly, we agree with OSAD that no colorable argument can be made that defendant was convicted pursuant to an unconstitutional statute.

¶ 18 B. Speedy Trial

¶ 19 Next, OSAD contends no colorable argument can be made that defendant presented the gist of a constitutional claim based on his right to a speedy trial being violated.

¶ 20 A defendant possesses “both constitutional and statutory rights to a speedy trial.” *People v. Woodrum*, 223 Ill. 2d 286, 298, 860 N.E.2d 259, 268-69 (2006) (citing U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; and 725 ILCS 5/103-5(a) (West 1998)). However,

a defendant's claim that he was denied his statutory right to a speedy trial cannot be the foundation for postconviction relief because the issue is "not constitutional in scope." *People v. French*, 46 Ill. 2d 104, 107, 262 N.E.2d 901, 903-04 (1970). "[D]efendant's allegation that he was denied the constitutional right to a speedy trial because he was not tried within 120 days cannot be considered in this [postconviction] proceeding." *Id.*

¶ 21 We therefore agree with OSAD that no colorable argument can be made that defendant presented the gist of a constitutional claim based on his right to a speedy trial being violated.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we grant OSAD's motion to withdraw as counsel for defendant and 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).

¶ 24 Affirmed.