2020 IL App (2d) 170865-U
No. 2-17-0865
Order filed April 28, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DANIEL C. CLARK, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 12-CF-303 Honorable Robert A. Miller, Judge, Presiding.

JUSTICE BRIDGES delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly summarily dismissed defendant's postconviction petition alleging ineffective assistance of trial counsel: the record established that defendant's guilty plea was knowing and voluntary, contrary to his claim that counsel misled him into agreeing to a negotiated plea with a sentence cap, which was a procedural bar to challenging only his sentence.

¶ 2 Defendant, Daniel C. Clark, appeals the summary dismissal of his petition filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)). He contends that his counsel was ineffective for allowing him to plead guilty to a negotiated plea instead of a blind plea, resulting in his inability to appeal his sentence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on multiple offenses related to an automobile accident in which he struck a state trooper's vehicle, killing a passenger and causing serious injury to the trooper. On July 22, 2013, the parties appeared for a guilty-plea hearing.

¶ 5 At the hearing, one of defendant's two privately retained attorneys told the trial court that he anticipated defendant entering a blind plea. The State said that defendant would plead guilty to two counts and the State would dismiss eight counts. The court asked defendant, "[t]he attorneys have indicated it's your intention to plead guilty to two charges today without any agreement as to what the disposition would be. Is that your understanding?" The assistant State's Attorney later interrupted and said "judge, I apologize for the interruption. But we did—part of the agreement, is that we would cap our recommendation to the Court at 12 years in the Department of Corrections." The court then told defendant that the State indicated that this was a negotiated plea and that, based on that representation, the court would not impose a sentence beyond 12 years. The court asked defendant if he understood, and he said "[y]es, I do." The court then admonished defendant that, because this was a plea agreement with a sentence cap, defendant could not ask the court to reconsider a sentence that did not exceed 12 years. The court asked defendant if he understood, and defendant again said "[y]es, I do." The court also asked defendant if any promises had been made to induce his plea, other than the State's agreement to the cap and to dismiss certain charges, and defendant answered "no." He agreed that he was entering the plea freely and voluntarily. Defendant pleaded guilty. Neither defendant nor his counsel objected to the characterization of the plea as negotiated.

¶ 6 At sentencing, the trial court again referred to the negotiated plea and sentenced defendant to 10 years' incarceration on one charge and a concurrent 3-year term on the other. There was no

objection that the plea agreement was not negotiated. The court admonished defendant that, to appeal the sentence, he must first file a motion to withdraw the guilty plea which, if granted, would vacate the judgment and sentence and the case would be set for trial. Defendant did not voice any concern about the negotiated plea and said that he understood. His counsel responded that he intended to file a motion to reconsider the sentence.

¶ 7 Defendant moved to reconsider his sentence and to withdraw his guilty plea. Defendant contended that, although the State offered to cap the sentence at 12 years during negotiations, defendant did not agree to that offer and instead entered a blind plea. Defendant characterized the State's cap offer as a "good faith gratuitous act." Defendant further noted that, at the guilty-plea hearing, counsel had stated that it was a blind plea and never concurred that the cap was a condition of the agreement. Both of defendant's counsel attached affidavits stating that, although it was discussed, a cap of 12 years was never pursued as a condition of the plea.

¶ 8 The State moved to strike defendant's motions and moved to disqualify defendant's counsel. The State argued that the motion to withdraw the plea showed a potential conflict of interest because it raised concerns of ineffective assistance of counsel and defendant's counsel would likely be called to testify as witnesses. Thus, it argued, counsel could be placed in the position of arguing their own ineffectiveness. Defendant's counsel did not respond.

¶ 9 At the hearing on the motions, the State stood on its argument in its motion to disqualify, and defendant made no argument on the matter. The court denied the motion without providing any specific analysis. The court then found that the plea was negotiated, that defendant was correctly admonished, and that defendant agreed to it. Thus, the court denied defendant's motions to withdraw the plea and reconsider the sentence. The court also commented that, even if it could reconsider the sentence, it would still deny the motion.

¶ 10 Defendant appealed the denial of the State's motion to disqualify his counsel. He did not appeal the denial of his motions to withdraw the guilty plea and reconsider the sentence. *People v. Clark*, 2016 IL App (2d) 140027-U, ¶ 10. We affirmed in part but vacated a duplicate restitution order. *Id.* ¶¶ 21-23.

¶ 11 In August 2017, defendant filed a *pro se* postconviction petition, including a claim that his counsel was ineffective for allowing him to enter a negotiated plea without his knowledge or consent. Defendant attached an affidavit, averring that, before the guilty plea hearing, the State had made an offer for a nine-year prison sentence but counsel advised defendant to enter a blind plea, which would be looked on more favorably by the court, would likely result in a lower sentence, and would allow defendant to retain all of his appellate rights, including review of the sentence. Defendant first heard of the 12-year cap at the hearing when the State brought it up. Because his counsel did not refute it, defendant thought nothing of it and believed that he was still entering a blind plea. Defendant was confused by the court's admonishment that he could not file a motion to reconsider his sentence or appeal the sentence, but he falsely told the court that he understood because he thought he might not be hearing the court correctly. He believed that, if the agreement was different from what his counsel told him, he was sure that his counsel would object. Defendant averred that, after the hearing, counsel told him again that he could appeal his sentence. At the sentencing hearing, defendant felt reassured when admonished that he must file subsequent motions to appeal the sentence. When his counsel discussed setting a date for a motion to reconsider the sentence, defendant believed that everything was proceeding according to plan. Counsel continued to talk with defendant as though he had entered a blind plea, then a month before the hearing on the motions, counsel told defendant that the guilty plea was actually negotiated " 'in name' " and said that it complicated the appeal. Defendant averred that he learned

the full truth that he could not appeal his sentence when he spoke with the appellate defender. Defendant asserted that, had he known that he could not appeal his sentence, he would not have pleaded guilty and would have proceeded to trial or pursued a determinate sentence offer from the State. Defendant also provided notes that he took after the guilty plea indicating that counsel told him that he could appeal his sentence. Members of defendant's family provided affidavits with similar accounts of defendant's discussion with his counsel. Defendant also presented the previous affidavits from his counsel stating that they did not concur that the sentence cap was a condition of the plea.

¶ 12 The trial court summarily dismissed the petition, noting that defendant was fully admonished and that, even if the court had entertained a motion to reconsider the sentence, it would have denied it. Defendant appeals.

¶ 13 II. ANALYSIS

¶ 14 Defendant contends that he stated an arguable meritorious claim of ineffective assistance of counsel because his counsel misled him and failed to object when the State altered the terms of the plea. Essentially, defendant claims that his guilty plea was involuntary because counsel's performance was unreasonable and he suffered prejudice through loss of his ability to appeal his sentence.

¶ 15 The Act provides a remedy to defendants who have suffered substantial violations of their constitutional rights. See 725 ILCS 5/122-1 (West 2016); *People v. Edwards*, 197 Ill. 2d 239, 243-44 (2001); *People v. Ramirez*, 162 Ill. 2d 235, 238-39 (1994). There are three stages to proceedings under the Act. *Edwards*, 197 Ill. 2d at 244. At the first stage, a defendant need present only a limited amount of detail in the petition. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The trial court independently reviews the petition within 90 days of its filing and determines whether the petition

is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2016); *Edwards*, 197 Ill.2d at 244. If the petition is not dismissed at this stage, it advances to the second stage for the appointment of counsel. *People v. Mauro*, 362 Ill. App. 3d 440, 441 (2005). At the second stage, counsel may amend the petition, and the State may file a motion to dismiss or an answer. *Id.* at 441. If the trial court does not dismiss or deny the petition at the second stage, the proceeding advances to the final stage, where the trial court conducts an evidentiary hearing. *Id.* at 441-42.

¶ 16 Because this petition was dismissed at the first stage of the postconviction process, we must determine whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2016); *Ramirez*, 162 Ill.2d at 239-40. A petition is frivolous or patently without merit if it "has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 16. "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Id.* At this stage, the court treats allegations of fact as true so long as those allegations are not affirmatively rebutted by the record. *People v. Thomas*, 2014 IL App (2d) 121001, ¶ 47. A *pro se* petitioner need only state the gist of a meritorious claim to survive first-stage dismissal. *Edwards*, 197 Ill. 2d at 244. We review the summary dismissal of a petition *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 17 Under the two-prong test in *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984), a defendant claiming ineffective assistance of counsel must show that his counsel's performance "fell below an objective standard of reasonableness" and that the deficient performance was prejudicial in that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." "At the first stage of proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed if [(1)] it is

arguable that counsel's performance fell below an objective standard of reasonableness and [(2)] it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17.

¶ 18 A guilty plea must be voluntary and intelligent. *People v. Blankley*, 319 Ill. App. 3d 996, 1007 (2007). "The *Strickland* standard also applies to a claim that trial counsel was ineffective during the guilty-plea process." *People v. Brown*, 2017 IL 121681, ¶ 26 (citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)). Counsel's conduct is deficient under *Strickland* if counsel fails to ensure that the defendant entered the plea voluntarily and intelligently. *People v. Rissley*, 206 Ill. 2d 403, 457 (2003). To establish prejudice, a defendant must show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 59. However, " '[a] conclusory allegation that a defendant would not have pleaded guilty and would have demanded a trial is insufficient to establish prejudice' for purposes of an ineffectiveness claim." *People v. Brown*, 2017 IL 121681, ¶ 26 (quoting *People v. Valdez*, 2016 IL 119860, ¶ 29).

¶ 19 A lack of prejudice may also be shown when the trial court's admonitions pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012) were sufficient to overcome any prejudice created by the claims of ineffective assistance. See *People v. Hall*, 217 Ill. 2d 324, 339 (2005). The purpose of such a colloquy is to ensure that a defendant's guilty plea is not accepted unless it is intelligent and voluntary. *People v. Horton*, 250 Ill. App. 3d 944, 951 (1993). This purpose would hardly be served if a defendant could state on the record that his plea was voluntary and then turn around and claim that it was involuntary, as it would reduce the colloquy to a meaningless exercise. See *People v. Robinson*, 157 Ill. App. 3d 622, 629, (1987). "[E]xhaustive admonitions cannot be disregarded as merely a ritualistic formality." *Ramirez*, 162 Ill. 2d at 245. Thus, "a defendant cannot be rewarded for disregarding the specific admonitions of the court." *People v.*

Radunz, 180 Ill. App. 3d 734, 742 (1989). If a plea of guilty is to have any binding effect or is to be given any subsequent weight, extensive and accurate admonitions given by a trial court must be held to overwhelm a defendant's assertion that he entered his plea involuntarily. *Robinson*, 157 Ill. App. 3d at 629. Where, as here, a defendant has been meticulously advised of the consequences of his plea and has affirmatively acknowledged that he understands those consequences, he may not claim error on appeal merely because he is dissatisfied with the length of his sentence. *People v. Spriggle*, 358 Ill. App. 3d 447, 455 (2005).

¶ 20 Here, before accepting defendant's guilty plea, the trial court held a colloquy with him in accordance with Rule 402, admonished him that the plea was negotiated and that, by pleading guilty, defendant could not ask the court to reconsider the sentence. Defendant stated that he understood. He assured the trial court that no one had forced or threatened him into pleading guilty and that no promises had been made, other than the terms of the negotiated plea. In short, defendant assured the trial court that he was pleading guilty freely and voluntarily, according to a negotiated agreement. He understood that he could not ask the court to reconsider the sentence but now seeks to contradict his own statements. While there is no *per se* rule that the Rule 402 colloquy is determinative (see *Ramirez*, 162 Ill. 2d at 245), under the circumstances here, the trial court's admonitions, and defendant's stated understanding of them, were sufficient to overcome any alleged deficiencies in assistance of counsel.

¶ 21 Defendant argues that, under our decision in *People v. Edmonson*, 408 Ill. App. 3d. 880 (2011), the only prejudice he needed to show was that, absent his counsel's misinformation, he would not have pleaded guilty or that he lost his ability to appeal his sentence. But in *Edmondson*, both counsel and the trial court mistakenly believed that, following his agreement to plead guilty in exchange for a recommended sentencing cap, the defendant could attack his sentence on appeal

and the court mistakenly referred to the agreement as an open plea. *Id.* at 883, 886. Thus, unlike here, the defendant in *Edmonson* was not correctly admonished about the effect of his plea.

¶ 22 Further, since our decision in *Edmonson*, our supreme court has clarified that, to show prejudice from erroneous advice about the consequences of a plea, a defendant must show that a decision to reject a plea would have been rational under the circumstances. See *Brown*, 2017 IL 121681, ¶¶ 48, 52. Here, the trial court stated that, even if it were to reconsider the sentence, it would not have granted the motion, and defendant has not presented any argument that such a determination would have been an abuse of discretion. Under the agreement, multiple charges against defendant were dismissed. Defendant claimed that he previously rejected an offer of 9 years' incarceration, but his resulting 10-year sentence does not make the offer that he accepted less favorable. The sentence cap guaranteed that he would not receive a higher sentence, while he could have been sentenced to less. Thus, the mere fact that defendant had options other than the one that he chose is not sufficient to establish prejudice. Defendant cannot show that a decision to reject the plea agreement so that he could appeal his sentence would have been rational under the circumstances. Accordingly, the trial court correctly summarily dismissed the petition.

¶ 23 III. CONCLUSION

¶ 24 The trial court did not err in summarily dismissing defendant's petition. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.