

No. 1-10-0517

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 3986
)	
MIGUEL MOLINA-JUAREZ,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Lampkin concurred in the judgment.

ORDER

- ¶ 1 **Held:** The judgment of the circuit court affirmed where the court did not recharacterize defendant's postconviction petition as a motion to withdraw his guilty plea.
- ¶ 2 Defendant Miguel Molina-Juarez entered into a negotiated guilty plea to aggravated battery of a child in exchange for a 14-year sentence. Defendant now appeals from the summary dismissal of his *pro se* petition filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)). Defendant contends the court erred in recharacterizing his postconviction petition as a motion to withdraw his guilty plea. We affirm.

¶ 3 Defendant was charged with attempted first degree murder, aggravated battery of a child and aggravated battery. On November 12, 2009, following a Supreme Court Rule 402 (eff. July 1, 1997) conference, defendant agreed to plead guilty to aggravated battery of a child for shaking his 7-month-old daughter, Netalia Molina. Evidence underlying the plea showed that Netalia was found unresponsive and taken to the hospital where she was treated for injuries associated with shaken baby syndrome. There, the physician on call treated her for bleeding to the brain, a bilateral subdural hematoma. The treating physician would testify that Netalia had extensive bilateral hemorrhaging and suffered from respiratory failure at that time. An assistant State's Attorney would testify that days after the incident, defendant gave a handwritten statement to her admitting that he had picked the child up because she would not stop crying. With his left hand around her neck and right hand under her buttocks, he held Netalia face-up, parallel to the ground, and shook her until her head snapped back two times. The treating physician would testify that defendant's statement was consistent with Netalia's injuries. Evidence further showed that Netalia was in rehabilitation for approximately five months and, at the time of the plea, still suffered from blindness and severe injuries requiring a feeding tube and brain surgery.

¶ 4 The court sentenced defendant to the agreed term of 14 years' imprisonment. Defendant did not file a motion to withdraw his guilty plea or a direct appeal.

¶ 5 On January 5, 2010, two months after pleading guilty, defendant filed this *pro se* postconviction petition. He alleged that his trial attorney was constitutionally ineffective for failing to request or present evidence, including medical records and statements, that would have proven his innocence. Defendant alleged that his attorney failed to obtain these records in spite of defendant's repeated requests for the information and that his attorney was "more concerned with forcing a plea bargain" than obtaining "easily available" evidence.

¶ 6 On January 13, 2010, the circuit court reviewed defendant's petition. The court noted that it remembered the case, the arraignment, close of discovery and the matter being set for trial

before defendant decided to plead guilty. The court stated that there was a clear factual basis with medical evidence supporting the conviction and, further, that defendant was admonished about "what time he had to withdraw his plea of guilty." The court concluded: "I find that his Pro Se Petition for Post-Conviction Relief is nothing more than a motion to withdraw his guilty plea. It is untimely. Accordingly, his Pro Se Post-Conviction Petition is without merit, and it is denied." On January 14, 2010, the court entered a "certified report of disposition," denying defendant's petition for postconviction relief. The circuit clerk's notes reflect this disposition. Defendant appealed.

¶ 7 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, the Illinois Constitution or both. 725 ILCS 5/122-1(a)(1) (West 2008); *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). Once a petition is filed and docketed, the circuit court must examine the petition within 90 days, then enter an order thereon. 725 ILCS 5/122-2.1 (West 2008). If the trial court fails to do so within 90 days, then the petition must be docketed for second-stage proceedings. *People v. Harris*, 224 Ill. 2d 115, 129 (2007). A *pro se* postconviction petition may be summarily dismissed as frivolous and patently without merit if it has no arguable basis in law or fact, *i.e.*, if it is based on an indisputably meritless legal theory or a fanciful factual allegation. *Hodges*, 234 Ill. 2d at 11-12, 16-17.

¶ 8 Defendant contends the court erred in recharacterizing his clearly labeled postconviction petition as a motion to withdraw his guilty plea and requests that we remand his petition for further proceedings under the Act. The record does not support this claim.

¶ 9 At the hearing on defendant's petition, which was held within the requisite 90-day period under the Act, the circuit court identified defendant's pleading as a "Pro Se Post-Conviction Petition." The court addressed the substance of defendant's petition: "He is saying that his Public Defender talked *** him into pleading guilty instead of looking for medical evidence that would

have helped him out." The court flatly rejected that claim after noting it recalled the case, which had "a clear factual basis with plenty of medical evidence." The court found the petition, subscribed and sworn to by defendant a little over a month after his guilty plea, was really an attempt to withdraw defendant's guilty plea. While the court concluded that the petition was masked as a motion to withdraw defendant's guilty plea and, as such was untimely, the court did not ultimately recharacterize the petition. Rather, the court found the petition lacked merit and, the day after the hearing, entered a certified report of disposition denying defendant's "petition for post-conviction relief." The circuit clerk's notes reflect this disposition. Defendant's claim therefore fails.

¶ 10 It is well-settled that we review the first-stage summary dismissal of a postconviction petition *de novo*. *Hodges*, 234 Ill. 2d at 9. We review the judgment of the circuit court, not its reasoning. *People v. Primbas*, 404 Ill. App. 3d 297, 301-02 (2010). Defendant, however, has made no argument that his petition was not, as the trial court found, lacking in merit, choosing instead to rely solely on his procedural argument. Accordingly, defendant has forfeited any argument that the petition states an arguable claim. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). It is not the role of this court to search the record for claims that a defendant could have, but has not, advanced. Therefore, we must recognize defendant's forfeiture, and we conclude the trial court did not err when it summarily dismissed his postconviction petition.

¶ 11 We affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.