2012 IL App (1st) 110946-U

SECOND DIVISION
December 11, 2012

No. 1-11-0946

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	05 CR 7688; 05 CR 19020;
	)	05 CR 25374
HARLIS WOODS,	)	
	)	Honorable
Defendant-Appellant.	)	Stanley Sacks,
	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

O R D E R

***Held*:** In his first-stage postconviction petition, defendant failed to state arguable claims that: counsel was ineffective, trial court erred in failing to order a *sua sponte* fitness hearing, and trial court improperly coerced his guilty plea. Alternatively, defendant's petition should not be remanded for second-stage proceedings.

¶ 1 This appeal arises from the dismissal of defendant Harlis Woods' *pro se* first-stage

postconviction petition. Four years after pleading guilty to three separate crimes of aggravated criminal sexual assault, defendant filed a postconviction petition alleging that he received ineffective assistance of trial counsel, that the trial court erred in failing to conduct a *sua sponte* fitness hearing, and that the trial court coerced defendant's guilty plea. The circuit court dismissed the petition, and defendant appealed. Defendant now contends that the trial court improperly dismissed his petition because he stated three arguable claims, and he alternatively requests that this court remand his petition for second-stage proceedings. For the following reasons we affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant's postconviction petition challenged three separate convictions. In the first case, defendant was charged with eighteen counts of aggravated criminal sexual assault, six counts of criminal sexual assault, two counts of aggravated kidnaping, and one count of kidnaping. In the second case, defendant was charged with nine counts of aggravated criminal sexual assault, six counts of aggravated kidnaping, one count of robbery, three counts of criminal sexual assault, two counts of kidnaping, and one count of unlawful restraint. In the third case, defendant was charged with two counts of aggravated criminal sexual assault, four counts of aggravated kidnaping, one count of criminal sexual assault, and two counts of kidnaping. All three cases occurred between 2004 and 2005.

¶ 4 Defense counsel requested a behavior clinical examination on October 25, 2005, to evaluate defendant's fitness to stand trial. Defense counsel told the trial court, "I've had some other *bona fide* issues or problem's [*sic*] regarding [defendant's] fitness. I'm asking that

[defendant] be BCX'd, especially given the light that I don't believe he's able to cooperate with me."

¶ 5 Dr. Debra Ferguson examined defendant on three separate occasions in November 2005. She noted that defendant had a long history of mental illness and treatment with psychotropic medication, but that the nature and severity of his mental illness was contradicted by his clinical presentation and psychological assessment data. Rather than suggesting that defendant had a major mental illness, the data instead indicated "severe characterologic deficits which are manifested in a variety of maladaptive behaviors." Dr. Ferguson noted that during her interviews with defendant, his responses demonstrated a volitional and manipulative quality. She also opined that defendant could cooperate with counsel if he chose to do so.

¶ 6 Dr. Jonathan Kelly, Staff Forensic Psychiatrist, created a report based on his examination of defendant and his review of defendant's records. Dr. Kelly found defendant fit to stand trial, with medication. He noted that defendant was taking mood stabilizing medication and antipsychotic medication. Dr. Kelly opined that defendant experienced no side effects which would have interfered with his competency to stand trial. Additionally, Dr. Kelly opined that defendant understood the nature of the charges against him and the nature and purpose of legal proceedings, and that he was able to assist in his defense.

¶ 7 Defendant agreed to a Rule 402 conference, and on June 2, 2006, the trial court explained to defendant the following:

> "[A 402 conference] is a proceeding where the State will tell me a few things as to what class felony you're charged with, I believe all three cases

> are Class Xs, what your prior record is if you happen to have any, what type of sentence they would be looking for if you chose to plead guilty to those three cases, and your lawyer could tell me what he thinks is a fair sentence if you were to plead guilty, and I will then tell you what sentence I would actually give you if you actually did plead guilty.
>
> You could then decide for yourself whether you want to plead guilty or not. If you do, that will be fine. ***.
>
> Do you understand what I said?"

¶ 8 Defendant replied, "Yes sir."

¶ 9 On June 13, 2006, the trial court stated that if defendant pleaded guilty to all three cases, defendant would be sentenced to 43 ½ years. The trial court then explained to defendant that he would have to serve 85% of that sentence, which would mean he would serve approximately 37 years in custody. The trial judge asked if defendant understood, and defendant responded, "Yes, sir." The trial court asked defendant if he talked to his lawyers, and he responded, "Yes, sir." The trial court then asked, "And you wish to plead guilty to these 3 cases in return for that sentence of 43 and a half years." Defendant responded, "Yes, sir." The trial court then read the charges out loud to defendant and asked if he understood each of them. Defendant responded in the affirmative for each charge.

¶ 10 The following colloquy then took place:

> ¶ 11 "THE COURT: When you plead guilty, Mr. Woods, you give up a number of your Constitutional and statutory rights. One of the things you

give up is your Constitutional right to a trial by a jury of 12 people. Do you understand what that is?

THE DEFENDANT: Yes, sir.

***

THE COURT: You also gave up your right to a trial by me which is commonly known as a bench trial. You give up your right to remain silent, to cross examine and confront the witnesses, to present evidence in your own defense, to argue that any search or seizure of evidence by the police in any one of the cases might have been illegal, and finally to object to any identifications made of you or statements that might have been given by you as being unlawfully obtained. In other words, there will not be a trial of any kind as to either one of these 3 cases, do you understand that?

THE DEFENDANT: Yes, sir.

***

THE COURT: Has anyone used any force or threats or done anything to you physically or any other way to cause you to plead guilty to those three charges?

THE DEFENDANT: No, sir.

THE COURT: Are you pleading guilty therefore freely and voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: The only promise made to you was that if you were to plead

guilty to these 3 charges, you would receive a sentence as I told you before of 43 and a half years, is that correct?

THE DEFENDANT: Yes, sir."

¶ 12 Defendant then pleaded guilty to one count of aggravated criminal sexual assault in each of the three cases. Defendant was sentenced to 20 years in prison for the first case, 13 ½ years for the second case, and 10 years for the third case, to be served consecutively. Defendant did not file a motion to vacate his plea, nor did he file a direct appeal.

¶ 13 On January 20, 2011, defendant filed a postconviction petition alleging that defense counsel was ineffective for failing to request a fitness hearing, that the trial court failed to order a *sua sponte* fitness hearing, and that defendant was denied the right to a fair trial where the trial court told defendant that his sentence would be substantially harsher if he went to trial.

¶ 14 The circuit court denied defendant's petition finding that it was frivolous and patently without merit. In its written order the trial court found that defendant's petition failed to include any proof to support his allegations. The court found that the record affirmatively demonstrated that on June 13, 2006, when defendant pled guilty to the charges, he was coherent and indicated that he was fully aware of his circumstances and the nature of the charges. The court noted that it asked defendant a series of questions with respect to his guilty pleas. The court explained the charges in detail and defendant stated that he understood them. The court then explained the rights, including trial by jury, that defendant was giving up and insured that defendant was pleading guilty freely and voluntarily and that no one had used any force or threats or done anything to him physically or in any way to cause him to plead guilty. Accordingly, the court

found that defendant had presented no evidence whatsoever that this court should have *sua sponte* ordered a fitness hearing before accepting defendant's guilty pleas.

¶ 15 The trial court also found that defendant's ineffective assistance of counsel claim was without merit, and that defendant's allegations were unsupported and conclusory, and fell short of the evidence needed to establish a question of fitness. The court noted that the issue was not mental illness, but rather whether defendant could understand the proceedings against him and cooperate with counsel. The court found that the record demonstrated that defendant fully understood the proceedings and could cooperate with counsel if he chose to do so. Defendant's postconviction petition was dismissed, and defendant now appeals.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant contends that the trial court erred in dismissing his postconviction petition because he stated an arguable claim that defense counsel was ineffective, he stated an arguable claim that the trial court erred when it failed to order a *sua sponte* fitness hearing, and he stated an arguable claim that the trial court coerced defendant's guilty plea. Alternatively, defendant asks us to send this case back for a second-stage postconviction hearing.

¶ 18 A. Arguable Claim of Ineffective Assistance of Counsel

¶ 19 Defendant's first contention on appeal is that the trial court erred in dismissing his postconviction petition where he stated an arguable claim that defense counsel was ineffective for failing to request a fitness hearing. The State responds that the trial court properly dismissed his petition where defendant failed to include proof to support his allegations, and nevertheless that defendant's contentions were directly rebutted by the record. We agree with the State.

¶ 20 Postconviction petitions for relief are governed by the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq*. (West 2010)), which provides a method by which persons under criminal sentence 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. 725 ILCS 5/122-1 *et seq*. (West 2010); *People v. Petrenko*, 237 Ill. 2d 490, 495-96 (2010). A circuit court may summarily dismiss a postconviction petition if it determines that a petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010). A postconviction petition is considered frivolous or patently without merit if the allegations in the petition, taken as true and liberally construed, fail to present the gist of a constitutional claim. *People v. Gale*, 376 Ill. App. 3d 344, 351 (2007). This "gist" standard is a low threshold which requires the defendant to present only a limited amount of detail, not the claim in its entirety or legal argument or citation to legal authority. *Gale*, 376 Ill. App. 3d at 351.

¶ 21 Our supreme court has explained that a petition is frivolous or patently without merit only if it has no "arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). A petition lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16. A petition lacks an arguable basis in fact if it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic or delusional. *Id*. at 16-17. The summary dismissal of a postconviction petition is a legal question that is subject to *de novo* review. *Petrenko*, 237 Ill. 2d at 496.

¶ 22 Here, defendant's *pro se* petition alleged that his trial counsel provided ineffective

assistance. Ineffective assistance of counsel claims are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. More specifically, the defendant must demonstrate that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

¶ 23 At the first stage of proceedings under the Act, a petition alleging ineffective assistance of counsel 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. "To establish that failure to request a fitness hearing prejudiced a defendant within the meaning of *Strickland*, a defendant must show that facts existed at the time of trial that would have raised a *bona fide* doubt of his ability 'to understand the nature and purpose of the proceedings against him or to assist in his defense.' " *People v. Harris*, 206 Ill. 2d 293, 304 (2002) (quoting 725 ILCS 5/104-10 (West 1998)). To determine whether there exists a *bona fide* doubt of defendant's fitness, a court may consider the defendant's irrational behavior, the defendant's demeanor at trial, and any prior medical opinion on defendant's competence. *Harris*, 206 Ill. 2d at 304.

¶ 24 Defendant claims that trial counsel's failure to request a fitness hearing prejudiced

defendant because the following facts raised a *bona fide* doubt of his ability to understand the nature and purpose of the proceeding against him or to assist in his defense: defendant informed defense counsel that defendant was the son of Satan; defendant harassed defense counsel for displaying what he perceived as homosexual and effeminate mannerisms; defendant obtained controversial tattoos and a bizarre haircut; and defendant tried to hang himself in his holding cell in the presence of defense counsel.

¶ 25 We first note that defendant's *pro se* postconviction petition was supported only by his own affidavit, and not supported by any other affidavit, record, or other evidence, as required by section 122-2 of the Act. See 725 ILCS 5/122-2 (West 2010) ("[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached"). While our supreme court has recognized that the requiring of affidavits, records, or other evidence will, in some cases, place an unreasonable burden upon postconviction petitioners, this does not mean "that the petitions in such cases are relieved of bearing any burden whatsoever." *People v. Collins*, 202 Ill. 2d 59, 68 (2002). Rather, section 122-2 makes clear that the petitioner who is unable to obtain the necessary affidavits, records, or other evidence, must at least explain why such evidence is unobtainable. *Id.*

¶ 26 Here, defendant claimed in his postconviction petition that he requested copies of the common law record from the trial court, but that his motion was denied. We note that the "absence of accompanying affidavits may readily be sufficiently and adequately explained and excused where defects and violations of constitutional rights are raised by fair inference from the sworn statements of a petitioner and where they are substantially borne out by matters appearing

on the face of the record." *People v. Reeves*, 412 Ill. 555, 559 (1952). After careful review of the record, we find no support for defendant's allegations of his irrational behavior, including his alleged attempt to hang himself. Notably, defendant's petition lacked an affidavit by his trial counsel corroborating defendant's allegations. Thus, defendant failed to comply with section 122-2 of the Act, and his postconviction petition was properly dismissed.

¶ 27 We note, however, that even taking as true defendant's allegations that he displayed odd behavior after a change in his medication, these allegations do not necessarily establish that defendant was unfit. See *Harris*, 206 Ill. 2d at 305. The issue is not mental illness, but rather "whether defendant could understand the proceedings and cooperate with counsel." *Id*. Specifically, our supreme court has stated that "[f]itness speaks only to a person's ability to function within the context of a trial. It does not refer to sanity or competence in other areas." *People v. Easley*, 192 Ill. 2d 307, 319 (2000). If defendant could understand the proceedings against him and cooperate with counsel, then regardless of mental illness, defendant will be deemed fit to stand trial. *Easley*, 192 Ill. 2d at 323.

¶ 28 Here, the record clearly illustrates that defendant understood the nature and purpose of the proceedings. Prior to trial, defendant's trial counsel arranged for a psychologist to evaluate defendant. That psychologist found defendant fit to stand trial. Dr. Ferguson expressed doubts as to the validity of defendant's alleged mental illness and noted that he demonstrated a volitional and manipulative quality and that the nature and severity of his mental illness was contradicted by his clinical presentation and psychological assessment data. Dr. Ferguson found that defendant chose not to speak to his attorney because he disagreed with his attorney's approach to

the case, and that defendant was "fully capable of cooperating with counsel, if he so chooses."

¶ 29 Additionally, the trial court advised defendant of the charges against him and defendant stated that he wished to plead guilty. The trial court advised defendant to his right to a trial, to testify or remain silent, to present evidence, and to cross examine witnesses. Defendant indicated that he was giving up those rights. The trial court asked if he was pleading guilty of his own free will, and defendant stated that he was. The trial court advised defendant of his charges and the possible sentencing ranges for each one, and defendant stated that he understood.

¶ 30 We conclude that there was not a *bona fide* doubt of defendant's fitness to stand trial, and thus it was not arguable that defense counsel's performance fell below an objective standard of reasonableness for failing to request a fitness hearing. *Easley*, 192 Ill. 2d at 323

¶ 31 B. Arguable Claim of Failure to Conduct a *Sua Sponte* Fitness Hearing

¶ 32 Defendant's next contention on appeal is that he made an arguable claim that his due process rights were violated when the trial court failed to *sua sponte* order a fitness hearing due to his bizarre behaviors to the court including: irrational outbursts, attempts to dismiss counsel and proceed *pro se*, procuring various new tattoos, and obtaining a bizarre haircut that the court noted as a fashion statement. Defendant is arguing that such behavior raised a *bona fide* doubt as to his fitness to plead guilty, and thus the trial court should have *sua sponte* ordered a fitness hearing.

¶ 33 Due process bars prosecuting or sentencing a defendant who is not competent to stand trial. *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). As stated above, fitness to stand trial requires that a defendant understand the nature and purpose of the proceedings against him and

be able to assist in his defense. *Id*. Although a defendant's fitness is presumed by statute, the circuit court has a duty to order a fitness hearing, *sua sponte*, any time a *bona fide* doubt arises regarding a defendant's ability to understand the nature and purpose of the proceedings or assist in his defense. *Id*. "Whether a *bona fide* doubt as to a defendant's fitness has arisen is generally a matter within the discretion of the trial court." *Id*.; *People v. Murphy*, 72 Ill. 2d 421, 431 (1978).

¶ 34 Here, as stated above, defense counsel never requested a fitness hearing, and defendant maintains that he stated the gist of a constitutional claim in postconviction petition when he alleged that the trial court abused its discretion in not recognizing, *sua sponte*, that a *bona fide* doubt as to defendant's fitness existed. In support of his contention, defendant claims that he exhibited signs of mental illness to the trial court including: irrational outbursts, attempts to dismiss counsel and proceed *pro se*, procuring various tattoos, and obtaining a bizarre haircut. As we noted above, however, the issue is not mental illness, but rather "whether defendant could understand the proceedings and cooperate with counsel." *Harris*, 206 Ill. 2d at 305. And as we previously stated, the record clearly illustrates that defendant understood the nature and purpose of the proceedings, and thus there did not exist a *bona fide* doubt of defendant's fitness to stand trial. Accordingly, defendant's postconviction claim that the trial court's failure to order a *sua sponte* fitness hearing based on a *bona fide* doubt of defendant's fitness to stand trial, does not raise the gist of a constitutional claim.

¶ 35 C. Arguable Claim of Coercion

¶ 36 Defendant's next contention on appeal from the dismissal of his *pro se* postconviction

petition is that he stated an arguable claim that the trial court coerced defendant into pleading guilty by threatening to penalize him if he exercised his constitutional right to stand trial. Specifically, defendant claims that the trial court talked without defendant present, at which point the court informed defense counsel that defendant would have received a much harsher sentence than the 43 ½-year plea offer if defendant chose to proceed to trial. Defendant claims that defense counsel relayed that information to defendant and stated that defendant would be "idiotic" to think he may receive a lesser sentence and that he "better take the deal if he ever wished to be free again." The State responds that defendant failed to present an arguable claim that his guilty plea was coerced because the claim is directly rebutted by the record, and is thus frivolous and patently without merit. We agree.

¶ 37 As stated above, a postconviction petition is considered frivolous or patently without merit "if the allegations in the petition, taken as true and liberally construed, fail to present the gist of a constitutional claim." *People v. Gale*, 376 Ill. App. 3d 344, 351 (2007). A trial court may summarily dismiss a postconviction petition if the defendant's allegations are contradicted by the record from the original trial proceedings. *Id*. In this case, defendant's allegations are directly contradicted by the record. Before accepting defendant's guilty plea, the trial court asked: "Has anyone used any force or threats or done anything to you physically or any other way to cause you to plead guilty to those three charges?" Defendant answered: "No, sir." The trial court then asked: "Are you pleading guilty therefore freely and voluntarily?" Defendant responded: "Yes, sir." Defendant's contention is therefore rebutted by the record.

¶ 38 We are unpersuaded by defendant's reliance on *People v. Dennis*, 14 Ill. App. 3d 493

(1973), for the proposition that defendant was coerced into pleading guilty. In *Dennis*, the defendant was convicted after a jury trial and sentenced to a term of 40 to 80 years in prison. The defendant's conviction and sentence were upheld on direct appeal. The defendant then filed a postconviction petition alleging that the sentence imposed was a punishment for exercising his constitutional right to a trial by jury. The defendant included an affidavit from his trial counsel which indicated that the trial court had stated that he would impose a sentence of two to four years in prison if the defendant plead guilty to both indictments. This court found that the allegations in the petition, along with the fair inferences therefrom and the supporting affidavits, raised the issue of whether the defendant was denied a constitutional right. *Dennis*, 14 Ill. App. 3d at 493-95.

¶ 39 The case at bar is inapposite to *Dennis*. In *Dennis*, there was a gross disparity between the sentence that defendant was promised if he plead guilty (two to four years) and the sentence that he was given after a jury trial (40 to 80 years). Thus, because the sentence imposed was much harsher than that discussed during plea negotiations, there was a "fair inference" that the defendant had been penalized for exercising his right to a jury trial. There is no such fair inference in the case at bar. Here, defendant specifically stated that his decision to plead guilty was not the result of threats or coercion. Additionally, there is no evidence in the record suggesting that the trial court would have issued a harsher sentence had defendant gone to trial. Rather, the trial court went to great lengths to make sure defendant understood his rights, and what rights he would be giving up, by pleading guilty. Accordingly, the record directly rebuts defendant's claim of coercion and we find this claim to be without merit.

¶ 40 D. Alternative Claim for Remand and Second-Stage Proceedings

¶ 41 Defendant's final claim on appeal is that his postconviction petition should be remanded to the trial court for second stage proceedings because the trial court failed to issue findings of fact and conclusions of law as to defendant's allegation that the trial court threatened to penalize defendant if he exercised his constitutional right to stand trial.

¶ 42 Pursuant to section 122-2(a) of the Act, the court shall examine a postconviction petition within 90 days after the filing and docketing of that petition, and enter an order. Section 122-2(a)(1) states: "If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision." 725 ILCS 5/122-2(a)(1) (West 2010). Defendant argues that the trial court did not specifically address his contention that the trial court coerced him into pleading guilty by threatening to punish him with a harsher sentence if he went to trial, and thus the trial court failed to examine and enter an order on this issue within 90 days, rendering the trial court's dismissal order void. We disagree.

¶ 43 The trial court did address defendant's argument regarding coercion and specifically stated: "This court explained all of the rights (including that to a trial by a jury) that defendant was giving up and insured that defendant was pleading guilty *freely and voluntarily and that no one had used any force or threats or done anything to him physically or in any way to cause him to plead guilty.*" (Emphasis in original). The trial court specifically stated on page four of its order that "the record of the plea (6/13/06) and the hearing of June 2, 2006 indicate that

defendant knowingly and voluntarily entered into plea negotiations, and freely and voluntarily entered pleaded [*sic*] guilty for a total [of] 43 ½ years imprisonment, which sentence was less that [*sic*] he was offered by other judges on other occasions." And finally, the trial court found that "the issues raised and presented by petition are frivolous and patently without merit." Based on the record, it is clear that the trial court adequately addressed defendant's contention regarding coercion.

¶ 44 Moreover, even if we were to somehow find that the trial court failed to address this issue, our supreme court has specifically found that the written order requirement is advisable, but not mandatory. *People v. Porter*, 122 Ill. 2d 54, 81 (1988). The *Porter* court found that the use of the term "shall" in the statute does not refer to the contents of the trial court's order of dismissal itself, but rather to the court's "duty to dismiss a petition if it is frivolous or patently without merit." *Porter*, 122 Ill. 2d at 81. Additionally, this court has found: "If the trial court fails to specify its findings in a written order, the defendant is not prejudiced because the dismissal will be reviewed on appeal." *People v. Leason*, 352 Ill. App. 3d 450, 452 (2004); see also *People v. Ross*, 339 Ill. App. 3d 580, 584 (2003) (if the court fails to specify its findings in a written order, the defendant is not prejudiced because the dismissal will be reviewed on appeal). Here, we reviewed the issue complained-of on appeal, and thus there is no need for a remand to the trial court for second stage proceedings.

¶ 45 III. CONCLUSION

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 47 Affirmed.