

FIFTH DIVISION
MARCH 31, 2015

No. 1-13-0336

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. 02 CF 1617
)	
TURNER REEVES III,)	Honorable
)	Kay M. Hanlon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the circuit court's second-stage dismissal of defendant's postconviction petition where the court did not abuse its discretion in accepting his waiver of the right to counsel.

¶ 2 Defendant Turner Reeves III appeals from the second-stage dismissal of his petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2008). On appeal, defendant contends that the court erred in permitting him to discharge his postconviction counsel and proceed *pro se* without first obtaining a knowing and intelligent waiver of his statutory right to counsel. We affirm.

¶ 3 Following a jury trial, defendant was convicted of the aggravated kidnaping, aggravated sexual assault, and first-degree murder of Nassim Davoodi, as well as the concealment of her homicidal death. The trial court sentenced defendant to natural life in prison for murder, and 30-year prison terms for aggravated kidnaping and aggravated criminal sexual assault, to be served concurrently to each other and consecutive to the natural life sentence. The court also imposed five years for the concealment of a homicidal death, to be served consecutive to the other sentences. We affirmed defendant's convictions on direct appeal, but vacated the consecutive sentences and ordered the mittimus corrected to show that all sentences were to run concurrently. *People v. Reeves*, 385 Ill. App. 3d 716 (2008).

¶ 4 The parties agree that although the record does not contain defendant's original *pro se* postconviction petition, it was filed in 2009 and then advanced to the second stage where the public defender was appointed to represent him. On July 29, 2011, defendant filed a motion for leave to file a motion to discharge the public defender and to appoint outside counsel. Neither motion was included in the record on appeal. The circuit court granted defendant leave to file the motion to discharge the public defender and continued the matter for further proceedings.

¶ 5 On September 20, 2011, defendant, the public defender, and an assistant State's Attorney were present in court, and a hearing was held on defendant's motion to discharge the public defender and appoint outside counsel. At the hearing, defendant argued that the public defender did not adequately examine the trial record and was disinterested in his case. The circuit court informed defendant that he was entitled to appointed counsel, but not counsel of his choosing, and that the court would not grant his request to have outside counsel appointed for him. The court inquired if defendant still wanted to discharge his public defender and proceed *pro se*

knowing that no outside counsel would be appointed for him, and defendant responded affirmatively. The court informed defendant that he would be held to the standard of an attorney and would not be given special treatment because he was proceeding *pro se*. Defendant never swayed from his initial position at the hearing, and the court granted defendant's motion to discharge the public defender, but would not allow him to be appointed outside counsel.

¶ 6 After the circuit court's ruling, defendant filed a *pro se* 180-page amended petition with numerous attachments and exhibits, which superseded his previous filings. In it, defendant alleged his appellate counsel was ineffective for failing to raise several claims on direct appeal, including that the trial court erred in denying his motion to suppress the statements of his 16-year-old cousin, finding probable cause and exigent circumstances existed to arrest him, denying his motion for a *Franks* hearing, and denying his motion to quash the search warrant and suppress evidence. He also alleged his appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness.

¶ 7 The State filed a motion to dismiss defendant's amended petition, contending that defendant's claims were barred by *res judicata* and waiver, and he failed to establish any ineffective assistance of counsel claim pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984). Defendant filed a *pro se* 40-page response to the State's motion.

¶ 8 Following a hearing on October 5, 2012, the circuit court granted the State's motion to dismiss defendant's petition. It also denied defendant's motion to reconsider that ruling on January 25, 2013. This appeal follows.

¶ 9 On appeal, defendant contends that although his waiver of postconviction counsel was voluntary, the circuit court did nothing to ensure that his waiver was in any way knowing and

intelligent. As relief, defendant requests that we reverse the dismissal of his postconviction petition and remand the cause to the second stage of postconviction proceedings for proper admonishments.

¶ 10 The Act allows for the appointment of counsel upon the request of the defendant if the petition survives first-stage review. It states in pertinent part:

"If the petition is not dismissed pursuant to Section 122-2.1, and alleges that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person and order a transcript of the proceedings delivered to petitioner in accordance with Rule of the Supreme Court. If the petitioner is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested, and the petition is not dismissed pursuant to Section 122-2.1, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel." 725 ILCS 5/122-4 (West 2008).

¶ 11 In *People v. Gray*, 2013 IL App (1st) 101064, this court found a right to self-representation in postconviction proceedings. In doing so, we stated that where a defendant has a right to proceed *pro se*, he must knowingly and intelligently relinquish his right to counsel, and that waiver of counsel must be clear and unequivocal. *Gray*, 2013 IL App (1st) 101064, ¶ 23. "In determining whether a defendant's statement is clear and unequivocal, a court must determine whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation." *Gray*, 2013 IL App (1st) 101064, ¶ 23. Moreover, "[t]he determination of whether there has been an intelligent waiver of the right to counsel depends upon the particular

facts and circumstances of the case, including the background, experience, and conduct of the defendant." *Gray*, 2013 IL App (1st) 101064, ¶ 23. The determination of whether there has been an intelligent waiver of the right to counsel is reviewed for an abuse of discretion. *Gray*, 2013 IL App (1st) 101064, ¶ 23.

¶ 12 In this case, during the hearing on defendant's motion to discharge the public defender and appoint outside counsel, the following colloquy occurred:

"THE COURT: I will also note, [defendant], that you are entitled to counsel, of course; but you, again, are not entitled to counsel of your choosing. If I were to grant your motion to discharge the Public Defender's Office, then *** I would allow you to represent yourself. You certainly have a right to go *pro se*, or to represent yourself.

I am not of the mind to appoint outside counsel. *** I am going to quote a case. The statute clearly states: An indigent defendant shall be appointed counsel. The defendant shall state whether or not he wishes counsel to be appointed to represent him.

The right to appointed counsel does not give defendant the right to representation by counsel of defendant's choosing or by counsel with whom the defendant has an amicable rapport.

That's directly from the case. You cited to me *People versus Hardin* which could be found at 217 Illinois Second, 289 at page 300, which, of course, is a 2005 case.

So at this point in time I am going to ask you, [defendant], is it your desire to represent yourself knowing now that I am not going to appoint another outside counsel to represent you.

Would you like to continue with [assistant public defender] and the Public Defender or would you like to represent yourself in this matter?

DEFENDANT: Well, your Honor, I would submit my position to proceed *pro se* clearly because this case and my constitutional rights could not afford any more misrepresentations of the facts as well as the law that applies to those facts.

So it is imperative that I proceed in this manner. ***

* * *

THE COURT: [Defendant], before I make my final ruling, I want to make sure you are absolutely certain that you want to go *pro se* and represent yourself.

You will be held to the standards of an attorney or anybody else in my courtroom. I will not give you any special treatment or favors because you're representing yourself. You're going to be up against Cook County State's Attorneys who have gone to law school and received a degree. You have not been to law school, have you?

DEFENDANT: No, I haven't.

THE COURT: I want you to make sure you fully understand if the Public Defender does not represent you at this point, I have seen the transcripts in this case. I have seen the petition in this case. It is extremely lengthy. So I want to make sure I am giving you the last chance to consider before I rule.

DEFENDANT: If you're not going to – [assistant public defender] and I haven't spoken and our positions are still the same because of that. Unless you're willing to grant the motion, I feel that it's my only option."

The court then granted defendant's motion to discharge the public defender, allowed defendant to represent himself *pro se*, and denied his request to appoint outside counsel.

¶ 13 Based on the above conversation between the trial court and defendant, we cannot find that the court abused its discretion. Defendant concedes in his brief on appeal that his decision to waive counsel was voluntary, clear, and unequivocal. We also find that defendant's waiver was knowing and intelligent. The trial court ensured defendant understood that he was entitled to have the public defender represent him and explained that if his motion to discharge the public defender was granted he would have to represent himself. Moreover, the court told defendant that he would be arguing his case against experienced lawyers, he would not be treated any differently because he was representing himself, and he would be held to the standards of an attorney. Defendant repeatedly stated that if his motion to discharge the public defender was granted, and the court would not appoint him counsel of his choice, he desired to continue *pro se*. We thus find that the trial court did not err in accepting defendant's waiver of his right to counsel and allowing him to proceed *pro se*.

¶ 14 In reaching this conclusion, we find *Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993), the Florida Supreme Court case relied upon by defendant, distinguishable from the case at bar. In *Durocher*, the defendant, who was sentenced to death, was appointed counsel to represent him on collateral attacks to his conviction. Appointed counsel filed a collateral challenge to defendant's conviction, despite defendant's wish to "drop all of my appeals." The Florida Supreme Court found defendant could waive his statutory right to representation, and ordered the trial judge "to conduct a *Faretta*-type evaluation of [the defendant] to determine if he understands the consequences of waiving collateral counsel and proceedings." *Durocher*, 623 So.

2d at 485; see *Faretta v. California*, 422 U.S. 806, 835 (1975) (in addressing self-representation in the Sixth Amendment context, the Court held that in order for a defendant to choose self-representation competently and intelligently, "he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open"). Based on the *Durocher* opinion, defendant requests that we accept that case's approach in evaluating whether the waiver of postconviction counsel is knowing, intelligent, and voluntary.

¶ 15 However, we agree with the State that neither the provisions of the Act, nor the facts of this case, warrant the adoption of a *per se* rule requiring that "*Faretta*-type" admonishments be given to every postconviction petitioner who opts to discharge appointed counsel before the conclusion of postconviction proceedings. Unlike *Durocher*, defendant here was not sentenced to death, and the Act recognizes a difference between capital defendants and noncapital defendants, granting to the former significantly greater rights and legal protections, including the automatic appointment of counsel and a prohibition against first-stage summary dismissal. See 725 ILCS 5/122-2.1(a) (West 2008). In addition, defendant here was not seeking to waive all postconviction proceedings, but was simply attempting to exercise his right to self-representation. Moreover, *Durocher* was remanded for a *Faretta*-type evaluation, which involved the waiver of counsel at trial. Here, defendant has already been tried and convicted, and thus admonishments regarding his Sixth Amendment right to counsel would be irrelevant to his situation.

¶ 16 Moreover, it is well established that the findings of other states are not binding on this court. *People v. Sullivan*, 366 Ill. App. 3d 770, 781 (2006). We do not find it necessary to turn to

another state for guidance on this issue. *Sullivan*, 366 Ill. App. 3d at 781. This court has held that we review a waiver of counsel under the abuse-of-discretion standard. *Gray*, 2013 IL App (1st) 101064, ¶ 23. An abuse of discretion exists where the trial court's ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). The facts and circumstances of this case reveal no abuse of the trial court's decision.

¶ 17 We further reject defendant's contention that because this court in *Gray*, 2013 IL App (1st) 101064, ¶ 23, relied on *People v. Baez*, 241 Ill. 2d 44 (2011), an opinion involving a direct appeal from a criminal conviction which in turn relied on *Faretta*, it extended the standard used in deciding whether there has been a valid waiver of the constitutional right to counsel, to its analysis of what constitutes a valid waiver of the statutory right to postconviction counsel. The court in *Gray* never made any declarations that it was extending the standard used in a constitutional right to counsel case to a statutory right to counsel case. In fact, in reversing and remanding the matter to the trial court in order for it to make a determination as to whether the defendant's waiver of his statutory right to postconviction counsel was knowing and intelligent, no parameters were set forth in the opinion to guide the trial court's decision. *Gray*, 2013 IL App (1st), ¶ 27.

¶ 18 To the extent defendant maintains he is only requesting that the trial court admonish him of the duties imposed by counsel under Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013), we find his unsupported argument without merit. Rule 651(c) requires counsel to consult with the defendant to ascertain his allegations of how he was deprived of his constitutional rights, examine the record of proceedings from trial, and amend the defendant's *pro se* petition as

necessary to adequately present his contentions. Ill. S. Ct. R. 651(c) (eff. Feb. 6, 2013); *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). As the State correctly points out, informing defendant of his right to have counsel perform these duties would have been futile as it was clear defendant did not want to consult with counsel or have counsel act for him at all. See *People v. Heard*, 2014 IL App (4th) 120833, ¶ 9 ("counsel is not required to comply with Rule 651 when it is defendant who requested counsel withdraw from representation"). Instead, through his *pro se* exhaustive filings, defendant made all of the arguments he desired.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 20 Affirmed.