2018 IL App (1st) 152941-U

No. 1-15-2941

January 30, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 7010
	)	
JULIO GALVEZ,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's summary dismissal of defendant's *pro se* postconviction petition is affirmed over his contention that he stated an arguable claim that he did not knowingly enter the guilty plea because he does not speak English and did not understand the Spanish interpreter.

¶ 2 Julio Galvez, the defendant, appeals from the trial court's first stage summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*.) (West 2014)). On appeal, defendant contends that his postconviction petition stated an arguable

claim that he did not knowingly enter his guilty plea because he does not speak English and did not understand the Spanish translator during the guilty plea proceedings. We affirm.

¶ 3 Defendant and codefendant Crystal Almaraz, who is not a party to this appeal, were charged in case No. 14 CR 7010 with four counts of aggravated battery to a child in that they struck and burned the child about the body. They were also charged with 4 counts of aggravated domestic battery and 10 counts of aggravated battery. In case No. 14 CR 7264, defendant was charged with two counts of possession of cocaine with intent to deliver and possession of cannabis with intent to deliver.[1]

¶ 4 On November 13, 2014, defendant was present in court with an interpreter, and defense counsel requested that the court hold a Rule 402 conference. When the court specifically asked defendant if he wanted the court to hold a conference, he responded, "Yes." The court explained the procedures and defendant indicated he understood.

¶ 5 Before the conference, the State presented a factual basis for each case. In case No. 14 CR 72664, the State explained that, in executing a search warrant at a residence where defendant was the sole occupant, the Chicago police department recovered suspect cannabis, suspect methamphetamine, suspect cocaine, a large roll of cellophane used for narcotics packaging, a scale commonly used to measure narcotics, and $2181. A forensic scientist would testify that the three recovered substances tested positive for 7347 grams of cannabis, 15.5 grams of cocaine, and 1.1 grams of cocaine.

[1] The common law record does not contain the information or indictment for the charges in case No. 14 CR 7264. However, the reports of proceedings for defendant's arraignment and 402 conference show that defendant was charged with these counts.

¶ 6 The State presented a factual basis for case No. 14 CR 7010, which involved defendant and Almaraz's three-year-old daughter. On October 14, 2013, the victim's grandmother found numerous injuries on the child's body and took her to the hospital, where she was found to have burns, whip marks, and bruises throughout her body. When the grandmother spoke with Almaraz on the telephone, Almaraz told her, "I have nothing to do with it. It was him." In the background of this conversation, the grandmother heard defendant say, "They are my kids. I can do with them what I want." The physicians from the hospital would testify that the bruising and injures were not consistent with a single event and the three-year-old was a victim of abuse. The State showed the judge photographs of the injuries.

¶ 7 After the conference, the court went back on the record, stating: "Recalling and ready on [defendant]. Spanish interpreter." After defense counsel introduced himself for the record, the court stated, "Interpreter used. All right. [Defendant] is before the Court." Defense counsel informed the court that defendant wanted to decline the court's offer and accept the State's offer. The State's offer was for 10 years in prison for possession of controlled substance with intent to deliver, a Class X felony, to be served at 50% (case No. 14 CR 7246) and 10 years in prison for aggravated battery to a child, a Class X felony, to be served at 85% (case No. 14 CR 07010). Defendant would serve the sentences concurrently.

¶ 8 The court specifically asked defendant if he wanted to reject the court's offer and accept the State's offer, and defendant said, "Yes." The court admonished defendant of the immigration consequences of pleading guilty and defendant acknowledged he understood. The court explained to defendant the charges and sentencing ranges for the offenses, including that

possession of a controlled substance and aggravated battery to a child are Class X felonies that carry sentencing ranges of 6 to 30 years in prison.

¶ 9 The court specifically asked defendant if he understood the nature of the charges, they were Class X felonies with sentencing ranges of 6 to 30 years in prison, he had to serve the aggravated battery of a child charge at 85% and the drug charge at 50%, and his sentence would be followed by three years MSR. When the court asked defendant if he "understood all of that," defendant responded "Yes."

¶ 10 When the court asked defendant if he still wanted to plead guilty, defendant answered, "Yes." The court asked defendant if he knew what a jury trial was and defendant responded, "No." Defense counsel informed the court that he had informed defendant of what a jury trial was, but the court continued by explaining a jury trial to defendant. The court informed defendant he had a constitutional right to a jury trial and asked him if he was giving up the right. Defendant responded, "Yes." The court accepted defendant's oral and written waivers of his right to a jury trial and the following exchange occurred:

> "THE COURT: The Court accepts both your oral and written waivers of your right to have a jury trial. The written waiver is evidence and it is your counsel's contention that he discussed what a jury trial is.
>
> [DEFENSE COUNSEL]: That's correct, your Honor, in Spanish. I speak Spanish, without the interpreter.
>
> THE COURT: You spoke to him in Spanish on that?
>
> [DEFENSE COUNSEL]: Yes."

¶ 10 The court also explained to defendant that, before it imposed sentence, he had a right to a presentence investigative report (PSI). Defendant acknowledged he was waiving his right to a PSI. The court accepted defendant's oral and written waivers of his right to a PSI. In doing so, it explained that the written waiver was evidence of defense counsel's conversations with defendant and specifically asked defense counsel if he spoke Spanish. Defense counsel responded, "Yes." The court asked defense counsel if "that conversation was in Spanish," and defense counsel again responded, "Yes."

¶ 11 The court explained to defendant the rights he was giving up by pleading guilty and, when the court asked defendant if he understood, he responded, "Yes." The court asked defendant if he was pleading guilty voluntarily, and defendant responded, "Yes." The court asked defendant if anyone forced him to accept the State's offer, if the State promised him anything other than to recommend the sentences to the court, and if his attorney forced him to accept the State's offer. Defendant answered "No" to each question.

¶ 12 The parties stipulated that, during the Rule 402 conference, the court heard the factual basis to support the guilty plea. The court accepted defendant's plea and found him of guilty of aggravated battery to a child (14 CR 7010) and possession of controlled substance with intent to deliver (14 CR 7264). It found that defendant's plea was voluntary and a factual basis existed to support the plea.

¶ 13 The court sentenced defendant "as agreed upon to" 10 years in prison for aggravated battery to a child (720 ILCS 5/12-3.05(b)(1) (West 2012)) and 10 years in prison for possession

of a controlled substance with intent to deliver, to be served concurrently.[2] The court informed defendant of his appeal rights. Defendant did not file a postplea motion.

¶ 14 On April 7, 2015, defendant mailed from prison a *pro se* postconviction petition. He alleged that his guilty plea was involuntary because he "does not speak [E]nglish, his interpreter spoke way too fast, the child witnesses did not understand the proceedings, therefore he never understood that he had the right to a trial by jury." He also alleged his due process rights were violated and that "if he had understood the consequences of what he was agreeing to, he never would have entered the plea."

¶ 15 On May 1, 2015, the trial court summarily dismissed defendant's postconviction petition. In its written order, it found:

> "Petitioner never indicated that he did not understand the questions, nor did he ask to have any question repeated, as would be a natural human response if difficulties with the interpreter prevented him from following the proceedings. For petitioner to remain silent to this issue when entering a guilty plea, then to now assert a claim of inadequate translation would be an open invitation to due process exploitation."

The court concluded that the issues raised in defendant's petition were frivolous and patently without merit. This appeal followed.

¶ 16 Defendant contends that the trial court erred when it summarily dismissed his postconviction petition. He argues that his postconviction petition raised an arguable claim that his due process rights were violated when he did not knowingly enter the guilty plea because he

[2] The record of proceedings shows that the court sentenced defendant to 10 years in prison for possession of a controlled substance with intent to deliver. However, the mittimus for case No. 14 CR 7264 is not in the record.

does not speak English and did not understand the Spanish translator. He asserts that the record does not affirmatively rebut his claim. Defendant requests that we reverse the trial court's ruling and remand the case for further postconviction proceedings.

¶ 17 Under the Post-Conviction Hearing Act (Act), a defendant may collaterally attack a conviction by asserting that it resulted from a substantial denial of his or her constitutional rights. 725 ILCS 5/122-1 *et seq*. (West 2010); *People v. Walker*, 2015 IL App (1st) 130530, ¶ 11. The Act prescribes a three stage process for adjudicating postconviction petitions. *People v. Little*, 335 Ill. App. 3d 1046, 1050 (2003).

¶ 18 At the first stage, which applies here, the issue is whether the petition set forth the "gist of a constitutional claim." *People v. Palmer*, 2017 IL App (4th) 150020, ¶ 16. At the first stage, the trial court independently reviews the petition (*People v. Hodges*, 234 Ill. 2d 1, 10 (2009)), and "[u]nless positively rebutted by the record, all well-pleaded allegations are taken as true." *People v. Williams*, 364 Ill. App. 3d 1017, 1022 (2006). The trial court shall summarily dismiss a first stage petition if it determines it is "frivolous or patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2014). A petition is considered frivolous or patently without merit if "it has no arguable basis either in law or in fact," that is it is "based on an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 11, 16. An indisputably meritless legal theory is one that is "completely contradicted by the record" and a fanciful factual allegation is one that is "fantastic or delusional." *Hodges*, 234 Ill. 2d at 16-17. We review a trial court's summary dismissal of a postconviction petition *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010).

¶ 19 "Fundamental due process rights may require a court to permit an interpreter to translate courtroom proceedings." *Figueroa v. Doherty*, 303 Ill. App. 3d 46, 50 (1999). When a defendant is not provided a complete translation of all proceedings, a defendant may be deprived of his or her right to a fair hearing. See *Doherty*, 303 Ill. App. 3d at 52. Further, "[d]ue process requires that the court accept defendant's guilty plea only upon an affirmative showing that defendant entered his plea voluntarily and knowingly." *People v. Haywood*, 2016 IL App (1st) 133201, ¶ 36.

¶ 20 Under Illinois Supreme Court Rule 402, before the court accepts a guilty plea, it must admonish defendant and determine that he understands: (1) the nature of the charge, (2) the minimum and maximum sentencing ranges, (3) that he has a right to plead not guilty, persist in that plea if has already been made, or plead guilty, and (4) that, by pleading guilty, he waives the right to a jury trial and to confront witnesses against him. Ill. S. Ct. R. 402(a) (eff. July 1, 2012); *Haywood*, 2016 IL App (1st) 133201, ¶ 36. The rule requires that, before the court accepts a plea of guilty, it must determine that the plea was voluntary, state the plea agreement in open court, confirm the terms of the plea agreement by questioning the defendant, and determine whether any force, threats, or promises, separate from the plea agreement, were used to obtain the plea. Ill. S. Ct. R. 402(b) (eff. July 1, 2012).

¶ 21 Defendant does not argue that the court did not properly admonish him under Rule 402. Rather, as previously stated, he asserts he does not speak English and did not understand the Spanish translator during the trial proceedings and, thus, did not knowingly enter the guilty plea or understand the consequences of giving up his right to a jury trial. The record rebuts defendant's assertion.

¶ 22 The record reflects that a Spanish interpreter was used for defendant throughout the trial court proceedings and that defense counsel spoke Spanish. At a pretrial status conference, defense counsel informed the court that he spoke Spanish and could communicate at the next court date with the defendant. At the plea proceeding, defense counsel again informed the court on the record that he spoke Spanish and expressly represented that he spoke to defendant in Spanish about his jury and PSI waivers. Defense counsel is an officer of the court and "is always under an obligation to be truthful to the court." See *City of Chicago v. Higginbottom*, 219 Ill. App. 3d 602, 628 (1991). Thus, on this record, we have no reason to doubt that counsel, an officer of the court, did speak Spanish and could communicate with the defendant in Spanish.

¶ 23 Defendant's petition alleges that "his interpreter spoke way too fast, the child witnesses did not understand the proceedings, therefore he never understood that he had the right to a trial by jury." Defendant however never stated he did not understand the interpreter's translation or that the interpreter did not provide a complete or accurate translation of the proceedings. As defense counsel spoke Spanish, he would have been aware if the interpreter "spoke too fast" or defendant could have communicated this alleged problem to counsel. Defense counsel was present at the trial proceedings and, at no time during the plea proceeding, did defendant or defense counsel indicate that defendant had problem understanding the Spanish interpreter or the plea proceeding for any reason, including because the interpreter spoke too fast. Further, there were no child witnesses called at the plea proceeding so we do not know what "child witnesses" defendant is referring to in his petition.

¶ 24 The record shows that the court explained to defendant, through an interpreter, about his right to a jury trial and that, by entering the plea, he would waive this right. When the court

initially asked defendant if he knew what a jury trial was, defendant answered "No." The court then explained a jury trial to defendant and again asked him if he understood what a jury trial was. Defendant changed his response to "Yes." The court then informed defendant he had a constitutional right to a jury trial and asked him if he was giving up that right, and defendant answered, "Yes." Further, defendant signed a jury waiver form. And defense counsel, as an officer of the court, represented to the court that he went over the signed jury waiver form, in Spanish, with the defendant. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7 (finding valid jury waiver on direct appeal, noting "[a]lthough a signed jury waiver alone does not prove a defendant's understanding, it is evidence that a waiver was knowingly made."). Accordingly, the record rebuts defendant's assertion that he never understood he had a right to a jury trial.

¶ 25 Throughout the trial court's admonishments, made through a Spanish interpreter and in the presence of defendant's counsel who spoke Spanish, defendant repeatedly acknowledged he understood the rights he was giving up by pleading guilty and the charges and sentencing ranges for the offenses. Defendant acknowledged he wanted to plead guilty and his plea was voluntary. And, when the court asked him if anyone forced him to accept the State's offer, forced, threatened, or promised him something to plead guilty, or if his attorney forced him to accept the offer, he responded, "No." At no time during the plea proceeding, did defendant indicate he did not understand what the court was asking him, or what his interpreter was saying, let alone that he did not understand the proceedings, his rights, or the consequences of pleading guilty. Thus, the record rebuts defendant's assertion that he did not enter the plea voluntarily and knowingly.

¶ 26 Here, the record rebuts defendant's assertion that he did not knowingly enter the guilty plea because he did not understand the Spanish translator, therefore, he has not presented the gist

of a constitutional claim. The court properly dismissed his petition as frivolous and patently without merit.

¶ 27 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 28 Affirmed.