2012 IL App (3d) 100628-U

Order filed April 17, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellee,	)	La Salle County, Illinois,
	)	
v.	)	Appeal No. 3-10-0628
	)	Circuit Nos. 07-CF-147 and 08-CF-215
MICHAEL GOLDSMITH,	)	
	)	Honorable
Defendant-Appellant.	)	Chris H. Ryan,
	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's postconviction petition was properly dismissed as frivolous and patently without merit.

¶ 2 Defendant, Michael Goldsmith, entered a negotiated plea of guilty to unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2006)) and was sentenced to 14 years of imprisonment. Defendant appeals the summary dismissal of his postconviction petition, arguing that he stated the gist of a claim that his guilty plea was unknowing

and involuntary because the trial court and defendant's attorney misinformed him that he would have to serve 75% of his sentence. We affirm.

¶ 3 FACTS

¶ 4 On April 18, 2007, defendant was charged by information, and later by indictment, of unlawful possession of a controlled substance with intent to deliver, a Class X felony (720 ILCS 570/401(a)(1)(A) (West 2006)), in case No. 07-CF-147. The charges alleged that on March 24, 2007, defendant knowingly possessed with the intent to deliver 15 grams or more (but less than 100 grams) of a substance containing heroin. In case No. 07-CF-147, defendant was also charged with obstructing justice (720 ILCS 5/31-4 (West 2006)) and driving while license revoked (625 ILCS 5/6-303(d) (West 2006)). On November 20, 2007, defendant was present at the arraignment hearing, during which his attorney waived a formal reading of the charges and explanation of penalties, and entered a plea of not guilty.

¶ 5 On April 1, 2008, in case No. 08-CF-215, defendant was charged by information, and later by indictment, with the same drug offense as in case No. 07-CF-147, *i.e.*, possession of a controlled substance with intent to deliver on March 24, 2007. In addition, the State added new felony drug charges of unlawful criminal drug conspiracy (720 ILCS 570/405.1 (West 2006)) and unlawful possession of a controlled substance with intent to deliver on February 20, 2007 (720 ILCS 570/401(a)(1)(A) (West 2006)).

¶ 6 On April 2, 2008, the prosecutor requested that the trial court dismiss defendant's pending charges in case No. 07-CF-147 and file charges presented in case No. 08-CF-215. The trial court admonished defendant as follows:

"Now, with regard to the two new charges, they are both Class X felonies. If you

were to plead guilty or found guilty on either of those two you would be sentenced to the Department of Corrections to a minimum of six, maximum of thirty years. If found eligible for extended term *** from six to sixty years. *** And if you were to receive any Department of Corrections sentence on this matter you must serve a minimum of 75 percent of that particular sentence."

¶ 7 On August 14, 2008, a final pretrial hearing took place with defendant present. The State's Attorney indicated that defendant agreed to plead guilty to the March 24, 2007, unlawful possession of a controlled substance charge in exchange for a 14-year sentence in the Department of Corrections and a dismissal of the remaining charges. The trial court asked, "Is this a 50 percent?" The State's Attorney replied, "Yes, it is 50 percent, day for day." Defendant's attorney confirmed that the agreement was the arrangement defendant had made with the State. The State's Attorney clarified that the State had dismissed the previous charge of driving while license revoked, which would "never be reinstated." The trial court asked defendant, "Do you understand what's going on here[?]" Defendant stated, "Yeah."

¶ 8 After the factual basis for the plea was presented to the court, defendant confirmed that he was not threatened, intimidated, coerced, or forced to plead guilty and that no promises or inducements were used to get him to plead guilty other than the result of the plea agreement. The trial court accepted defendant's plea and sentenced him to 14 years of imprisonment.

¶ 9 On April 13, 2010, defendant filed a *pro se* postconviction petition with an attached affidavit under case No. 07-CF-147. In the affidavit attached to the petition, defendant attested as follows:

"The State's Attorney had told my appointed counsel *** that his offer was 13 yrs at 75%. During the whole time of being charged with conspiracy I thought that I was facing 75%.

The judge[,] Chris Ryan Jr.[,] stated that I was facing 75% and my appointed counsel stated I was facing 75%. Therefore[,] if the judge and my attorney would have not mistated [*sic*] the law I would have not pleaded guilty."

¶ 10 On July 8, 2010, the trial court dismissed defendant's petition as frivolous and patently without merit "due to the fact the matter of 07-CF-147 was dismissed" and defendant's claim of ineffective assistance of counsel was insufficient in relation to case No. 08-CF-215. Defendant appealed, listing both case numbers on his notice of appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant alleges that his postconviction petition stated the gist of a claim that his guilty plea was unknowing and involuntary because his attorney and the trial court misinformed him that he would be required to serve 75% of his sentence. Defendant claims if the court and his attorney had not misstated the law, he would not have pled guilty.

¶ 13 A. Jurisdiction

¶ 14 The State argues that this court lacks jurisdiction to hear the appeal because defendant filed the postconviction petition in case No. 07-CF-147. The State contends that because defendant never filed a postconviction petition in case No. 08-CF-215, there was no order for defendant to appeal from in case No. 08-CF-215.

¶ 15 A notice of appeal confers jurisdiction on a court of review to consider the judgments or parts thereof specified in the notice of appeal. *People v. Smith*, 228 Ill. 2d 95 (2008). A notice of appeal should be liberally construed so as not to defeat jurisdiction. *Id.* The notice should be considered as a whole and will be deemed sufficient if it fairly and adequately sets forth the judgment complained of and the relief sought, so as to advise the successful litigant of the nature of the appeal.

Id.

¶ 16 Our review of the record indicates that the trial court ruled upon defendant's petition as relating to both case Nos. 07-CF-147 and 08-CF-215. The subsequent notice of appeal from that order listed both case numbers. Here, the notice of appeal properly conferred jurisdiction on this court in that it fairly and adequately advised the State as to the nature of the appeal.

¶ 17 B. Dismissal of Postconviction Petition

¶ 18 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*. (West 2008)) provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Hodges*, 234 Ill. 2d 1 (2009). At the first stage, the trial court must independently determine whether the petition is "frivolous or is patently without merit[.]" 725 ILCS 5/122-2.1(a)(2) (West 2008). A petition is frivolous or patently without merit only if it has no arguable basis in law or fact. *Hodges*, 234 Ill. 2d 1. At this stage, the petition's allegations, liberally construed and taken as true, need only present the gist of a constitutional claim. *People v. Harris*, 224 Ill. 2d 115 (2007). We review the first-stage dismissal of a postconviction petition *de novo*. *People v. Morris*, 236 Ill. 2d 345 (2010).

¶ 19 To satisfy due process, a guilty plea must have been made voluntarily and intelligently, as required under Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 1997). *People v. Fuller*, 205 Ill. 2d 308 (2002). Supreme Court Rule 402 provides that the trial court not accept a guilty plea until defendant has been admonished as to the minimum and maximum sentence, including possible sentencing enhancements in light of prior convictions or consecutive sentences. Ill. S. Ct. R. 402 (eff. July 1, 1997). Rule 402 does not require that a defendant be informed of his good-time credit before a court can accept defendant's guilty plea. The failure to properly admonish a defendant does not automatically require a reversal or vacation of the guilty plea. *People v. Davis*, 145 Ill. 2d 240

(1991); *Fuller*, 205 Ill. 2d 308.

¶ 20 Substantial compliance with Rule 402 is all that is necessary to satisfy the rule's requirements. *People v. Sharifpour*, 402 Ill. App. 3d 100 (2010). Whether a reversal is warranted depends on whether real justice has been denied or defendant has been prejudiced by an imperfect admonishment. *Fuller*, 205 Ill. 2d 308. If the record shows that a guilty plea was voluntary and not the result of any force, threats, or promises, then any failure to strictly comply with Rule 402 is deemed harmless. *Sharifpour*, 402 Ill. App. 3d 100. The crucial time for determining whether a plea was intelligently and voluntarily made is the time the plea is taken. *People v. Blankley*, 319 Ill. App. 3d 996 (2001).

¶ 21 In this case, prior to the guilty plea hearing, defendant waived a reading of penalties for the March 24, 2007, unlawful possession of a controlled substance charge to which he pled guilty. After the charge had been dismissed in case No. 07-CF-147 and transferred to case No. 08-CF-215, the trial court admonished defendant as to the two newly added drug charges in case No. 08-CF-215, indicating that defendant would be required to serve 75% of his sentence. The record does not indicate that the trial court referred to the March 24, 2007, unlawful possession of a controlled substance charge when admonishing defendant that he would be required to serve 75% of his sentence.

¶ 22 Even if the record were interpreted to indicate that defendant was incorrectly admonished as to good conduct credit prior to the guilty plea hearing, the incorrect admonition was harmless. The record shows that at the time of the guilty plea hearing, defendant was provided new admonishments that correctly indicated that his sentence was subject to "50 percent, day for day" good-time credit (730 ILCS 5/3-6-3(a) (2.1) (West 2006)) on the charge to which he pled guilty. Also at the hearing,

defendant expressly indicated that no other promises were made to him in exchange for his guilty plea other than a 14-year agreed upon term of imprisonment and dismissal of his other pending charges.

¶ 23 Under these circumstances, at the time of the guilty plea hearing, there was substantial compliance with Rule 402, and defendant was correctly readmonished as to the amount of good-time credit he could be awarded. We cannot say that defendant's complaint of the prior inaccurate admonishment as to good-time credit stated the gist of a claim that his guilty plea was not knowing and voluntary. We, therefore, hold that defendant's postconviction allegations failed to set forth a meritorious claim, and the petition was properly dismissed. See *People v. Collins*, 202 Ill. 2d 59 (2002) (a trial court may dismiss a postconviction petition when the allegations are contradicted by the record).

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 26 Affirmed.