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2012 IL App (3d) 100780-U

Order filed August 10, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

NICHOLAS BAUER,

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 13th Judicial Circuit,
) La Salle County, Illinois,
)
) Appeal No. 3-10-0780
) Circuit No. 03-CF-380
)
) Honorable
) Cynthia M. Raccuglia,
) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant lacked standing to file a postconviction petition, and his argument that his sentence is void is moot.

¶ 2 Defendant, Nicholas Bauer, pled guilty to two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2002)). At the plea hearing, the trial court informed defendant that each offense carried with it a possible sentence of seven years' imprisonment with two years of mandatory supervised release (MSR). After accepting defendant's plea, the trial court sentenced

defendant to two concurrent terms of four years' imprisonment. The court's sentence, however, failed to mention the duration for which defendant would be subject to MSR.

¶ 3 Defendant was released from prison on August 12, 2005, and discharged from parole on August 13, 2009. Thereafter, on December 28, 2009, defendant filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act). The petition alleged a breach of the plea agreement. On August 24, 2010, the State filed a motion to dismiss defendant's petition, arguing that because defendant had completed his sentence, he did not have standing to file a petition under the Act. At a hearing on the State's motion, defense counsel argued that defendant had standing to bring a postconviction petition because he was currently confined under the Sexually Violent Persons Commitment Act (SVPCA). At the conclusion of the hearing, the trial court granted the State's motion and dismissed defendant's petition. Defendant appeals, arguing that he had standing to file a petition under the Act and that his sentence was void. We affirm.

¶ 4 ANALYSIS

¶ 5 Defendant first argues that the trial court erred when it found that he lacked standing to bring a petition under the Act. The Act allows a proceeding to be initiated by any person "imprisoned in the penitentiary." 725 ILCS 5/122-1(a) (West 2008). We review the trial court's decision *de novo*. *People v. Whitfield*, 217 Ill. 2d 177 (2005).

¶ 6 Defendant's postconviction petition was filed with the circuit court on December 28, 2009. At that time, defendant had completed his term of imprisonment and his period of MSR. Defense counsel argued that defendant had standing to bring the petition because he was currently subject to confinement under the SVPCA. In *People v. Steward*, 406 Ill. App. 3d 82

(2010), the court held that a person subject to the SVPCA is subject to civil confinement, and therefore lacks standing to bring a postconviction petition. We find no reason to depart from the *Steward* court's sound reasoning. Thus, we agree with the circuit court's conclusion that defendant lacked standing to initiate a proceeding under the Act because he was not presently imprisoned in the penitentiary.

¶ 7 Defendant next argues that his sentence is void because the Illinois Department of Corrections improperly usurped the circuit court's exclusive authority to impose a sentence when it imposed a term of four years of MSR. The State argues that this issue is moot. As mentioned above, at the time defendant raised this issue, he had already completed his term of imprisonment and his period of MSR. An issue is moot when it presents no actual controversy or when the issues no longer exist. *People v. Roberson*, 212 Ill. 2d 430 (2004). Here, because defendant has already served his sentence, we cannot offer any sort of effective relief. See *id.* While a reviewing court may address an otherwise moot issue based on the public interest exception, we do not find such an exception here and therefore dismiss this portion of defendant's appeal as moot.

¶ 8 CONCLUSION

¶ 9 The judgment of the circuit court of La Salle County is affirmed.

¶ 10 Affirmed.