2011 IL App (4th) 100148-U

Filed 7/14/11

NO. 4-10-0148

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
STEVEN B. DECKER,	)	No. 05CF559
Defendant-Appellant.	)	
	)	Honorable
	)	Gary W. Jacobs,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: As no meritorious issues could be raised on appeal, the office of the State Appellate Defender's motion to withdraw as defendant's counsel on appeal from the stage-one dismissal of *pro se* postconviction petition is granted and the trial court's judgment is affirmed.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground that no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2005, defendant, Steven B. Decker, was charged with attempted first degree murder (720 ILCS 5/8--4(a), 9--1(a)(1) (West 2004)). The State alleged that defendant inflicted multiple stab wounds upon his ex-girlfriend, Elizabeth Knupp, with the intent to kill or do great bodily harm to her. The State also brought charges against defendant in two

contemporaneous proceedings, alleging he unlawfully violated an order of protection and threatened a public official.

¶ 5 In February 2006, defendant filed a motion for psychiatric examination. Defense counsel indicated she intended to pursue an insanity defense and sought an evaluation of defendant's criminal responsibility. Dr. Lawrence L. Jeckel, a forensic psychiatrist, was later selected to examine defendant for both criminal responsibility and fitness to stand trial. In July 2006, Jeckel interviewed defendant in jail. Jeckel's findings and conclusions were provided in an August 2006 report. Notably, in an interview with police made available to Jeckel for purposes of the evaluation, defendant's sister reported that defendant had told her shortly following his arrest that he had stabbed Knupp and planned on feigning mental illness to avoid a prison sentence. Consistent with this allegation, Jeckel found defendant's thinking during the examination was "generally well-ordered" and "very coherent" but, when his cognitive ability was tested, "he blatantly falsified his responses and gave absurd answers to questions testing attention span, object recall, and orientation." Jeckel ultimately concluded defendant was fit to stand trial.

¶ 6 Jeckel's report was presented to the trial court in an August 2006 fitness hearing. The parties stipulated to the report. No other evidence was presented. The court found defendant was fit to stand trial.

¶ 7 In December 2006, defendant pleaded guilty to attempted first degree murder pursuant to a negotiated plea agreement. Before defendant entered his plea, the trial court admonished him regarding the rights he would waive by pleading guilty. In addition, the court inquired into defendant's capacity to waive these rights knowingly and voluntarily. Specifically,

the court asked defendant whether he was taking any prescription drugs. Defendant reported he had taken Thorazine and Perphenazine, two psychotropic, antipsychotic medications, on the morning of the plea hearing. The court asked, "Sir, is there anything about the medications that you're taking that prevents you from understanding what's happening here today?" Defendant responded, "No. I pretty much understood what's going on." The court also inquired into whether defendant's plea was coerced. Specifically, defendant stated his plea did not result from threat, force, or promises other than those in the agreement. The court subsequently found defendant entered his guilty plea knowingly and voluntarily. Pursuant to the plea bargain, the charges pending against defendant in the other two cases were dismissed and the court sentenced defendant to 25 1/2 years in prison. Defendant pursued no direct appeal.

¶ 8 In November 2009, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122--1 through 122--8 (West 2006)), alleging he was denied the effective assistance of trial counsel in that counsel (1) failed to interview witnesses, (2) failed to request the appointment of an additional expert to perform a fitness evaluation and request a competency hearing, and (3) induced defendant into pleading guilty by advising him he would receive a 60-year prison sentence if he lost at trial. In February 2010, the trial court dismissed defendant's petition, finding it was "frivolous or *** otherwise patently without merit." Defendant later filed his notice of appeal, and OSAD was appointed to serve as his attorney.

¶ 9 In January 2011, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave

to file additional points and authorities by March 1, 2011. Defendant has done so, and the State has responded. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 10 II. ANALYSIS

¶ 11 OSAD argues that this appeal presents no meritorious claim upon which defendant could realistically expect to obtain relief. Specifically, OSAD contends that the trial court did not err in dismissing defendant's postconviction petition and rejecting defendant's argument that his trial counsel provided ineffective assistance. We agree with OSAD that each of defendant's potential ineffective-assistance arguments would lack merit.

¶ 12 The Act provides a remedy for violations of a defendant's federal or state constitutional rights. *People v. Coleman*, 206 Ill. 2d 261, 277, 794 N.E.2d 275, 286 (2002). As an appeal from the denial of a postconviction petition is limited to issues actually raised in the petition (*People v. Jones*, 211 Ill. 2d 140, 148, 809 N.E.2d 1233, 1239 (2004)), we initially reject any issues raised by defendant in his additional points and authorities that were not presented to the trial court in his postconviction petition. We address only those claims actually raised in defendant's postconviction petition.

¶ 13 At the first stage of a postconviction proceeding, summary dismissal by written order is appropriate where the trial court determines the petition, on its face, is frivolous or patently without merit. *People v. Collins*, 202 Ill. 2d 59, 65-66, 782 N.E.2d 195, 198 (2002). In turn, a postconviction petition is frivolous or patently without merit if its "allegations, taken as true, fail to present the gist of a meritorious constitutional claim." *Id.* at 66, 782 N.E.2d at 198. Further, a defendant's "failure to either attach the necessary 'affidavits, records, or other evidence'

or explain their absence is 'fatal' *** [citation] and by itself justifies the petition's summary dismissal [citation]." *Id*.

¶ 14 We review the trial court's summary dismissal of defendant's postconviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388, 701 N.E.2d 1063, 1075 (1998). For purposes of our review, we accept as true "all well-pleaded facts that are not positively rebutted by the original trial record." *Id.* at 385, 701 N.E.2d at 1073.

¶ 15 Defendant's postconviction arguments allege defendant was denied the effective assistance of counsel guaranteed by the United States Constitution (U.S. Const., amends. VI, XIV) and the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 8). See *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984); *People v. Albanese*, 104 Ill. 2d 504, 526-27, 473 N.E.2d 1246, 1255-56 (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. To show ineffective assistance of counsel, a defendant must demonstrate (1) defense counsel's performance fell below an objective standard of reasonableness and (2) counsel's deficient performance prejudiced defendant. *Strickland* at 687-88; see also *Albanese*, 104 Ill. 2d at 526-27, 473 N.E.2d at 1255-56 (applying the two-pronged *Strickland* test to ineffective-assistance claims under the Illinois Constitution of 1970).

¶ 16 In his postconviction petition, defendant raises three ineffective-assistance arguments. First, defendant alleges his trial counsel failed to investigate and interview witnesses. Defendant failed to support this claim by "affidavits, records, or other evidence." This failure was fatal, especially as defendant identified neither the witnesses nor the content of their

expected testimony. Defendant's bald assertion that defense counsel should have uncovered exculpatory testimony from unnamed witnesses is insufficient to state the gist of a constitutional violation.

¶ 17 Second, defendant alleges counsel failed to request the appointment of an expert to evaluate defendant's fitness. Defendant claims his fitness to stand trial or to plead guilty was never evaluated as his counsel requested only a criminal-responsibility examination. However, this claim is belied by the record, which shows Jeckel was asked to--and did--evaluate defendant for both criminal responsibility and fitness to stand trial. Defendant stipulated to Jeckel's report, which indicated defendant was likely feigning mental illness to avoid a prison sentence. Relying on this expert opinion, the trial court concluded defendant was fit to stand trial.

¶ 18 Further, the record shows the trial court inquired into defendant's capacity to plead guilty. Based on defendant's statement that he understood the plea proceedings and the court's observation that defendant exhibited no abnormal behavior at any court appearance, the court concluded defendant entered his plea knowingly and voluntarily. As it is refuted by the record, defendant's allegation that counsel failed to request an evaluation of defendant's fitness to stand trial or plead guilty does not support a meritorious claim for postconviction relief.

¶ 19 Third, defendant alleges his counsel coerced him into pleading guilty by advising him that if he went to trial he would likely be sentenced to 60 years' imprisonment. The dialogue between defendant and the trial court at the plea hearing negates this contention. Defendant stated his plea had not been coerced by force or threat nor induced by any extraneous promise. Defendant cannot now maintain he was coerced into pleading guilty by counsel's threats of an extended sentence. Moreover, as the State points out, defendant would have been eligible for a

60-year sentence if he had been convicted and the State had sought an extended term based on the "brutal or heinous behavior indicative of wanton cruelty" exhibited by defendant in his commission of the crime. See 730 ILCS 5/5--5--3.2(b)(2) (West 2004). "That [a defendant] would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of free and rational choice." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Defendant may not claim he was denied the effective assistance of counsel where his plea was not coerced and resulted merely from his rational preference for a more lenient sentence.

¶ 20 As none of defendant's postconviction claims stated the gist of a constitutional violation, the trial court's summary dismissal of defendant's postconviction petition was not erroneous. Therefore, we agree with OSAD that this appeal presents no meritorious claim upon which defendant could realistically expect to obtain relief.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 23 Affirmed.