

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).

2011 IL App (4th) 100319-U

Filed 7/27/11

NO. 4-10-0319

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|-----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Cass County |
| RAYMOND R. MESIDOR, |) | No. 04CF108 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Richard D. Greenlief, |
| |) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the trial court did not err in dismissing defendant's postconviction petition, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.
- ¶ 2 In November 2004, defendant, Raymond R. Mesidor, pleaded guilty to one count of residential burglary and was sentenced to eight years in prison. In December 2009, defendant filed a "postconviction request," which the trial court dismissed. Thereafter, the office of the State Appellate Defender (OSAD) was appointed to represent defendant.
- ¶ 3 On appeal, OSAD moves to withdraw its representation of defendant pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be without merit. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5

In September 2004, the State charged defendant by information with single counts of home invasion (count I) (720 ILCS 5/12–11(a)(3) (West 2004)), residential burglary (count II) (720 ILCS 5/19–3(a) (West 2004)), and aggravated unlawful restraint (count III) (720 ILCS 5/10–3.1(a) (West 2004)).

¶ 6

In November 2004, defendant pleaded guilty to the charge of residential burglary. In exchange for his plea, the State agreed to dismiss counts I and III and to the imposition of an eight-year prison term. The trial court then sentenced defendant to eight years in prison and credited him with 72 days spent in custody. Defendant's sentence was to run concurrent to his misdemeanor conviction for domestic battery. Defendant did not file a direct appeal.

¶ 7

In December 2009, defendant filed a *pro se* "postconviction request," stating he was in the custody of the Department of Homeland Security (DHS) in the McHenry County jail awaiting a deportation hearing as a result of his residential-burglary conviction. Although he stated he had successfully served his prison term and completed his parole, defendant claimed his conviction had a "profound adverse ramification" on his pending immigration proceeding. He asked the trial court to reopen his case, vacate it, and reduce the charge.

¶ 8

In March 2010, the trial court found defendant failed to raise any issues reviewable in a postconviction petition, which was not timely filed. The court found the petition frivolous and dismissed it. Defendant filed an untimely notice of appeal. This court allowed defendant's late notice of appeal.

¶ 9

II. ANALYSIS

¶ 10

On appeal, OSAD has filed a motion to withdraw as counsel and has included a

supporting memorandum pursuant to *Finley*. Proof of service has been shown on defendant.

This court granted defendant leave to file additional points and authorities on or before April 20, 2011. He has done so, and the State has also filed a brief. Based on our examination of the record, we conclude, as has OSAD, that an appeal in this cause would be frivolous.

¶ 11 OSAD argues defendant lacked standing to file his postconviction petition because he served his prison sentence and was discharged from parole. The Illinois Post-Conviction Hearing Act (Act) provides that a defendant may only seek relief under the Act if he is "imprisoned in the penitentiary" when his petition is filed. 725 ILCS 5/122–1(a) (West 2008). Here, defendant stated in his petition that he had successfully completed his sentence and parole term. As a result, postconviction relief was unavailable to defendant. See *People v. West*, 145 Ill. 2d 517, 519, 584 N.E.2d 124, 125 (1991) (holding postconviction relief was unavailable to the petitioner who had fully served his underlying sentence).

¶ 12 Moreover, defendant was not "imprisoned in the penitentiary" because he was detained by DHS and facing deportation. In *People v. Carrera*, 239 Ill. 2d 241, 243, 940 N.E.2d 1111, 1112-13 (2010), the defendant pleaded guilty to unlawful possession of a controlled substance and was sentenced to probation. After completing his probation, the Immigration and Naturalization Service took him into custody and began deportation proceedings. *Carrera*, 239 Ill. 2d at 243, 940 N.E.2d at 1113. Thereafter, the defendant filed a postconviction petition, claiming his guilty plea was not voluntary because it was entered on erroneous legal advice. *Carrera*, 239 Ill. 2d at 244, 940 N.E.2d at 1113.

¶ 13 On appeal, the supreme court found the defendant had no standing under the Act to file a postconviction petition. *Carrera*, 239 Ill. 2d at 253, 940 N.E.2d at 1118. "Given the fact

that defendant had fully served his underlying sentence prior to filing his postconviction petition, defendant's liberty was not curtailed by the state in any way, and he was not a person 'imprisoned in the penitentiary,' as required in order to file a claim for postconviction relief." *Carrera*, 239 Ill. 2d at 253, 940 N.E.2d at 1118.

¶ 14 In the case *sub judice*, defendant served his prison sentence and completed his parole term prior to filing his postconviction petition. "[A] postconviction remedy is available only to those that are actually being deprived of their liberty, and not to those who have served their sentences and might wish to purge their records of past convictions." *Carrera*, 239 Ill. 2d at 257, 940 N.E.2d at 1121. The current constraints on defendant's liberties are being imposed by federal authorities. As defendant is no longer imprisoned in the penitentiary for his state crime, dismissal of his postconviction petition was appropriate. As any appeal in this matter would be frivolous, we grant OSAD's motion to withdraw.

¶ 15 III. CONCLUSION

¶ 16 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.

¶ 17 Affirmed.