2013 IL App (4th) 100782-U

NO. 4-10-0782

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 31, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JULIUS R. JAMES,	)	Nos. 08CF1114
Defendant-Appellant.	)	08CF1115
	)	08CF1296
	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Because the allegations in the postconviction petition were nonspecific, conclusory, and contradicted by the record, the petition was "frivolous" and "patently without merit," and its summary dismissal was justified. 725 ILCS 5/122-2.1(a)(2) (West 2010).

¶ 2 Defendant, Julius R. James, appeals from the summary dismissal of his petition for postconviction relief. See 725 ILCS 5/122-2.1(a)(2) (West 2010). Pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), the office of the State Appellate Defender (OSAD) moves for permission to withdraw from representing him, because, for the reasons OSAD discusses in its motion, it regards the appeal as frivolous. We notified defendant of his right to respond, by a certain date, with additional points and authorities, but he has not done so. After reviewing the record, we agree with OSAD that no reasonable argument could be made

in support of this appeal. Therefore, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On September 28, 2008, three men wearing hoodies and masks entered the Windjammer bar, where they used BB guns and paint-ball guns to rob the bartender and the patrons. None of the witnesses could identify the robbers. All they could say was that the robbers were three African-American men.

¶ 5 Three days after the robbery, on October 1, 2008, a confidential source for the Bloomington police department bought some cocaine from defendant. The transaction took place in defendant's apartment, approximately one block from the Windjammer bar. Later, the confidential source bought more cocaine from defendant.

¶ 6 On the bases of these controlled purchases of cocaine, the police obtained a warrant to search defendant's apartment. In his apartment, police officers found hoodies and paint-ball guns, all of which matched witnesses' descriptions of the items used in the robbery. In addition, defendant was wearing an ankle monitor, which showed that he was "off the grid" during the robbery.

¶ 7 Defendant admitted to the police that he had sold cocaine to the confidential source, and he also admitted participating in the robbery of the Windjammer bar. But he refused to name the other participants in the robbery.

¶ 8 In McLean County case No. 2008-CF-1114, the State charged defendant with two counts of unlawful delivery of a controlled substance (less than 1 gram) (720 ILCS 570/401(d)(i) (West 2008)) and one count of unlawful possession of a controlled substance with the intent to deliver it (more than 1 gram but less than 15 grams) (720 ILCS 570/401(c)(2) (West 2008)).

¶ 9 In another case, McLean County case No. 2008-CF-1115, a grand jury returned an indictment charging defendant with three counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)). Later, by information, the State added count IV, charging him with aggravated robbery (720 ILCS 5/18-5(a) (West 2008)).

¶ 10 While in pretrial custody for these charges, defendant was in the television room, and some inmates got into a verbal altercation. Correctional officers ordered the inmates to go to their cells for a "lockup," and all the inmates complied with that order except for defendant, who remained in the television room. He picked up the television and threw it on the floor, breaking it. He also damaged a clock radio. As a result, in McLean County case No. 2008-CF-1296, the State charged him with two counts of criminal damage to government supported property (720 ILCS 5/21-4(1)(a) (West 2008)).

¶ 11 On March 9, 2009, pursuant to a fully negotiated plea agreement, defendant pleaded guilty to the count of aggravated robbery, guilty to one count of unlawful delivery of a controlled substance in an amount less than one gram, and guilty to one count of criminal damage to government supported property. In return, the trial court sentenced him to 17 years' imprisonment for aggravated robbery, 12 years' imprisonment for unlawful delivery, and 3 years' imprisonment for criminal damage to government supported property. The court ordered that the first two prison terms run concurrently but that the third prison term run consecutively to the first two. The State dismissed the remaining charges.

¶ 12 Three days later, on March 12, 2009, defendant filed a motion to withdraw the guilty pleas. He alleged that his defense counsel had provided ineffective assistance by failing to explain to him which evidence would be admissible in a trial, by failing to file motions on his behalf, by

discouraging him from taking his case to trial, by manipulating him into accepting the State's plea offer by telling him that his fianceé wanted him to plead guilty, and by telling him that certain "things [might] not fall [his] way at trial."

¶ 13 The trial court held a hearing on these claims of ineffective assistance. After extensively questioning defendant, defense counsel, and the prosecutor, the court found no potentially viable claim of ineffective assistance of counsel.

¶ 14 The trial court then held a hearing on whether defendant should be allowed to withdraw his guilty pleas. The court declined to allow him to do so, concluding that his guilty pleas were knowing and voluntary.

¶ 15 Defendant then filed a direct appeal, raising two issues regarding his *per diem* credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2008)). *People v. James*, No. 4-09-0487, slip order at 4-5 (October 18, 2010) (unpublished order under Supreme Court Rule 23). We affirmed the trial court's decision that he was entitled to only one *per diem* credit under section 110-14(a). *Id.* at 7.

¶ 16 On July 22, 2011, defendant filed a petition for postconviction relief. In the petition, he asserted that (1) he "was convicted by perjured information by the State's Attorney," (2) he "was denied effective assistance of counsel," and (3) he "was denied [his] right to [a] fair trial hearing of withdrawing [his] guilty plea [*sic*] due to the State making perjured testimony to [the] judge." He did not attach any affidavits or other supporting documentation to his petition; nor did his petition offer any explanation for the lack of such supporting materials.

¶ 17 On July 27, 2011, the trial court summarily dismissed the petition, finding it to be "frivolous" and "patently without merit." See 725 ILCS 5/122-2.1(a)(2) (West 2010).

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 In OSAD's view, the allegations in defendant's postconviction petition are problematic for three reasons.

¶ 21 First, the allegations are nonspecific and conclusory. "Nonfactual and nonspecific assertions which merely amount to conclusions are not sufficient to require a hearing under the [Post-Conviction Hearing] Act." *People v. Coleman*, 183 Ill. 2d 366, 381 (1998).

¶ 22 Second, the petition does not "have attached thereto affidavits, records or other evidence supporting its allegations"; nor does the petition "state why the same are not attached." 725 ILCS 5/122-2 (West 2010).

¶ 23 Third, the record positively contradicts most of the assertions in the petition. Defendant asserts he "was convicted by perjured information by the State's Attorney." On the contrary, he was convicted by his own guilty pleas. There was no trial, and hence no testimony, and hence no perjury. Defendant also asserts that he was denied a fair hearing on his motion to withdraw his guilty pleas, "due to the State making perjured testimony to [the] judge." In that hearing, however, only one person testified: defendant.

¶ 24 In short, we agree with OSAD that, for all three of these reasons, the summary dismissal of the postconviction petition was justified. It would be impossible to make any reasonable argument to the contrary.

¶ 25 III. CONCLUSION

¶ 26 For the foregoing reasons, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 27 Affirmed.