2012 IL App (4th) 110440-U

NOS. 4-11-0440, 4-11-0441 cons.

FILED
November 29, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL L. FIELDS, Defendant-Appellant.	)	Appeal from Circuit Court of Vermilion County Nos. 07CF183 08CF546 Honorable Michael D. Clary, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 Held: The trial court did not err in dismissing defendant's postconviction petition in which he claims he was denied the effective assistance of counsel when counsel failed to seek a fitness hearing.

¶ 2 In March 2011, defendant, Michael L. Fields, filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2010)). In his petition, defendant argued, in part, his trial counsel provided ineffective assistance of counsel for failing to request a fitness hearing. The trial court concluded the petition was frivolous and patently without merit, finding (1) the record did not support defendant's claim he was unfit to plead guilty in April 2009 and (2) defendant failed to attach any evidence supporting his claim. Defendant appeals, arguing he stated the gist of a constitutional claim. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This case involves consolidated appeals of two cases: No. 07-CF-183 and No. 08-CF-546. In No. 07-CF-183, defendant was charged with burglary (720 ILCS 5/19-1(a) (West 2006)) and criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2006)). In No. 08-CF-546, defendant was charged with attempt (burglary) (720 ILCS 5/8-4(a), 19-1(a) (West 2008)) and criminal damage to property over $300 (720 ILCS 5/21-1(1)(a) (West 2008)).

¶ 5 In April 2009, defendant entered a negotiated plea of guilty. Defendant pleaded guilty to the burglary counts, and, in exchange, the State dismissed the other charges. The parties agreed defendant would be sentenced to no more than 20 years in prison. Defendant was eligible for Class X sentencing on each burglary charge and faced mandatory consecutive sentences.

¶ 6 At the guilty-plea hearing, the trial court questioned defendant before accepting his plea:

> "THE COURT: How old are you, sir?
>
> THE DEFENDANT: Forty-eight.
>
> THE COURT: How far have you gone in school?
>
> THE DEFENDANT: GED.
>
> THE COURT: So you read and write English, correct?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Have you ever been hospitalized as a person in need of mental treatment?
>
> THE DEFENDANT: No.
>
> THE COURT: Are you currently being treated by a doctor

for anything?

THE DEFENDANT: Yes.

THE COURT: Can you tell me what?

THE DEFENDANT: Uhm, cancer and colostomy bag.

THE COURT: Okay. Do you take prescription medicines?

THE DEFENDANT: Yeah.

THE COURT: Can you tell me what they are?

THE DEFENDANT: Percocet, Klonopin, and Trazodone. Catapres.

THE COURT: Have you had whatever dosages that you would normally have by now today?

THE DEFENDANT: Yes.

THE COURT: Okay. Is there anything about your medication or your condition that you think in any way affects your ability to understand what we're doing here this morning?

THE DEFENDANT: No.

THE COURT: All right. Have you understood everything I've said so far?

THE DEFENDANT: Yes.

THE COURT: I notice you've been kind of favoring one ear. I take it you have a little bit of a hearing issue.

THE DEFENDANT: Uh-huh.

THE COURT: If you either don't understand or can't hear something, will you make sure you raise your hand and let me know that?

THE DEFENDANT: Yes."

¶ 7 The trial court then explained the charges and potential sentences. When asked if he understood, defendant replied he did. The court explained the negotiated plea, and defendant stated he understood the terms of the plea. Defendant answered he did not have questions regarding the plea and said he wanted to enter a guilty plea. Defendant stated he understood his rights and the effect of the guilty pleas. When asked "how do you plead to that offense," defendant responded, "Guilty." The court accepted the pleas and set the matter for sentencing.

¶ 8 A June 2009 presentence report recounted defendant's lengthy criminal history. The report shows defendant, in May 1998, pleaded guilty, but mentally ill, to a residential-burglary charge. Defendant was referred to Crosspoint Human Services (Crosspoint) for an examination to determine if defendant was mentally ill when he committed the offense. In October 1998, defendant was sentenced to 15 years' imprisonment.

¶ 9 The presentence report contains other references regarding defendant's mental health. In the section entitled "Physical and Mental History and Condition," the reporting officer stated defendant took "Pepcid for ulcers, Clonodine for blood pressure, Nerottin for seizures, Percocet for pain and intestine problems, Klonipin for seizures and anxiety, and Trazadone for depression." Defendant also stated he had been in the "Psych Unit at Dixon Correctional [C]enter" and he received "counseling at Crosspoint for depression, anxiety, posttraumatic stress disorder, and psychoffective disorder." The author of the report recommended the following to

aid in defendant's rehabilitation: defendant should obtain a mental-health assessment and cooperate with recommended counseling and treatment.

¶ 10 Attached to the presentence report are mental-health records from Crosspoint. The records are dated from February 2006 until April 2007. One record from 2006 refers to defendant as "alert [and] oriented," but states defendant complained of hearing voices two to three times a day telling him to hurt himself. That same record indicates defendant did not have suicidal or homicidal ideations. Other records indicate defendant suffered depression, mood swings, and anxiety. According to a February 2007 record, defendant also experienced "some hallucinations." A biopsychosocial assessment, dated January 2007, indicates defendant was alert, oriented, and goal directed. Defendant reported forgetfulness and mood swings. Defendant suffered auditory and visual hallucinations. Defendant claimed his deceased father and dog talked to him, telling him to hurt himself. Defendant also suffered paranoia, claiming people followed him and listened to his conversations through the television. Defendant had sleep problems as well. One entry states the following: "4 attempts, cut self, hang self, ideations, tear things up; verbal aggression."

¶ 11 The presentence report also contains medical records from Provena United Samaritans Medical Center. A patient history report, dated October 2008 and authored by L. Royce Larsen, the physician who performed a colonoscopy on defendant, summarized defendant's mental and physical condition. Dr. Larsen found defendant "awake, alert, oriented to time, place and person." Other records from the medical center indicate defendant was "alert" and "oriented."

¶ 12 At an October 2009 sentencing hearing, defendant was not present. Because

defendant had received his absentia warnings, the trial court proceeded with sentencing. Defense counsel asked for the minimum six-year sentence on each count. Defense counsel argued defendant had mental-health and medical problems "for quite some time." Defense counsel maintained defendant had self-medicated much of his life and was seeking help to deal with getting clean and sober. Defense counsel further stated the first offense involved defendant taking $100 from the manager's office at a grocery store and the other was defendant's attempt to get into a hotel bar after closing to get into the cash register. Defense counsel highlighted no violence or threats were involved.

¶ 13 The trial court concluded, due to defendant's lengthy criminal history, a sentence "substantially more than the minimum" was required. The court observed defendant had significant health issues, but determined those issues, in large part, were due to his drug and alcohol usage. In No. 08-CF-546, the court sentenced defendant to a prison term of nine years. In No. 07-CF-183, the court sentenced him to eight years' imprisonment, to be served consecutively to the sentence in No. 08-CF-546.

¶ 14 In March 2011, defendant filed his *pro se* postconviction petition. Defendant alleged defense counsel provided ineffective assistance because, in part, counsel refused to request a fitness hearing. In his petition, defendant specifically alleged he "asked [the] public defender to order [a] fitness hearing," but was told "the judge won't allow that." Defendant alleged he asked counsel "for a fitness interview to determine his sanity at the time of [the] offense." Defendant asserted he had a lengthy history of mental-health problems. Defendant alleged, when he entered his plea, he "was on heavy medications ***, impairing his ability to comprehend what took place during the plea [agreement]." Defendant attached no affidavits or

other evidence to support his petition.

¶ 15 In April 2011, the trial court dismissed defendant's petition as frivolous and patently without merit. The court observed, when the plea was accepted in April 2009, the trial court questioned defendant about any hospitalization for mental treatment and his medications, and the court was satisfied with those answers. The court further noted the presentence report indicated defendant had been treated for depression, anxiety, post-traumatic stress disorder, and other conditions, but "[t]here was no indication to probation from the [d]efendant that he could not understand the proceedings." The court cited the medical records dated 2006 to 2008, which showed defendant had been treated for depression, anxiety and auditory hallucinations, but these records did not indicate "[d]efendant was unable to understand what he was doing." The court found the record did not support the claim defendant was unfit as of April 2009 and defendant had not attached any evidence to support his claims.

¶ 16 Defendant appealed. This court docketed defendant's appeal in case No. 07-CF-183 as No. 4-11-0440 and docketed defendant's appeal in case No. 08-CF-546 as No. 4-11-0441. In August 2011, we allowed defendant's motion to consolidate the appeals.

¶ 17 II. ANALYSIS

¶ 18 A. Postconviction Proceedings

¶ 19 The Act sets forth a three-stage process by which a defendant in noncapital cases may obtain postconviction review of his claims that a substantial denial of his constitutional rights resulted upon his conviction. *People v. Dopson*, 2011 IL App (4th) 100014, ¶ 17, 958 N.E.2d 367, 372. At the first stage of proceedings, after a petition is filed, the trial court examines the petition and dismisses any petition deemed frivolous or patently without merit.

People v. Andrews, 403 Ill. App. 3d 654, 658, 936 N.E.2d 648, 652 (2010); see also 725 ILCS 5/122-2.1(a)(2) (West 2008). A postconviction petition will be found frivolous or patently without merit "if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). A petition lacking an arguable basis in either law or fact is one "based on an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. "An example of an indisputably meritless legal theory is one which is completely contradicted by the record." *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. "Fanciful factual allegations include those [that] are fantastic or delusional." *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212.

¶ 20 Most petitions in the first stage are drafted by defendants having little legal knowledge or training. *Hodges*, 234 Ill. 2d at 9, 912 N.E.2d at 1208. A *pro se* defendant thus must "only present a limited amount of detail in the petition," alleging sufficient "facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Hodges*, 234 Ill. 2d at 9, 912 N.E.2d at 1208.

¶ 21 This low threshold does not excuse a *pro se* petitioner from providing any factual details. See *Hodges*, 234 Ill. 2d at 10, 912 N.E.2d at 1208. The Act requires a petitioner to attach "affidavits, records, or other evidence supporting its allegations" or to state why such evidence is not attached. 725 ILCS 5/122-2 (West 2010). A *pro se* petitioner need not provide a complete and detailed recitation of facts, but must provide some facts that can be corroborated and are objective in nature or explain why such facts are absent. *People v. Delton*, 227 Ill. 2d 247, 254-55, 882 N.E.2d 516, 520 (2008).

¶ 22 B. Defendant's Claim His Postconviction Petition States the Gist of a Claim He was Denied the Effective Assistance of Counsel

¶ 23 On appeal, defendant argues his petition should not have been dismissed because he stated the gist of a claim he was denied the effective assistance of counsel. Defendant emphasizes his lengthy history of mental-health problems, his psychotropic medications, and defense counsel's refusal to request a fitness hearing. In support, defendant relies upon the Second District's decision in *People v. Sawczenko*, 328 Ill. App. 3d 888, 898, 767 N.E.2d 519, 529 (2002).

¶ 24 A defendant may not be convicted or sentenced if that person is incompetent to stand trial. *People v. Williams*, 364 Ill. App. 3d 1017, 1023, 848 N.E.2d 254, 259 (2006). Under Illinois law, "[a] defendant is presumed to be fit to stand trial or to plead, and be sentenced." 725 ILCS 5/104-10 (West 2008). If, however, the trial court has a *bona fide* doubt of the defendant's fitness, "the trial court must order a fitness hearing so that the question of fitness may be resolved before the matter proceeds any further." *Williams*, 364 Ill. App. 3d at 1023, 848 N.E.2d at 259. A defendant is fit to plead guilty, stand trial, or be sentenced if he is able to understand the purpose and nature of the proceedings against him or assist in his defense. *Williams*, 364 Ill. App. 3d at 1023, 848 N.E.2d at 259; 725 ILCS 5/104-10 (West 2008).

¶ 25 Defendant agues he was denied the effective assistance of counsel because his counsel refused to seek a fitness hearing. At the first stage of proceedings under the Act, a petition asserting ineffective assistance of counsel may not properly be summarily dismissed if it is arguable: (1) counsel's performance fell below an objective standard of reasonableness, and (2) defendant was prejudiced. *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212. Generally, when a

defendant seeks to establish counsel was ineffective for failing to seek a fitness hearing, the prejudice prong may be satisfied by showing the trial court, had it been informed of the evidence at that time, would have found a *bona fide* doubt of the defendant's fitness and ordered a fitness hearing. *People v. Harris*, 206 Ill. 2d 293, 304, 794 N.E.2d 181, 189 (2002). In this context, an appeal from a first-stage dismissal of a postconviction petition, defendant need only show it is *arguable* the trial court would have found a *bona fide* doubt of defendant's fitness and granted a fitness hearing to prove the prejudice prong. See generally *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212. In deciding whether a *bona fide* doubt of defendant's fitness exists, "a court may consider the defendant's irrational behavior, the defendant's demeanor at trial, and any prior medical opinion on defendant's competence." *Harris*, 206 Ill. 2d at 304, 794 N.E.2d at 190.

¶ 26 We find defendant's petition is based on an indisputably meritless legal theory and was properly dismissed at the first-stage of proceedings. "A legal theory is indisputably meritless if it is completely contradicted by the record." *People v. Brown*, 236 Ill. 2d 175, 189, 923 N.E.2d 748, 757 (2010). We take all well-pleaded facts as true unless they are rebutted positively by the record. *Brown*, 236 Ill. 2d at 189, 923 N.E.2d at 757.

¶ 27 Defendant's argument is contradicted by the record. The record shows defendant had a lengthy history of mental illness that may have included at least one suicide attempt and defendant was taking psychotropic medications at the time of his plea. These facts only establish defendant suffered a mental illness. Any inference, however, from these facts defendant was unable to understand the nature or the purpose of the proceedings or help in the defense is indisputably contradicted by the record. Defendant exhibited no irrational behavior, and acted in a reasonable and competent manner at the plea hearing. In addition, there was no medical

opinion on the issue of defendant's competence, meaning a *bona fide* doubt would not have been found. See generally *Harris*, 206 Ill. 2d at 304, 794 N.E.2d at 190 (outlining a trial court's considerations for granting a fitness hearing). The same mental-health records defendant relies upon, dated one to three years before his plea, show defendant, while suffering mental-health issues, was "alert," "oriented," and "goal-driven." Defense counsel saw no indication a fitness hearing was required. The trial court, before accepting defendant's plea, questioned defendant extensively. Defendant's direct and responsive answers indicate defendant understood the proceedings. The probation officer who interviewed defendant for the presentence report gave no indication defendant was unfit. These facts rebut the only affirmative allegation defendant's mental acuity was impaired. A fitness hearing would focus on the present. Defendant's claims are based on records from several years before his plea. The question is not whether defendant's physical and mental health made it difficult for him to conduct his daily life, but whether when charged with a crime, he understood the proceedings against him and could assist his lawyer in his defense. Nothing in this record suggests defendant did not understand his rights, the nature of the proceedings, or was unable to assist his attorney.

¶ 28 *Sawczenko* does not require a different result. In *Sawczenko*, the postconviction petitioner alleged he should have been granted a fitness hearing as he was taking psychotropic medication at the time of his guilty plea and he had attempted suicide just two days before his pleading guilty. See *Sawczenko*, 328 Ill. App. 3d at 898, 767 N.E.2d at 529. The Second District found these allegations sufficiently stated the gist of a constitutional claim. *Sawczenko*, 328 Ill. App. 3d at 898, 767 N.E.2d at 529. The opinion in *Sawczenko* does not, however, include any transcript testimony, like that here, that shows defendant's conversations with the trial court were

rational and coherent. In addition, the allegations made by defendant in *Sawczenko* show some of defendant's legal decisions were irrationally influenced; for example, defendant alleged that " 'extreme religiousism [*sic*]' due to insomnia led him to believe that he was to withdraw his postconviction petition 'by divine providence.' " *Sawczenko*, 328 Ill. App. 3d at 891, 767 N.E.2d at 523. No such evidence exists here.

¶ 29 We find no error in the trial court's decision dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 30 III. CONCLUSION

¶ 31 We affirm the trial court's judgment. We grant the State its statutory assessment of $50 against defendant as costs of this appeal.

¶ 32 Affirmed.