2013 IL App (4th) 110772-U

NO. 4-11-0772

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 5, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Jersey County
BRYON KEIDEL,	)	No. 08CF172
Defendant-Appellant.	)	
	)	Honorable
	)	Eric S. Pistorius,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Where the allegations in defendant's postconviction petition did not provide a nexus between the alleged abuse by jail officials in a different county on different charges and the guilty plea in this case, the petition failed to state the gist of a constitutional claim.

¶ 2 In September 2008, pursuant to a plea agreement, defendant pleaded guilty to criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2006)) with an agreed upon sentence of 15 years' imprisonment to run concurrent with the sentence in his Madison County case (People v. Keidel, No. 06-CF-1686 (Cir. Ct. Madison Co.)). In August 2011, defendant filed a *pro se* postconviction petition, asserting he pleaded guilty to the charge in this case because of how poorly he was treated in the Madison County jail on other charges. That same month, the Jersey County circuit court dismissed defendant's petition as frivolous and patently without merit.

¶ 3 Defendant appeals, asserting his postconviction petition does state the gist of a

constitutional claim. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On September 3, 2008, the State charged defendant by information with one count of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2006)) for defendant's alleged actions in May 2006.

¶ 6 On September 28, 2008, the trial court held the plea hearing on the criminal-sexual-assault charge. When the court asked defendant what the proposed plea agreement was, defendant responded, "18 years to run concurrent with a class X in Madison County." The court questioned defendant's eligibility for an extended-term sentence, and defendant appropriately answered the court's questions. When the court realized defendant was ineligible for an extended-term sentence, it recessed the plea hearing to allow the parties to discuss the case.

¶ 7 After the recess, the parties submitted a proposed plea agreement with a 15-year sentence. The trial court explained to defendant that, while the sentence was the maximum, the State's concession was the sentence would be concurrent to the one in Madison County. Defendant stated he understood and pleaded guilty to the charge. When asked if "[a]ny force or threats been made to get you to plead guilty," defendant responded in the negative. After the factual basis and a few more questions, the court found defendant's guilty plea was voluntary and accepted the plea. The court then addressed sentencing. It gave defendant the opportunity to address the court, and he declined. The court sentenced defendant to the agreed upon 15-year prison term to run concurrent with the sentence in the Madison County case. Defendant did not appeal.

¶ 8 On August 8, 2011, defendant filed his 26-page postconviction petition. Most of

the petition detailed the abuse he suffered in the Madison County jail. Defendant submitted an affidavit of his own stating the facts in the petition were true and correct to the best of his recollection but did not attach any supporting materials to his petition or explain their absence. On August 11, 2011, the trial court dismissed the petition, noting the petition did not raise any constitutional issues or suggest specific allegations of error as to the Jersey County charge. On August 29, 2011, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). See Ill. S. Ct. R. 651(d) (eff. Dec. 1, 1984) (providing the supreme court rules governing criminal appeals apply to appeals in postconviction proceedings). Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 651(a) (eff. Dec. 1, 1984).

¶ 9 On appeal, defendant moved to supplement the record with the common-law record and transcript of the August 8, 2008, proceedings in the Madison County case. On November 16, 2012, before this case was submitted for disposition, this court allowed the motion over the State's objection.

¶ 10 II. ANALYSIS

¶ 11 In this appeal, defendant challenges the trial court's dismissal of his *pro se* postconviction petition at the first stage of the proceedings. We review *de novo* the trial court's dismissal of a postconviction petition without an evidentiary hearing. *People v. Simms*, 192 Ill. 2d 348, 360, 736 N.E.2d 1092, 1105-06 (2000).

¶ 12 The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/art. 122 (West 2010)) provides a defendant with a collateral means to challenge his or her conviction or sentence for violations of federal or state constitutional rights. *People v. Jones*, 211 Ill. 2d 140,

143, 809 N.E.2d 1233, 1236 (2004). When a case does not involve the death penalty, the adjudication of a postconviction petition follows a three-stage process. *Jones*, 211 Ill. 2d at 144, 809 N.E.2d at 1236. At the first stage, the trial court must, independently and without considering any argument by the State, decide whether the defendant's petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010). To survive dismissal at this initial stage, the postconviction petition "need only present the gist of a constitutional claim," which is "a low threshold" that requires the petition to contain only a limited amount of detail. *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996). Legal argument or citation to legal authority is not required. *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). However, section 122-2 of the Postconviction Act (725 ILCS 5/122-2 (West 2010)) requires the petition to "have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." In analyzing the petition, courts are to take the allegations of the petition as true, as well as liberally construe them. *Brown*, 236 Ill. 2d at 184, 923 N.E.2d at 754.

¶ 13 Moreover, our supreme court has explained a court may summarily dismiss a *pro se* postconviction petition "as frivolous or patently without merit only 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 lacks an arguable legal basis when it is based on an indisputably meritless legal theory, such as one the record completely contradicts. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition lacks an arguable factual basis when it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Hodges*, 234 Ill. 2d at 16-17, 912 N.E.2d at 1212.

¶ 14 We must first address what this court can consider at the first stage of the postconviction proceedings. On appeal, defendant asks us to take judicial notice of the common-law record and transcript of the guilty plea proceeding in his Madison County case. In support of his request, he cites the Second District's decision in *People v. Mann*, 341 Ill. App. 3d 832, 835, 794 N.E.2d 425, 428 (2003), where the reviewing court took judicial notice of the record in a separate case when reviewing the trial court's grant of a motion to dismiss the indictment. Here, the proceedings are under the Postconviction Act. Section 122-2.1(c) of the Postconviction Act (725 ILCS 5/122-2.1(c) (West 2010)) provides that, at the first stage of the proceedings, "the court may examine the court file of the proceeding *in which the petitioner was convicted*, any action taken by an appellate court in such proceeding and any transcripts of such proceeding." (Emphasis added.) The Madison County record and transcript were never made part of the trial court record in this case, and defendant did not attach them to his petition or provide an explanation for why he did not attach the document (see 725 ILCS 5/122-2 (West 2010)). Accordingly, since the Madison County record and transcript was never made part of the trial court's proceedings in this case, we decline to take judicial notice of them.

¶ 15 We also find that, in this case, defendant's affidavit was sufficient to satisfy section 122-2 of the Postconviction Act (725 ILCS 5/122-2 (West 2010)). The reason for the lack of affidavits from his attorneys in the Madison County case and from the Madison County jail officials is self-evident.

¶ 16 As to the merits of defendant's petition, defendant's petition lacks an arguable basis in law. On appeal, defendant cites no case law for the proposition abusive jail conditions in another county while awaiting trial on different charges renders a guilty plea involuntary in a

subsequent case. Moreover, the facts alleged by defendant in his petition do not show a nexus between the alleged abusive conditions at the Madison County jail and his guilty plea in this case. While defendant alleges he entered into a plea agreement in both cases while jailed in Madison County, the alleged agreement for the Jersey County charge provided for a sentence that defendant was ineligible to receive. Thus, the parties in this case had to renegotiate a new plea agreement during a recess of the plea hearing. Accordingly, defendant did not plead guilty under the plea agreement established in Madison County. Further, defendant's recitation of facts in his petition shows he had been out of the Madison County jail for a period of time before the guilty plea hearing in this case. In fact, he was in his second Department of Corrections (DOC) facility when he was sent to Jersey County for the plea hearing. Defendant made no complaints in his petition about the second DOC facility. Thus, we are not dealing with allegations defendant was being abused by jail or prison officials when he pleaded guilty in this case. Defendant also had ample time to reconsider his decision to plead guilty in this case.

¶ 17 The transcript of the plea hearing in this case also contradicts defendant's allegation his plea was involuntary. The record demonstrates the trial court complied with Illinois Supreme Court Rule 402 (eff. July 1, 1997) and determined defendant's plea was voluntary. Defendant answered in the negative when questioned if any force or threats had been made to get him to plead guilty. Defendant never mentioned the abuse in Madison County jail at the plea hearing. Additionally, contrary to his petition, the transcript of the plea hearing shows defendant answered the trial court's questions appropriately and did more than answer in the affirmative to the court's questions.

¶ 18 As to defendant's suggestion he was afraid of being abused in Jersey County when

he pleaded guilty, we note defendant stated in his petition that, before attending the plea hearing, he was aware he would be driven to Jersey County and then driven back to DOC after the plea hearing. Thus, even if defendant reasonably believed Jersey County jail would be like Madison County jail, defendant knew he was not going to Jersey County jail after the plea hearing. Further, as stated, defendant did not come to the plea hearing from the alleged abusive environment of the Madison County jail or another facility that defendant alleged was abusive. Accordingly, under the facts alleged by defendant, he had nothing to get away from when he pleaded guilty in this case.

¶ 19 Last, we note that, even considering the Madison County record in analyzing defendant's petition at the first stage of the proceedings, defendant failed to establish a nexus between the abuse in Madison County and his guilty plea in this case.

¶ 20 Since defendant's petition lacks an arguable basis in law, the trial court properly dismissed it at the first stage of the postconviction proceedings.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the Jersey County circuit 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.