

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).

2013 IL App (4th) 120284-U

NO. 4-12-0284

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

August 30, 2013

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from        |
| Plaintiff-Appellee,                  | ) | Circuit Court of   |
| v.                                   | ) | Champaign County   |
| EDDIE J. MILLER,                     | ) | No. 02CF1027       |
| Defendant-Appellant.                 | ) |                    |
|                                      | ) | Honorable          |
|                                      | ) | Thomas J. Difanis, |
|                                      | ) | Judge Presiding.   |

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**ORDER**

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

¶ 1 *Held:* Because the trial court did not abuse its discretion by denying defendant's amended petition for relief from judgment, the judgment is affirmed.

¶ 2 Defendant, Eddie J. Miller, who is serving a 42-year prison sentence for heinous battery (720 ILCS 5/12-4.1(a) (West 2002)), appeals from the denial of his amended petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)). The office of the State Appellate Defender (OSAD) moves to withdraw from representing him in this appeal, because OSAD does not believe that any reasonable argument could be made in support of this appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Defendant has responded with additional points and authorities, and the State also has filed a brief. After reviewing these materials and the record, we agree with OSAD's assessment of the merits of this appeal. Therefore, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 3

## I. BACKGROUND

¶ 4

On June 30, 2002, the State charged defendant with heinous battery (720 ILCS 5/12-4.1(a) (West 2002)) in that on June 1, 2002, he threw hot oil on the face and hands of Ruscenda Jackson.

¶ 5

On January 16, 2003, a jury found defendant guilty of the charged offense.

¶ 6

On February 27, 2003, the trial court sentenced defendant to imprisonment for 42 years.

¶ 7

Defendant took a direct appeal, and we affirmed his conviction and sentence. *People v. Miller*, No. 4-03-0220 (Jan. 7, 2005) (unpublished order under Supreme Court Rule 23).

¶ 8

On September 26, 2005, defendant filed a petition for postconviction relief. In his petition, he accused his trial counsel of rendering ineffective assistance.

¶ 9

On December 21, 2005, the trial court summarily dismissed the postconviction petition. We affirmed the summary dismissal. *People v. Miller*, No. 4-06-0174, slip order at 1 (Feb. 28, 2008) (unpublished order under Supreme Court Rule 23).

¶ 10

On February 1, 2012, defendant filed a petition for relief from judgment. The State moved to dismiss the petition as legally insufficient (see 735 ILCS 5/2-615 (West 2012)), and the trial court granted the motion on February 27, 2012.

¶ 11

On March 19, 2012, defendant filed an amended petition for relief from judgment. The State moved to dismiss the amended petition, again as legally insufficient (735 ILCS 5/2-615 (West 2012)). On March 26, 2012, the trial court stated in a docket entry: "Defendant's Amended 2-1401 Petition is DENIED."

¶ 12

This appeal followed.

¶ 13

## II. ANALYSIS

¶ 14 We ask whether the trial court abused its discretion by denying defendant's amended petition for relief from judgment. See *People v. Lott*, 325 Ill. App. 3d 749, 751 (2001).

¶ 15 We are concerned only with the amended petition, not the original petition. Because the amended petition does not incorporate the original petition, we deem the original petition to be abandoned. See *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill.2d 150, 154 (1983); *Jacobson v. Gimbel*, 2013 IL App (2d) 120478, ¶ 22.

¶ 16 Public Act 80-1099 (eff. Feb. 1, 1978), which began as House Bill 1500 (80th Ill. Gen.Assem., House Bill 1500, 1977 Sess.), created the offense of heinous battery, the offense of which defendant was convicted. In his amended petition for relief from judgment, defendant takes the position that Public Act 80-1099 is void and that his conviction of heinous battery therefore is void.

¶ 17 His rationale for this position is as follows (we quote from the amended petition):

"On March 31, 1977, the House Judiciary Committee attached House amendment #1 to the bill and sen[t] it back to the full house for a vote, May 19, 1977. The House voted to pass the bill with a vote of 153 (aye) and 6 voting (nay) and 6 voting (present). The bill passed the full House and was sen[t] to the Senate. On June 27, 1977, the House amendment was tabled with Bill 1500. Because the bills [*sic*] was inconsist[e]nt with the Senate rule that means Public Act 80-1099 and statu[t]e 12-4.1 does not provides [*sic*] any authority. To this day the bill is dead. The bill was passed dead." (Emphases in original.)

¶ 18 Defendant seems to be under the impression that after the House of Representatives passed House Bill 1500 and sent it to the Senate, the Senate tabled a House amendment to the bill and thereafter passed the unamended version of the bill. So, defendant appears to believe that the House of Representatives passed one version of the bill (the amended version) and that the Senate passed a different version of the bill (the unamended version) and that, consequently, both houses of the legislature never voted in favor of the bill that the Governor subsequently signed.

¶ 19 Defendant appears to be mistaken as to the facts. On April 28, 1977, in the House of Representatives, the Committee on Judiciary II recommended passage of House Bill 1500 as amended. 80th Ill. Gen. Assem., Proceedings of the House of Representatives, Apr. 28, 1977, at 2. On May 19, 1977, the House of Representatives passed House Bill 1500. 80th Ill. Gen. Assem., Proceedings of the House of Representatives, May 19, 1977, at 107-08.

¶ 20 House Bill 1500 then went to the Senate, and a Senate committee proposed an amendment to the bill, amendment No. 1, which was tabled on June 27, 1977. 80th Ill. Gen. Assem., Proceedings of the Senate, June 28, 1977, at 140 (statements by Senator Egan) ("Yes, now last evening, Mr. President, it was . . . it's my best recollection that we Tabled the . . . the committee . . . the Senate committee amendment on this bill \*\*\*.").

¶ 21 On November 22, 1977, six other amendments proposed in the Senate, amendment Nos. 2 through 7, were tabled because those proposed amendments had been incorporated into a single proposed Senate amendment, amendment No. 8. 80th Ill. Gen. Assem., Proceedings in the Senate, Nov. 22, 1977, at 83. On that same date, the Senate adopted amendment No. 8 (80th Ill. Gen. Assem., Proceedings in the Senate, Nov. 22, 1977, at 84) and

then passed House Bill 1500 as amended by Senate amendment No. 8 (80th Ill. Gen. Assem., Proceedings in the Senate, Nov. 22, 1977, at 124-25).

¶ 22 Because the Senate voted in favor of House Bill 1500 only as amended by Senate amendment No. 8, the bill had to go back to the House of Representatives for its approval. On November 23, 1977, Representative Schlickman remarked: "[W]e have here an 80-page Amendment, Amendment #8 to a very important Bill, a Bill that was greatly changed in the Senate." 80th Ill. Gen. Assem., Proceedings in the House of Representatives, Nov. 23, 1977, at 101 (statements by Representative Schlickman). On that date, the House of Representatives concurred in Senate amendment No. 8 to House Bill 1500. 80th Ill. Gen. Assem., Proceedings in the House of Representatives, Nov. 23, 1977, at 121. Thus, contrary to defendant's apparent contention, both houses of the Illinois General Assembly passed House Bill 1500 as amended by Senate amendment No. 8.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we grant OSAD's motion to withdraw, we affirm the trial court's judgment, and we award the State \$50 in costs against defendant.

¶ 25 Affirmed.