

**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).

2014 IL App (4th) 130024-U

NO. 4-13-0024

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 22, 2014

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.	)	Macon County
ROLANDO D. ROYSTER,	)	No. 10CF1084
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

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PRESIDING JUSTICE APPLETON delivered the judgment of the court.  
Justices Turner and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* We grant the office of the State Appellate Defender's motion to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirm the circuit court's dismissal of defendant's postconviction petition where defendant's petition did not present a meritorious claim.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2010, a jury found defendant guilty of residential burglary after the State presented evidence that a witness watched defendant enter the victim's home through a window and exit through the front door while the victim was not home. The next day, the victim reported his cellular telephone was missing. The trial court sentenced defendant to 12 years in

prison. Defendant appealed, claiming the evidence was insufficient to prove he had entered the victim's home with the intent to commit a theft. He also challenged the imposition of various fines and fees. We affirmed defendant's conviction, vacated the fines imposed by the circuit clerk, reimposed several fines, and remanded with directions to award appropriate sentencing credit. *People v. Royster*, 2013 IL App (4th) 110453-U, ¶ 27.

¶ 5 In September 2012, while his direct appeal was pending, defendant filed a *pro se* postconviction petition, claiming his trial counsel was ineffective. He claimed that, although he had consented to the introduction of a jury instruction on the lesser-included offense of criminal trespass, he did not authorize his attorney to concede his guilt to that offense. In her closing argument, counsel explained the difference between residential burglary and criminal trespass and ultimately asked the jury, based on the evidence presented, to find defendant not guilty of residential burglary "and find him guilty of criminal trespass to residence." Defendant claims counsel's actions deprived him of his constitutional right to the effective assistance of counsel.

¶ 6 Within 90 days, the circuit court entered an order summarily dismissing defendant's petition for failing "to set forth the gist of a meritorious constitutional claim." Defendant filed a timely notice of appeal with the trial court, and the court appointed OSAD to serve as his attorney. OSAD moved to withdraw as appellate counsel, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities. Defendant has done so and the State has filed an appellee's brief. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the court's judgment.

¶ 7

## II. ANALYSIS

¶ 8

OSAD claims no meritorious issues can be raised in this appeal. Specifically, OSAD asserts defendant's ineffective-assistance-of-counsel claim has no merit. Distinguishing the two supreme court cases cited by defendant in his postconviction petition, counsel argues no reasonable argument can be made supporting defendant's allegations. See *People v. Hattery*, 109 Ill. 2d 449 (1985) and *People v. Redmond*, 50 Ill. 2d 313 (1972). In both *Hattery* and *Redmond*, the supreme court found the defendants were not required to demonstrate the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984) (to prove a claim of ineffective assistance, a defendant must prove counsel's performance was deficient and he suffered prejudice from the deficiency), as generally required for the success of an ineffective-assistance-of-counsel claim. *Hattery*, 109 Ill. 2d at 465; *Redmond*, 50 Ill. 2d at 317. Instead, because both counsels' performances were so deficient, the courts found prejudice was presumed and the standard set forth in *United States v. Cronin*, 466 U.S. 648 (1984) applied. *Hattery*, 109 Ill. 2d at 465; *Redmond*, 50 Ill. 2d at 317.

¶ 9

*Hattery* is distinguishable from the case *sub judice* because in *Hattery*, counsel conceded defendant's guilt to the *only charged crime* and argued the only issue was whether the defendant was eligible for the death penalty. *Hattery*, 109 Ill. 2d at 464. Likewise, in *Redmond*, counsel conceded the defendant's guilt to the only charged crime and the appellate court described counsel's closing argument as "meaningless," and "confusing and incoherent." *Redmond*, 50 Ill. 2d at 316. Neither counsel had subjected the State's case to meaningful adversarial testing.

¶ 10

However, in defendant's case, counsel conceded defendant's guilt to the lesser-included offense, but presented a reasonable defense to the more serious offense. Thus, OSAD

likened defendant's case to *People v. Weger*, 154 Ill. App. 3d 706 (1987), where this court determined that counsel's concession to defendant's guilt of two charges, for which the State had presented overwhelming evidence of guilt, while still presenting a reasonable defense to a third charge, did not qualify for application of the *Cronic* standard. *Weger*, 154 Ill. App. 3d at 710 (this court declined to "create a blanket ruling that anytime defense counsel makes an admission of his client's guilt, even if on only one offense of a multioffense case, it becomes ineffective assistance of counsel"). Instead, this court held the defendant must demonstrate both prongs of the *Strickland* test. *Weger*, 154 Ill. App. 3d at 711-12.

¶ 11 We agree with OSAD's analysis. In this case, counsel conceded defendant's guilt to the lesser-included offense of criminal trespass, an offense supported by overwhelming evidence of guilt based on eyewitness testimony. Yet, counsel presented a reasonable defense to the more serious offense of residential burglary, arguing defendant lacked the requisite intent of theft when he entered the victim's home. We agree that counsel's decision to concede defendant's guilt to the lesser-included offense, in light of the evidence presented, was a reasonable defense strategy and not indicative of ineffective assistance of counsel. Therefore, we conclude the circuit court did not err in summarily dismissing defendant's postconviction petition and we agree with OSAD's assessment of the appeal.

¶ 12 III. CONCLUSION

¶ 13 For the reasons stated, we affirm the circuit court's judgment and grant OSAD's motion to withdraw as counsel. As part of our judgment, we award the State its \$50 assessment against defendant as costs of this appeal.

¶ 14 Affirmed.