2016 IL App (4th) 140794-U

NO. 4-14-0794

FILED
December 8, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
STEVEN FEAGIN,	)	No. 00CF2187
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The motion of the office of the State Appellate Defender to withdraw as appellate counsel is granted and the trial court's dismissal of defendant's *pro se* petition for relief from judgment is affirmed.

¶ 2 Defendant, Steven Feagin, appeals the trial court's dismissal of his *pro* se petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). On appeal, the office of the State Appellate Defender (OSAD) was appointed to represent him. OSAD has filed a motion to withdraw as appellate counsel alleging an appeal would be frivolous. For the reasons that follow, we grant OSAD's motion and affirm the trial court's dismissal of defendant's petition for relief from judgment.

¶ 3 I. BACKGROUND

¶ 4 This case represents respondent's second appeal before this court. Due to the history of this case and the parties' familiarity with the issues presented, we only reiterate the

facts necessary to reach our decision, as previously provided in *People v. Feagin*, 2014 IL App (4th) 120891-U.

¶ 5 A. Defendant's Underlying Convictions

¶ 6 In December 2000, the State alleged by information that in Champaign County, James Doe, an African-American male with a certain deoxyribonucleic acid (DNA) profile, committed in 1993, aggravated criminal sexual assault against S.B. (720 ILCS 5/12-13(a)(1), 14(a)(1) (West 1992)) and in 1995, committed aggravated criminal sexual assault against T.B. and M.P. (720 ILCS 5/12-13(a)(1), 14(a)(1) (West 1994)). The identity of James Doe remained unknown until approximately seven years later, when the Broward County, Florida, sheriff's office began investigating a June 2007 sexual assault that occurred in Deerfield Beach, Florida.

¶ 7 In June 2007, Florida detective Eric Hendel investigated the sexual assault of A.C. and submitted a DNA profile found on her bedsheets into the Combined DNA Index System (CODIS), a national computerized database of DNA samples. CODIS indicated the DNA found on the sheets matched three sexual assault cases in Champaign and Urbana, Illinois.

¶ 8 After learning that the suspect had reappeared in Florida, Urbana police officers consulted the University of Illinois student directories to find students with a connection to Florida. Of the 37,665 students listed in the 1994-95 student and staff directory, 73 students were from Florida. After eliminating female and Asian students from the list, 54 names remained. Those 54 students were numbered and the authorities attempted to discern whether they were African-American. Student number 13 was defendant, whose home address was listed as Deerfield Beach, Florida, the same city in which A.C.'s sexual assault occurred.

¶ 9 The Urbana authorities determined that defendant was a student at the University of Illinois at Champaign-Urbana from 1991 through 1995 and, after graduating, he remained in

the area as a graduate assistant with the university's football team. The 1993 assault took place at 306 E. Michigan Ave., apartment No. 10. At the time, defendant lived in the same building, in apartment No. 7. The February 1995 assault occurred in the Colony West Apartments, where defendant was also living, and the building in which the assault took place was "within sight" of defendant's building. The 2007 Florida assault occurred two houses away from defendant's home.

¶ 10 According to the affidavit, all four victims were Caucasian females with blonde hair and blue or green eyes. Defendant's wife, Jennifer Feagin, also had blonde hair and blue eyes. The affidavit further averred that a composite sketch of the suspect, created with M.P.'s assistance, demonstrated an "obvious similarity" to a 1991 photograph of defendant. In addition, in 1995, defendant had contact with a Champaign police officer and the officer's report described defendant as 5 feet and 11 inches and weighing 198 pounds. Based on this information, the Florida trial court granted a search warrant permitting police to obtain oral swabs from defendant for the purpose of obtaining a DNA sample. Defendant's DNA profile was later identified as matching the DNA profile found on A.C.'s bed sheets.

¶ 11 In October 2008, amended charges were filed in Illinois alleging defendant committed aggravated sexual assaults against T.B., M.P., and S.B. In December 2008, a grand jury indicted defendant on six counts of aggravated criminal sexual assault, alleging defendant sexually assaulted (1) S.B. in November 1993 (count I); (2) T.B. in February 1995 (counts II and III); and (3) M.P. in July 1995 (counts IV, V, and VI). In November 2011, the trial court ordered defendant to supply a sample for DNA testing. In December 2011, defendant's standards were taken and transferred to the Illinois State Police crime lab for analysis.

¶ 12 In January 2012, defendant filed a motion to suppress evidence, requesting the trial court conduct a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). Defendant's motion alleged the State had indicated it planned to use the Florida swab, the results of a DNA analysis performed on the Florida swab, and the comparison of the results of the DNA analysis of the Florida swab with the DNA collected in the Illinois case. Defendant requested a *Franks* hearing and, if the outcome of that hearing was favorable, that the Florida warrant be quashed and that the State be precluded from using against defendant "any evidence seized under the purported authority of the warrant."

¶ 13 In February 2012, the parties appeared before the trial court. Following arguments, the court found the search warrant was appropriately issued and nothing in the record indicated the matter needed to proceed to any further stage of a *Franks* hearing. The matter proceeded to trial on counts IV, V, and VI, and the jury found defendant guilty of all three counts of aggravated criminal sexual assault.

¶ 14 Defendant appealed to this court and argued, *inter alia*, the trial court erred by denying him a *Franks* hearing. *Feagin*, 2014 IL App (4th) 120891-U, ¶ 27. On May 2, 2014, this court entered an order holding the court did not abuse its discretion when it denied defendant's motion for a *Franks* hearing and affirming defendant's conviction. *Feagin*, 2014 IL App (4th) 120891-U, ¶ 46.

¶ 15 B. Section 2-1401 Petition

¶ 16 On July 21, 2014, defendant filed a petition to vacate the trial court's judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2014)). Defendant argued the judgment was void because the court did not have authority to order him to submit a sample of his DNA for forensic analysis and comparison because his DNA was already in CODIS (citing

People v. Marshall, 242 Ill. 2d 285, 950 N.E.2d 668 (2011)). Defendant argued he was unaware of these facts at the time judgment was entered and discovered these facts after reviewing the State's appellate brief on direct appeal, which was filed on December 13, 2013.

¶ 17 On August 11, 2014, the State moved to dismiss defendant's petition. The State argued defendant failed to state a meritorious defense or an appropriate error of fact. More specifically, the State argued defendant failed to state a legal basis for his claim that the trial court could not order a DNA sample if his DNA was already in CODIS. The State disagreed with defendant's assessment that he became aware of the error when the State filed its appellate brief and stated, "[i]t is nonsensical for *** defendant to claim he was unaware that he had provided a DNA sample in Broward County, Florida pursuant to the prosecution of a State of Florida case against him prior to having been ordered to provide a DNA sample for the purpose of the prosecution of Illinois charges." The State contended the DNA sample was part of defendant's claim on appeal from his conviction, which alleged the trial court erred when it failed to allow him a *Franks* hearing on the issuance of the Florida search warrant. Therefore, the State suggested this claim should have been raised on defendant's appeal from his conviction.

¶ 18 On August 19, 2014, the trial court dismissed defendant's petition because it "[did] not state a cause of action and [was] logically inconsistent." Two days later, defendant filed a response to the State's motion. Defendant added two arguments: (1) he was arrested based on an 11-loci match, which is not a legitimate match as it did not include all 13 loci; and (2) no evidence was presented to convict him of counts V and VI. The trial court considered defendant's response and affirmed its previous order dated August 19, 2014. This appeal followed.

¶ 19 In September 2014, OSAD was appointed to serve as counsel for defendant. In May 2016, OSAD moved to withdraw, asserting it had thoroughly reviewed the record and concluded any request for review would be without merit. We granted defendant leave to file additional points and authorities by June 23, 2016. On June 13, 2016, defendant filed a response to OSAD's motion for leave to withdraw, to which the State responded. After examining the record, we grant OSAD's motion and affirm the trial court's judgment.

¶ 20 II. ANALYSIS

¶ 21 OSAD alleges defendant is not entitled to relief under his section 2-1401 petition because his claims are not supported by law and do not present newly discovered evidence. Specifically, OSAD argues (1) the trial court's order to obtain a sample of defendant's DNA was not improper; (2) defendant's DNA matched at 16 loci; and (3) evidence was presented to support his conviction for counts V and VI. The State argues defendant's petition was insufficient as a matter of law because his claims are based on matters appearing in the trial record, and therefore, they have been forfeited.

¶ 22 Section 2-1401 of the Code allows a party to obtain relief from a final judgment more than 30 days after its entry. 735 ILCS 5/2-1401 (West 2014). "A section 2-1401 petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition." *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182 (2000). A trial court should grant a section 2-1401 petition if the petitioner has pleaded and established a meritorious defense to the action, as well as due diligence in presenting the defense and filing the petition. *Engel v. Loyfman*, 383 Ill. App. 3d 191, 198, 890 N.E.2d 633, 639 (2008).

¶ 23 A. Standard of Review

¶ 24 First, we must clarify our standard of review. OSAD suggests this court's review of the trial court's dismissal of defendant's petition is reviewed for an abuse of discretion (citing *People v. Lee*, 2012 IL App (4th) 110403, ¶ 15, 979 N.E.2d 992). The State contends the denial of defendant's petition is reviewed *de novo* (citing *People v. Vincent*, 226 Ill. 2d 1, 14-18, 871 N.E. 17, 26-28 (2007)). Our supreme court has stated, "the abuse of discretion standard is improper in section 2-1401 proceedings in which either judgment on the pleadings or dismissal for failure to state a cause of action has been entered." *Vincent*, 226 Ill. 2d at 15, 871 N.E.2d at 27. In the case at bar, the court dismissed defendant's petition for failure to state a claim. Therefore, we will review defendant's claim *de novo*. See *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 45-52, 32 N.E.3d 1099.

¶ 25 B. Defendant's Section 2-1401 Petition

¶ 26 In his section 2-1401 petition, defendant claimed the trial court's judgment was void because the court did not have authority to order him to submit a sample of his DNA for forensic analysis and comparison because his DNA was already identified in CODIS. Defendant relied upon *Marshall* for this assertion. In *Marshall*, the defendant argued he had already submitted a DNA sample as part of a previous conviction and the circuit court lacked authority to order him to submit another DNA sample and pay a $200 DNA analysis fee as part of his sentence for a separate conviction. At issue was section 5-4-3 of the Unified Code of Corrections, which provided certain offenders are required to submit a DNA sample upon conviction of certain crimes. 730 ILCS 5/5-4-3 (West 2008).

¶ 27 The supreme court held the statute's purpose is satisfied when a defendant submits his or her first sample and, as long as the sample remains in the police database, a defendant need

not submit multiple samples upon subsequent convictions. *Marshall*, 242 Ill. 2d at 296, 950 N.E.2d at 676. Defendant's reliance on *Marshall* is misplaced. In *Marshall*, the court did not address defendant's circumstances, where the trial court ordered him to submit a DNA sample as he was the suspect of multiple sexual assault cases pursuant to Illinois Supreme Court Rule 413(a)(vii) (eff. July 1, 1982). Rather, *Marshall* addressed the proper protocol to obtain DNA samples for a police database *after* a defendant has been convicted of a specific crime. Further, defendant fails to point to any other source of law to support his argument that when a DNA sample is identified in CODIS, a court is without jurisdiction to order a defendant to submit his DNA for sampling. For the foregoing reasons, defendant's convictions are not void.

¶ 28 C. Defendant's Response to the State's Motion

¶ 29 On August 11, 2014, the State filed its motion to dismiss defendant's petition, and the trial court granted the motion on August 19, 2014. Defendant filed a response to the State's motion on August 21, 2014, raising two additional arguments: (1) he was arrested based on an 11-loci match, which is not a legitimate match as it did not include all 13 loci; and (2) no evidence was presented to convict him of counts V and VI. On August 27, 2014, the trial court noted it considered defendant's response and affirmed its order granting the State's motion. OSAD argues these additional claims are meritless and improper under a section 2-1401 petition because these issues would have been apparent to defendant when judgment was entered against him in the trial court. The State also argues these claims are meritless. We agree.

¶ 30 Section 2-1401 petitions are subject to the rules of civil procedure (*Vincent*, 226 Ill. 2d at 8, 871 N.E.2d at 23), which require a party to file a motion to amend his petition if he wishes to add new causes of actions. See 735 ILCS 5/2-616 (West 2014). As a result, issues not

raised in an original petition or amended petition are forfeited. Defendant forfeited the two arguments he raised in his response to the State's motion to dismiss.

¶ 31 Assuming, *arguendo*, these two arguments were not forfeited, we find them to be without merit. Defendant is essentially challenging the sufficiency of the evidence used to convict him, without pointing to any new facts or newly discovered evidence. Defendant's section 2-1401 claims are legally insufficient because he is asking this court to reevaluate the evidence already contained in the record. See 735 ILCS 5/2-1401(b) (West 2014) ("[t]he petition must be supported by affidavit or other appropriate showing as to matters not of record."). As the State suggests, this is further evidenced by defendant's citations to the record and his appendix, which all include matters which were of record during his appeal from his conviction. Defendant has failed to show the claims he now raises were not of record. Thus, these claims could have been raised on appeal from his conviction and are improper as the basis of his section 2-1401 petition.

¶ 32 Accordingly, as defendant's claim is without arguable merit, we grant OSAD's motion to withdraw as counsel.

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.