2014 IL App (5th) 120420-U

NO. 5-12-0420

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 10-CF-2220
	)	
CHRISTOPHER MARTIN,	)	Honorable
	)	Charles V. Romani, Jr.,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The summary dismissal of the postconviction petition was appropriate, and any argument to the contrary would have no merit, and therefore appointed counsel's *Finley* motion to withdraw is granted, and the judgment is affirmed.

¶ 2 The defendant, Christopher Martin, appeals from an order summarily dismissing his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)). His appointed counsel on appeal, the Office of the State Appellate Defender (OSAD), has filed a motion to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). OSAD argues that this appeal does not present any issue of arguable merit. The defendant was informed of OSAD's motion. This court gave the

defendant an opportunity to file *pro se* briefs, memoranda, or other documents showing cause why the appeal should not be dismissed or the judgment affirmed for a lack of substantial merit and why OSAD should not be allowed to withdraw as counsel. The defendant has not availed himself of that opportunity. Following careful examination of OSAD's motion to withdraw as counsel and of the entire record on appeal, this court agrees with OSAD's assessment of the appeal, grants the motion to withdraw as counsel, and affirms the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 In October 2010, the defendant was charged with aggravated unlawful participation in methamphetamine manufacturing (720 ILCS 646/15(b)(1)(B) (West 2010)) and unlawful possession of a controlled substance (720 ILCS 646/60(b)(1) (West 2010)).

¶ 5 On May 17, 2011, the defendant filed by counsel a motion to suppress his confession, alleging that police interrogators did not properly inform him of his rights and continued to question him after he asserted his right to remain silent, and that the defendant did not fully understand his rights and could not validly waive them.

¶ 6 On June 16, 2011, the court held a hearing on the motion to suppress the confession. Brock Cato, a Madison County sheriff's deputy, testified that on October 2, 2010, at 5:50 a.m., while it was still dark, he was in his marked squad car as he followed another car off the parking lot of a service station in Godfrey, Illinois. From earlier observations, he had suspicions about the car's two occupants. As the car traveled down the street, Cato followed from a distance of three car lengths, and estimated that the car was traveling at approximately 48 miles per hour. The posted speed limit was 40 miles per hour. As Cato

continued to follow the car, he noticed that the rear registration light was not illuminated. Cato activated his squad car's overhead lights in order to effect a stop. The car he was following accelerated. It ran a stop sign. Eventually, the car drove onto a parking lot and crashed into a fence. The car's driver and its sole passenger bailed out of the car and ran in different directions. Cato chased, caught, and arrested the driver, who was identified as the defendant. A backup officer apprehended the passenger. Cato advised the defendant of his right to remain silent and the other *Miranda* rights, and the defendant indicated his understanding of them. The defendant seemed very sleepy; his speech was slurred, and his eyes were red and "glassy." Nevertheless, Cato found the defendant responsive and cooperative. The defendant never asked for a lawyer or for termination of Cato's questioning. The defendant told Cato that he had been using methamphetamine. Cato arrested the defendant for driving under the influence of drugs. Cato performed an inventory search of the car the defendant had been driving, in accordance with the sheriff's written policy. Upon opening the car's trunk, Cato smelled "a meth lab" and saw several garbage bags with "garden hoses hanging out of them." Cato closed the trunk, and requested the assistance of the "Meth Response Team" of the Illinois State Police.

¶ 7 The court denied the defendant's motion to suppress his confession. The court found that the police properly informed the defendant of his rights and that the defendant validly waived them.

¶ 8 In August 2011, the defendant wrote a letter to the court. In that letter, the defendant opined that assistant public defender Tyler Bateman was not providing him with effective assistance, but added that he "[did] not wish to fire [Bateman]."

¶ 9 On January 5, 2012, the defendant filed *pro se* a "motion for ineffective assisstance [*sic*] of council [*sic*]." He alleged that assistant public defender Bateman had failed "to have the investigator go and check out the license plate light on the car," despite the defendant's explicit request. According to the defendant, a defective license plate light was "the reason Madison Co Officer Brock Cato said was the reason for pulling [him] over," but in fact the light was functioning. The defendant ended his letter by stating that he wanted Bateman "removed from [his] case" and that he was "ready to get this resolved so [he] can move forward and hopefully get some real legal advice from a competant [*sic*] attorney willing to get this resolved."

¶ 10 On February 14, 2012, the defendant and assistant public defender Bateman, along with assistant State's Attorney James Buckley, appeared in court. The parties informed the court that they had reached a plea agreement, *viz.*: the State would move to dismiss count I, which charged the offense of aggravated unlawful participation in methamphetamine manufacturing, and would move to amend count II so as to charge unlawful possession of controlled substance (methamphetamine, 100 grams or more but less than 400 grams) (720 ILCS 646/60(b)(4) (West 2010)), a Class X felony; and the defendant would plead guilty to the amended count II, and would be sentenced to imprisonment for 14 years, while a variety of traffic and misdemeanor charges against the defendant in other cases would be dismissed. In response to the court's queries, the defendant indicated his understanding of the plea agreement, the nature of the charge to which he was pleading guilty, the statutory range of penalties, his right to plead not guilty, his right to a trial by jury or by judge, his right to counsel and to appointed counsel, his

various rights at trial, including the right to testify on his own behalf, the State's burden of proof, and the consequences of a guilty plea. The defendant also indicated his desire to plead guilty to count II. In response to further queries by the court, the defendant indicated that he was pleading guilty freely and voluntarily, and not in response to any force, threats, or promises outside the plea agreement. The court found that the defendant understood the nature of the charge, his rights, and the possible penalties, and further found that the defendant freely, knowingly, and voluntarily pleaded guilty. The court accepted the guilty plea and imposed the agreed-upon 14-year prison sentence plus 3 years of mandatory supervised release. The defendant confirmed that he had received the sentence to which he had agreed. The court admonished the defendant as to his appeal rights, including the need for a motion to withdraw guilty plea.

¶ 11 On June 18, 2012, the defendant filed *pro se* a petition for postconviction relief. His claims were as follows: (1) the defendant's attorney provided ineffective assistance by failing to arrange for an investigator to examine the license plate light on the car in which the defendant was stopped, where an examination would have revealed that the light was functioning, (2) the traffic stop was illegal because it was for a "false" reason, and therefore the search of the car's trunk was illegal, (3) assistant State's Attorney Buckley was prejudiced against the defendant and had "a conflict of interest" due to the defendant's being "charged in 2004 for a truck that was stolen from a friend" of Buckley, (4) the defendant attempted to obtain the common law record and the transcripts in his case so that he could "try to go pro se," but "they refused to give [him] the transcripts or records," (5) the defendant's 14-year sentence was disproportionate to his codefendant's 8-year sentence,

where they both possessed "the same amount of drugs," and the codefendant's criminal record "has violance [*sic*] in it" while the defendant's criminal record does not, and (6) the defendant was "under the influence of psyche [*sic*] drugs" and "not in [his] right state of mind" when he "took [the] plea agreement."

¶ 12 The *pro se* petition was accompanied by three affidavits, two of which were from the defendant himself. In one affidavit, the defendant wrote that at the time he pleaded guilty, he was "not fit to make good decisions" due to being "under the influence" of two psychotropic medications, Sinequan and Depakote. In another affidavit, the defendant wrote that he complained to the Madison County public defender about Bateman's representation and requested a different lawyer, but the public defender refused to assign a different attorney to handle the defendant's case. Furthermore, "they refused to let [the defendant] get copys [*sic*] of [his] motion so [he] could go pro se." Donald J. Frymire prepared an affidavit wherein he stated that on the night of the stop, he "checked the license plate light" and found that it was functioning. Frymire checked all of the lights on the car because he "knew [he] was going out to commit a felony."

¶ 13 On August 23, 2012, the circuit court entered a written order summarily dismissing the petition on the ground that it was frivolous and patently without merit. The court found that the defendant failed to state the gist of a claim that his guilty plea was involuntary, and noted that the court properly admonished the defendant at the plea hearing. The court also found that the defendant failed to state the gist of a claim of ineffective assistance of plea counsel. According to the court, the defendant failed to allege any professional error that, if it had not occurred, would probably have changed the

outcome of the case. From this order of dismissal, the defendant now appeals.

¶ 14 ANALYSIS

¶ 15 The Act provides a method by which a person under criminal sentence may assert that his or her conviction resulted from a substantial denial of federal or state constitutional rights. See 725 ILCS 5/122-1(a)(1) (West 2012). The person commences a proceeding under the Act by filing a petition verified by affidavit. 725 ILCS 5/122-1(b) (West 2012). The petition must "clearly set forth the respects in which petitioner's constitutional rights were violated" and must "have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2012). A *pro se* postconviction petition "is not expected to set forth a complete and detailed factual recitation, [but] it must set forth some facts which can be corroborated and are objective in nature or contain some explanation as to why those facts are absent." *People v. Delton*, 227 Ill. 2d 247, 254-55 (2008).

¶ 16 Within 90 days after the filing of the petition, the circuit court must examine the petition and enter an order thereon. 725 ILCS 5/122-2.1(a) (West 2012). The court must review the petition independently, and must take as true all of its factual allegations. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). If the court determines that the petition is frivolous or patently without merit, it must dismiss the petition in a written order. 725 ILCS 5/122-2.1(a)(2) (West 2012). Also, if the petitioner fails to support his allegations with affidavits, records, or other evidence, or fails to explain the absence of such supporting evidence, this failure is fatal to the petition and by itself justifies summary dismissal of the petition. *People v. Collins*, 202 Ill. 2d 59, 66 (2002). If the court does

not dismiss the petition, it must order the petition docketed for further consideration. 725 ILCS 5/122-2.1(b) (West 2012). A *pro se* postconviction petition may be summarily dismissed 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 (2009). That is, it may be summarily dismissed only if it is "based on an indisputably meritless legal theory or a fanciful factual allegation. An example of an indisputably meritless legal theory is one which is completely contradicted by the record. [Citation.] Fanciful factual allegations include those which are fantastic or delusional." *Hodges*, 234 Ill. 2d at 16-17. On appeal, the summary dismissal of a postconviction petition is reviewed *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388 (1998).

¶ 17 An examination of the six claims presented in the defendant's *pro se* petition leads to the conclusion that the petition is indeed frivolous and patently without merit.

¶ 18 In claim 1, the defendant accused his plea attorney of providing constitutionally ineffective assistance by failing to arrange for an investigator to examine the license plate light of the car that he was driving at the time of the traffic stop. The defendant alleged that such an examination would have established that the light was functioning at the time of the stop, and that the police officer who stopped him testified falsely at the suppression hearing that the light was not on. According to the defendant, the allegedly defective light was the sole "reason" for the traffic stop, and if the defense had established that the light was functioning properly, the court would have found that the traffic stop was unlawful and would have suppressed the inculpatory evidence that was found during a subsequent search of the car's trunk.

¶ 19 In order to state a claim for ineffective assistance of counsel, a convicted defendant must show (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-95 (1984). Here, there is no reasonable probability that the proceedings would have ended differently if plea counsel had arranged for an investigator to examine the license plate light. Even if the defense somehow established that the light was functioning at the time of the traffic stop, the circuit court would have found the traffic stop lawful. After all, the officer who effected the stop testified that the car was traveling above the posted speed limit even before he noticed its defective light. The speeding violation, standing alone, was enough to justify the stop. The defendant is incorrect in asserting that the defective light was the sole reason for the stop.

¶ 20 In claim 2, the defendant alleged that the traffic stop was illegal because it was for a "false" reason and therefore the subsequent search of the car's trunk was illegal. This claim is related to claim 1. As previously explained, the nonfunctioning license plate light was not the sole reason for the traffic stop; the defendant's speeding also justified the stop. Moreover, even if the traffic stop was unjustified and unlawful at its inception, the defendant would not have been free to disregard the police officer's flashing overhead lights. He would not have been free to proceed as he did. The defendant's actions clearly constituted fleeing or attempting to elude a peace officer, a violation of section 11-204 of the Illinois Vehicle Code (625 ILCS 5/11-204 (West 2012)) and a Class A misdemeanor.

The defendant was subject to arrest for that offense. His appearance, slurred speech, etc., also justified his arrest for driving under the influence of drugs. Because the defendant's arrest was valid, the officer was justified in impounding the car and performing an inventory search thereof. See *People v. Hundley*, 156 Ill. 2d 135, 138 (1993) (discussing the three criteria for a valid warrantless inventory search of a vehicle).

¶ 21 In claim 3, the defendant alleged that assistant State's Attorney Buckley, who handled the prosecution in this case, was prejudiced against him and had a "conflict of interest" due to the defendant's being "charged in 2004 for a truck that was stolen from a friend [of Buckley]." Essentially, the defendant alleged that the assistant State's Attorney harbored some animus toward him due to the defendant's possibly committing a crime against one of the assistant State's Attorney's friends at some point in the past. This allegation is wholly unsupported, and the defendant does not begin to explain how this situation might constitute a constitutional violation. (The defendant did not allege an unconstitutionally selective enforcement of a criminal statute. See generally *Oyler v. Boles*, 368 U.S. 448, 456 (1962).)

¶ 22 In claim 4, the defendant alleged that "they refused to give [him] the transcripts or records" of his case so that he could "try to go pro se." Here, too, it is difficult to identify any constitutional right that is implicated. This court merely notes that the defendant was represented by appointed counsel throughout the proceedings that resulted in his conviction and sentence, and he never made a clear request to proceed *pro se*. See *People v. Burton*, 184 Ill. 2d 1, 21 (1998) (a criminal defendant's waiver of counsel and request to proceed *pro se* must be clear, unequivocal, and unambiguous).

¶ 23 In claim 5, the defendant alleged that his 14-year prison sentence is disproportionate to his codefendant's 8-year sentence. A disparate-sentence claim certainly may be raised in a postconviction petition. *People v. Caballero*, 179 Ill. 2d 205, 215 (1997). However, the defendant's claim was not supported by any affidavit, etc., and the defendant did not explain the absence of such supporting evidence. A myriad of factors may enter into sentencing determinations. See *People v. Perruquet*, 68 Ill. 2d 149, 156 (1977). The defendant did not make any serious attempt to explore the factors that may have gone into his codefendant's sentence.

¶ 24 Finally, in claim 6, the defendant alleged that at the time he pleaded guilty pursuant to his agreement with the State, he was "under the influence of psyche [*sic*] drugs" and "not in [his] right state of mind." A criminal defendant's mere ingestion of psychotropic medication does not create a presumption of unfitness to stand trial. See 725 ILCS 5/104-21(a) (West 2012). Mere ingestion, standing alone, does not even raise a *bona fide* doubt about fitness to stand trial. *People v. Mitchell*, 189 Ill. 2d 312, 331 (2000). Moreover, the defendant's claim of unfitness is belied by the record of the plea hearing, which shows that the circuit court scrupulously admonished and questioned the defendant, who gave every indication that his plea was knowing and voluntary. Nothing suggested a lack of fitness. The record completely refutes any allegation that the defendant was unfit to plead guilty.

¶ 25 For all of the foregoing reasons, the summary dismissal of the defendant's postconviction petition was appropriate. No argument to the contrary would have any merit. Therefore, OSAD's motion to withdraw as counsel is granted, and the judgment of

the circuit court is affirmed.

¶ 26 Motion granted; judgment affirmed.