2022 IL App (4th) 210557-U

NO. 4-21-0557

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 12, 2022
Carla Bender
4th District Appellate
Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SAVANNAH WEISS, Defendant-Appellant. | ) Appeal from the ) Circuit Court of ) Coles County ) No. 17CF478 ) ) Honorable ) James R. Glenn, ) Judge Presiding. |

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held*: The summary dismissal of the postconviction petition is affirmed because the petition is, as the circuit court held, frivolous or patently without merit.

¶ 2 The defendant, Savannah Weiss, is serving a sentence of 20 years' imprisonment for first degree murder (720 ILCS 5/9-1(a)(2) (West 2016)). She petitioned for postconviction relief. The circuit court of Coles County summarily dismissed the petition, finding it to be frivolous or patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2020). The Office of the State Appellate Defender (appellate counsel) has moved to withdraw from representing Weiss, because appellate counsel can think of no reasonable argument to make in support of this appeal. We notified Weiss that she had the right to respond, by a certain date, to appellate counsel's motion and supporting memorandum. Weiss has not done so. In our *de novo* review of the record (see *People v. Tate*, 2012 IL 112214, ¶ 10), we agree with appellate counsel's assessment of the merits

of this appeal. Therefore, we grant appellate counsel's motion to withdraw, and we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 As amended, count I of the information charged that, during the period of December 1 to 4, 2017, Weiss committed first degree murder (720 ILCS 5/9-1(a)(2) (West 2016)) in that

> "while under a duty to provide care and protection to her child, M.J.E., born October 2, 2015, *** [she] confined the child to a playpen and knowingly neglected to provide food, liquid, and sanitation to the child, *** knowing said acts would create a strong probability of death or great bodily harm and thereby caused M.J.E.'s death by dehydration."

¶ 5 In January and February 2018, by order of the circuit court, a licensed clinical psychologist, Dr. Jerry L. Boyd, examined Weiss to evaluate her fitness to stand trial. In his written evaluation, Dr. Boyd discussed the psychiatric records he had obtained from Sarah Bush Lincoln Health Center Behavioral Services. According to those records, Weiss had been diagnosed with a major depressive disorder, severe without psychosis, with postpartum worsening. Dr. Boyd diagnosed her as suffering from a major depressive disorder, severe, recurrent, with melancholy and anxious distress features; a generalized anxiety disorder; and a personality disorder. He opined, however, that the depressive disorder was "not psychotic" and that Weiss was fit to stand trial. (Emphasis omitted.)

¶ 6 On March 5, 2018, the parties stipulated to the psychological evaluation, and the circuit court found Weiss to be fit to stand trial.

¶ 7 On May 20, 2019, Weiss pleaded guilty to the amended count I in return for a sentence of 20 years' imprisonment and the dismissal of the original six counts of the information. Afterward, she filed no motion to withdraw her guilty plea.

¶ 8 On September 8, 2021, Weiss petitioned, *pro se*, for postconviction relief. In her petition, she made essentially two claims.

¶ 9 First, Weiss claimed that, because she was suffering from postpartum depression when she allowed her son to die of dehydration, her sentence of 20 years' imprisonment was a "cruel and unusual punishment" within the meaning of the eighth amendment to the United States Constitution (U.S. Const., amend. VIII), an amendment made applicable to the states by the fourteenth amendment (U.S. Const., amend. XIV) (*Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008)).

¶ 10 Second, Weiss claimed that she was denied the effective assistance of counsel and other constitutional rights because her plea counsel failed to inform her of some statutory amendments that applied to her case. Specifically, under Public Act 100-574 (eff. June 1, 2018), postpartum depression became a mitigating factor in a sentencing hearing as well as a basis for postconviction relief.

¶ 11 The amendment added subsection (a)(17) to section 5-5-3.1 of the Unified Code of Corrections, a section titled "Factors in mitigation":

> "(a) The following grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment:
>
> * * *
>
> (17) At the time of the offense, the defendant was suffering from post-partum depression or post-partum psychosis which was either

undiagnosed or untreated, or both, and this temporary mental illness tended to excuse or justify the defendant's criminal conduct and the defendant has been diagnosed as suffering from post-partum depression or post-partum psychosis, or both, by a qualified medical person and the diagnoses or testimony, or both, was not used at trial. In this paragraph (17):

'Post-partum depression' means a mood disorder which strikes many women during and after pregnancy which usually occurs during pregnancy and up to 12 months after delivery. This depression can include anxiety disorders.

'Post-partum psychosis' means an extreme form of post-partum depression which can occur during pregnancy and up to 12 months after delivery. This can include losing touch with reality, distorted thinking, delusions, auditory and visual hallucinations, paranoia, hyperactivity and rapid speech, or mania." Pub. Act 100-574, § 10 (eff. June 1, 2018) (codified as 730 ILCS 5/5-5-3.1(a)(17)).

¶ 12 Also, the amendment added subsection (a)(3) to section 122-1 of the Post-Conviction Hearing Act:

"(a) Any person imprisoned in the penitentiary may institute a proceeding under this Article if the person asserts that:

* * *

(3) by a preponderance of the evidence that each of the following allegations in the petition establish:

(A) he or she was convicted of a forcible felony;

(B) his or her participation in the offense was a direct result of the person's mental state either suffering from post-partum depression or post-partum psychosis;

(C) no evidence of post-partum depression or post-partum psychosis was presented by a qualified medical person at trial or sentencing, or both;

(D) he or she was unaware of the mitigating nature of the evidence or if aware was at the time unable to present this defense due to suffering from post-partum depression or post-partum psychosis or at the time of trial or sentencing neither was a recognized mental illness and as such unable to receive proper treatment; and

(E) evidence of post-partum depression or post-partum psychosis as suffered by the person is material and noncumulative to other evidence offered at the time of trial or sentencing and it is of such a conclusive character that it would likely change the sentence imposed by the original court.

Nothing in this paragraph (3) prevents a person from applying for any other relief under this Article or any other law otherwise available to him or her.

As used in this paragraph (3):

> ‘Post-partum depression’ means a mood disorder which strikes many women during and after pregnancy which usually occurs during pregnancy and up to 12 months after delivery. This depression can include anxiety disorders.
>
> ‘Post-partum psychosis’ means an extreme form of post-partum depression which can occur during pregnancy and up to 12 months after delivery. This can include losing touch with reality, distorted thinking, delusions, auditory and visual hallucinations, paranoia, hyperactivity and rapid speech, or mania.” Pub. Act 100-574, § 5 (eff. June 1, 2018).

¶ 13 Subsection (a)(17) is still in section 5-5-3.1 of the Unified Code of Corrections (730 ILCS 5/5-5-3.1 (West 2020)). However, Public Act 101-411, § 5 (eff. Aug. 16, 2019) removed subsection (a)(3) from section 122-1 of the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2020)).

¶ 14 On September 10, 2021, the circuit court summarily dismissed Weiss’s postconviction petition as frivolous or patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2020).

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 “It is axiomatic that when the legislature amends an unambiguous statute by deleting certain language, it is presumed that the legislature intended to change the law in that respect.” *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm’n*, 2017 IL 121302, ¶ 42. Section 122-1, as amended by Pub. Act 100-574, § 5 (eff. June 1, 2018), was not ambiguous.

Therefore, we presume that, by this amendment, the legislature intended to change the law so as to make postpartum depression, in and of itself, no longer a basis for postconviction relief. See *id.*

¶ 18 Besides, as appellate counsel observes, the consideration of postpartum depression could not have lessened Weiss's sentence. No mitigating factor could have done so. For first degree murder, Weiss received the most lenient sentence allowed by law. See 730 ILCS 5/5-4.5-20(a) (West 2018) (providing that, for first degree murder, the "[t]he defendant shall be sentenced to imprisonment" for "not less than 20 years and not more than 60 years"). It follows that, on the ground of a lack of prejudice, the circuit court was justified in summarily rejecting Weiss's claim of ineffective assistance. See *People v. Hale*, 2013 IL 113140, ¶ 17. Advice that postpartum depression was a mitigating factor would have been merely academic information to Weiss considering that plea counsel had negotiated for her a sentence that was the absolute minimum.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we grant appellate counsel's motion to withdraw and affirm the circuit court's judgment.

¶ 21 Affirmed.