

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210087-U

NO. 4-21-0087

FILED

May 3, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
EMANUEL L. WILLIAMS,)	No. 15CF414
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed and remanded for the appointment of new postconviction counsel and further second-stage postconviction proceedings, concluding defendant was denied the reasonable assistance from his previously appointed postconviction counsel.

¶ 2 Defendant, Emanuel L. Williams, appeals from the circuit court's judgment dismissing his amended postconviction petition at the second stage of postconviction proceedings. On appeal, defendant argues this court should reverse and remand for the appointment of new postconviction counsel and a third-stage evidentiary hearing on his claims of actual innocence and ineffective assistance of plea counsel or, alternatively, further second-stage proceedings. For the reasons that follow, we reverse and remand for the appointment of new postconviction counsel and further second-stage postconviction proceedings.

¶ 3

I. BACKGROUND

¶ 4

A. Charges

¶ 5

Between March and August 2015, the State charged defendant, who was then 40 years old, with the following criminal offenses: (1) unlawful restraint (720 ILCS 5/10-3(a) (West 2014)), a Class 4 felony; (2) domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)), a Class A misdemeanor; (3) criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2014)), a Class 1 felony; (4) aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(3) (West 2014)), a Class X felony; and (5) aggravated criminal sexual abuse (720 ILCS 5/11-1.60(a)(6) (West 2014)), a Class 2 felony. The State alleged defendant committed the charged offenses against his girlfriend, Dana C., on March 24, 2015.

¶ 6

B. Guilty Plea

¶ 7

In August 2015, defendant pleaded guilty to aggravated criminal sexual abuse. In exchange for his guilty plea, the State dismissed the remaining charges against defendant, and defendant received, as recommended by the State and agreed to by defendant, a sentence of 180 days in the county jail and 48 months' probation. Defendant was also ordered, as recommended by the State and agreed to by defendant, to pay various fines and fees, to not contact Dana C., to obtain an evaluation for sex offender treatment, to complete any recommended treatment, and to comply with the requirements of the Sex Offender Registration Act (730 ILCS 150/1 to 12 (West 2014)). In support of the guilty plea, the State presented the following factual basis:

“Your Honor, the victim and the defendant were in a dating relationship. On March 24, 2015, the defendant and the victim were together at the defendant's apartment when he became angry. He

began throwing things, refused to let the victim out of the apartment. He started hitting her and threatening her life. He then demanded sex, and she complied because she was scared for her life and thought that he would calm down if she complied and then she could leave.”

¶ 8 C. Amended Petition to Revoke Probation

¶ 9 In November 2016, the State filed a petition to revoke defendant’s probation, which it later amended. In its amended petition, the State alleged defendant violated his probation by failing to report to court services since June 2016 and comply with recommended treatment and/or counseling as ordered.

¶ 10 D. Admission to Violating Probation

¶ 11 In December 2016, defendant admitted to violating his probation as alleged in the State’s amended petition to revoke probation. In exchange for his admission, the State dismissed a pending criminal charge against defendant for telephone harassment.

¶ 12 E. Resentencing

¶ 13 In January 2017, the circuit court resentenced defendant to 76 months in prison. Defendant, after his motion to reconsider the sentence was denied, appealed.

¶ 14 F. Direct Appeal

¶ 15 In March 2019, this court rejected defendant’s argument that the circuit court abused its discretion in resentencing him. *People v. Williams*, 2019 IL App (4th) 170161-U.

¶ 16 G. *Pro Se* Postconviction Petition

¶ 17 In November 2019, defendant filed a *pro se* postconviction petition alleging claims

of actual innocence and ineffective assistance of plea counsel. As to his claim of actual innocence, defendant alleged he was innocent of the crime to which he pleaded guilty and a later recantation by Dana C. as well as her continued romantic interest in him after he was imprisoned supported his innocence. Defendant attached to his petition an August 30, 2018, affidavit from Dana C. in which she avers the sexual contact between her and defendant on March 24, 2015, was consensual and her prior statements to the contrary were coerced by a victim's advocate. In alleging his claim, defendant noted he would not have pleaded guilty had Dana C. recanted earlier, and he "only [pleaded] guilty out of fear of a higher prison sentence had he gone to trial." As to his claim of ineffective assistance of plea counsel, defendant alleged counsel "misinformed *** [him] that he would need to register [as a sex offender] for five years when in fact the offense requires [him] to register for life," and he "would not have accepted a plea had he been given adequate advice by his lawyer."

¶ 18 H. Appointment of Postconviction Counsel

¶ 19 Also in November 2019, the circuit court advanced defendant's *pro se* postconviction petition to the second stage of postconviction proceedings and appointed counsel to represent defendant.

¶ 20 I. Amended Postconviction Petition

¶ 21 In December 2019, postconviction counsel filed an amended postconviction petition on defendant's behalf, as well as a certificate of compliance pursuant to Illinois Supreme Court Rule 651(c) (eff. July 1, 2017). In the amended petition, counsel first presented claims of alleged constitutional violations. In relevant part, counsel presented a claim of ineffective assistance of plea counsel based upon plea counsel misadvising defendant as to the length of time

he would need to register as a sex offender if he pleaded guilty to aggravated criminal sexual abuse. Specifically, postconviction counsel alleged (1) plea counsel erroneously advised defendant that he would need to register as a sex offender for five years when in fact he would have to register for life and (2) “[h]ad [defendant] been properly advised, he would not have pleaded guilty.” After presenting the claims of alleged constitutional violations, postconviction counsel noted, pursuant to *People v. Greer*, 212 Ill. 2d 192, 205, 817 N.E.2d 511, 520 (2004), she was “not amending [d]efendant’s *pro se* petition” on his claim of actual innocence. Counsel explained, citing *People v. Reed*, 2019 IL App (4th) 170090, ¶ 19, 125 N.E.3d 480, defendant’s claim of actual innocence was “barred” because he entered into a negotiated plea agreement. When citing *Reed*, counsel acknowledged an appeal had been allowed in that case.

¶ 22 J. Motion to Dismiss

¶ 23 In January 2020, the State filed a motion to dismiss defendant’s amended postconviction petition. In its motion, the State initially noted, “As acknowledged by [defendant’s postconviction counsel], a claim of actual innocence is barred when the defendant enters into a negotiate plea, which happened in this case.” The State then explained why the claims of alleged constitutional violations presented in defendant’s amended postconviction petition did not warrant a third-stage evidentiary hearing. As to defendant’s claim of ineffective assistance of plea counsel based upon counsel misadvising defendant as to the length of time he would need to register as a sex offender, the State asserted defendant had not made a substantial showing that his counsel’s performance was deficient or that he was prejudiced.

¶ 24 K. Dismissal

¶ 25 In July 2020, the circuit court entered an order dismissing defendant’s amended

postconviction petition. The order stated, “The State’s Motion is well taken in its entirety.” Thereafter, the circuit clerk mailed defendant a letter to the prison where he was previously housed to notify him of the court’s dismissal and his right to appeal. The letter was later returned as undeliverable.

¶ 26 L. Notice of Appeal

¶ 27 In February 2021, defendant filed a notice of appeal from the dismissal of his amended postconviction petition, and the circuit court appointed counsel to represent defendant on appeal. Defendant’s appellate counsel filed a motion for a supervisory order from the Illinois Supreme Court. In the motion, counsel alleged defendant did not receive notice of the dismissal because he was already on mandatory supervised release (MSR) at the time the notice was mailed to the prison where he was previously housed. The supreme court granted the motion for a supervisory order and directed this court to treat respondent’s notice of appeal as a properly perfected appeal from the dismissal order.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, defendant argues this court should reverse and remand for the appointment of new counsel and a third-stage evidentiary hearing on his claims of actual innocence and ineffective assistance of plea counsel or, alternatively, further second-stage proceedings. Specifically, defendant asserts (1) his “actual innocence claim [is] sufficient to warrant” a reversal and remand for the appointment of new counsel and a third-stage evidentiary hearing on that claim or, alternatively, the unreasonable assistance provided by his postconviction counsel as it related to that claim is sufficient to warrant a reversal and remand for the appointment of new counsel and

further second-stage postconviction proceedings and (2) his “amended post[]conviction petition [makes] a substantial showing that [plea] counsel was ineffective” for misadvising him as to the sex-offender registration requirements to warrant a reversal and remand for the appointment of new counsel and a third-stage evidentiary hearing on that claim.

¶ 31 The State, in response, concedes defendant received “unreasonable assistance of counsel” as a result of postconviction counsel omitting defendant’s nonfrivolous *pro se* claim of actual innocence from the amended postconviction petition and, therefore, “the dismissal of defendant’s amended postconviction petition should be reversed.” The State contends “the cause should be remand for further second-stage proceedings” as opposed to a third-stage evidentiary hearing on defendant’s claims of actual innocence and ineffective assistance of plea counsel, because (1) the claim of actual innocence was withdrawn from controversy by postconviction counsel and, therefore, is not properly before this court for review and (2) the amended postconviction petition does not make a substantial showing that plea counsel was ineffective for misadvising defendant as to the sex-offender registration requirements where it would not have been rational for defendant to reject the plea bargain under the circumstances.

¶ 32 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2018)) “provides a mechanism by which a criminal defendant can assert that his conviction and sentence were the result of a substantial denial of his rights under the United States Constitution, the Illinois Constitution, or both.” *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The adjudication of a postconviction petition follows a three-stage process. *People v. Allen*, 2015 IL 113135, ¶ 21, 32 N.E.3d 615.

¶ 33 At the first stage of postconviction proceedings, the circuit court must, within 90

days of a postconviction petition's filing, independently evaluate the petition, and if the court determines it is frivolous or patently without merit, it must dismiss the petition in a written order. *People v. Hodges*, 234 Ill. 2d 1, 10, 912 N.E.2d 1204, 1208 (2009); 725 ILCS 5/122-2.1(a)(2) (West 2018). Accordingly, a postconviction petition advances to the second stage of postconviction proceedings if (1) the court fails to rule on the petition within the 90-day period, regardless of the petition's merit (*People v. Harris*, 224 Ill. 2d 115, 129, 862 N.E.2d 960, 969 (2007)) or (2) the facts alleged in the petition state an arguable claim of a constitutional deprivation (*Hodges*, 234 Ill. 2d at 9, 17).

¶ 34 At the second stage of postconviction proceedings, counsel may be appointed (725 ILCS 5/122-4 (West 2018)), and the State may answer the postconviction petition or move to dismiss it (725 ILCS 5/122-5 (West 2018)). *People v. Edwards*, 197 Ill. 2d 239, 246, 757 N.E.2d 442, 446 (2001). The relevant inquiry at the second stage is “whether the petition and any accompanying documentation make a substantial showing of a constitutional violation.” *People v. Johnson*, 2018 IL 122227, ¶ 15, 123 N.E.3d 1083. The defendant bears the burden of making such a showing. *People v. Domagala*, 2013 IL 113688, ¶ 35, 987 N.E.2d 767. If the defendant satisfies his burden, the petition is advanced to a third-stage evidentiary hearing. *Edwards*, 197 Ill. 2d at 246; 725 ILCS 5/122-6 (West 2018).

¶ 35 A defendant who is represented by counsel in proceedings under the Act is entitled to “a ‘reasonable’ level of attorney assistance.” *Johnson*, 2018 IL 122227, ¶ 16. Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) sets forth the following duties postconviction counsel must undertake: (1) consult with the defendant by phone, mail, electronic means or in person; (2) examine the record as needed to shape the defendant's *pro se* claims; and (3) make any

amendments necessary for an adequate presentation of the defendant's *pro se* claims. *People v. Custer*, 2019 IL 123339, ¶ 32, 155 N.E.3d 374. Counsel's certification of compliance with these duties creates a rebuttable presumption that counsel provided the defendant with a reasonable level of assistance. *Id.*

¶ 36 A circuit court's dismissal at the second stage of postconviction proceedings is reviewed *de novo*. *People v. Dupree*, 2018 IL 122307, ¶ 29, 124 N.E.3d 908. Similarly, consideration of whether postconviction counsel provided reasonable assistance is also reviewed *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42, 862 N.E.2d 977, 979 (2007).

¶ 37 First, defendant contends his claim of actual innocence is sufficient to warrant a reversal and remand for the appointment of new counsel and a third-stage evidentiary hearing on that claim. We disagree. As acknowledged by defendant, his postconviction counsel "essentially abandon[ed]" his claim and "concede[d]" it could not be raised in the amended postconviction petition. Indeed, counsel, after presenting claims of alleged constitutional violations in defendant's amended postconviction petition, noted she was "not amending [d]efendant's *pro se* petition" on his claim of actual innocence pursuant to *Greer*, 212 Ill. 2d at 205, a case in which the supreme court recognized postconviction counsel is not required "to advance frivolous or spurious claims on defendant's behalf." Counsel then explained why she believed defendant's *pro se* claim of actual innocence was frivolous. Under these circumstances, defendant's *pro se* claim of actual innocence was effectively withdrawn from controversy by defendant's postconviction counsel. Contrary to defendant's argument on appeal, the State's comment in its motion to dismiss agreeing with counsel's explanation for why she was not advancing defendant's *pro se* claim and the circuit court's comment in its order that "the State's motion is well taken in its entirety" does not show

the merits of defendant's *pro se* claim of actual innocence was before the circuit court. Accordingly, any ruling concerning whether defendant's *pro se* claim of actual innocence is sufficient to warrant a third-stage evidentiary hearing would amount to an improper advisory opinion. See *In re Luis R.*, 239 Ill. 2d 295, 306, 941 N.E.2d 136, 143 (2010) ("It is well settled that Illinois courts cannot *** render an advisory opinion." (Internal quotation marks omitted.)); *People v. Snow*, 2012 IL App (4th) 110415, ¶ 55, 964 N.E.2d 1139 (finding an issue not retained in the defendant's amended postconviction petition was not properly before the appellate court for review). Defendant, therefore, is not entitled to the requested relief.

¶ 38 Second, defendant contends his amended postconviction petition makes a substantial showing that plea counsel was ineffective for misadvising him as to the sex-offender registration requirements to warrant a reversal and remand for the appointment of new counsel and a third-stage evidentiary hearing on that claim. We disagree. As acknowledged by defendant, he must make a substantial showing that his decision to reject the State's plea bargain would have been rational under the circumstances to be entitled to an evidentiary hearing on his claim. *People v. Brown*, 2017 IL 121681, ¶ 48, 102 N.E.3d 205. Defendant has not done so. He suggests it would have been rational for him to reject the State's plea bargain and proceed to trial by comparing the sentence he received with the sentence he could have received had he gone to trial and been convicted of the offense to which he pleaded guilty. Defendant fails to recognize, however, he had multiple charges pending against him at the time of the plea bargain. Indeed, defendant, who was 40 years old at the time, was facing a Class X felony with a potential 30-year prison sentence, of which at least 85% would have to be served, followed by a possible natural life term of MSR. 720 ILCS 5/11-1.30(a)(3), (d) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014); 730 ILCS 5/3-6-

3(a)(2)(ii) (West 2014); 730 ILCS 5/5-8-1(d)(4) (West 2014). Defendant further does not dispute a sufficient factual basis existed to support the other charges at the time of the plea bargain. Notably, defendant acknowledged an important factor for pleading guilty was the “fear of a higher prison sentence had he gone to trial.” Under these circumstances, defendant has not shown it would have been rational for him to reject the State’s plea bargain. Defendant, therefore, is not entitled to the requested relief.

¶ 39 Last, defendant contends the unreasonable assistance provided by his postconviction counsel as it related to his claim of actual innocence is sufficient to warrant a reversal and remand for the appointment of new counsel and further second-stage postconviction proceedings. We agree. Because the circuit court affirmatively advanced defendant’s *pro se* postconviction petition to the second stage of postconviction proceedings, postconviction counsel’s responsibility was to either place the *pro se* claims raised therein in proper form or explain why they were in fact frivolous or patently without merit. *People v. Kuehner*, 2015 IL 117695, ¶¶ 20-21, 32 N.E.3d 655. Consistent with *Kuehner*, postconviction counsel provided an explanation for why she was abandoning defendant’s *pro se* claim of actual innocence—that she believed the claim was frivolous based upon *Reed*. However, counsel also recognized *Reed* was pending before the supreme court at the time the amended petition was filed. Indeed, not only was *Reed* pending before the supreme court at that time, but another appellate district had rejected the analysis in *Reed*. See *People v. Shaw*, 2019 IL App (1st) 152994, ¶ 54, 143 N.E.3d 228. Regardless of whether the circuit court would have been required to find defendant’s claim was subject to dismissal at the time, the claim was certainly not frivolous when postconviction counsel abandoned it. Accordingly, counsel’s decision to abandon defendant’s claim on legally incorrect grounds

rebutts counsel's Rule 651(c) certification and shows counsel provided unreasonable assistance. Defendant, therefore, is entitled to the requested relief—a reversal and remand for the appointment of new counsel and further second-stage postconviction proceedings.

¶ 40

III. CONCLUSION

¶ 41

We reverse and remand for the appointment of new postconviction counsel and further second-stage postconviction proceedings.

¶ 42

Reversed; cause remanded.