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2012 IL App (3d) 090786-U

Order filed May 9, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-09-0786
)	Circuit No. 86-CF-827
)	
JUAN PADILLA,)	Honorable
)	Stephen R. White,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Carter dissented.

ORDER

¶ 1 *Held:* The trial court erred in summarily dismissing defendant's postconviction petition in which he stated the gist of a constitutional claim that his due process rights were violated where he was not admonished that a term of mandatory supervised release would be added to the sentence he agreed upon in exchange for his guilty plea.

¶ 2 Defendant Juan Padilla filed a *pro se* postconviction petition alleging he was deprived of his due process rights when the trial court failed to admonish him that a three-year term of mandatory supervised release (MSR) would be added to his two concurrent 10-year terms of imprisonment for

attempt murder and armed violence for which he entered a negotiated guilty plea. The trial court summarily dismissed his postconviction petition. We reversed and remanded, finding that Padilla stated the gist of a constitutional claim that his due process rights were violated when he was not admonished that a three-year term of MSR would be added to his sentence. *People v. Padilla*, 2011 IL App (3d) 090786-U (unpublished order under Supreme Court Rule 23). The State appealed. The Illinois Supreme Court, in its supervisory authority, directed this court to vacate its judgment and reconsider it in light of *People v. Guerrero*, 2012 IL 112020, to determine if a different result is warranted. *People v. Padilla*, No. 113251 (2011). Having reconsidered our prior decision in light of *Guerrero*, we reach the same conclusion, and reverse the trial court's summary dismissal of Padilla's postconviction petition, and remand for further postconviction proceedings.

¶ 3

FACTS

¶ 4 In 1987, defendant Juan Padilla was charged with attempt murder and two counts of armed violence. Ill. Rev. Stat., Chpt. 38, para. 9-1(a) (1), 8-4(a) (West 1985); Ill. Rev. Stat., Chpt. 38, para. 33A-2, 12-4(b)(6) (West 1985). He entered a plea of guilty to attempt murder and one count of armed violence in exchange for concurrent 10-year sentences to be served consecutive to a Cook County case and the dismissal of one armed violence count. The docket entries from the plea hearing indicate that Padilla was addressed in open court and stated that he understood the nature of the charges against him, the consequences of the guilty plea, the minimum and maximum sentences, his right to plead not guilty, and his right to trial by bench or jury. The trial court found that Padilla entered the plea knowingly and voluntarily and that no threats or use of force were used to obtain the plea. The trial court also determined that a factual basis for the plea was presented. The trial court accepted the plea and sentenced Padilla pursuant to the plea agreement. In July 2009,

Padilla filed a *pro se* postconviction petition in which he alleged that his plea was not knowing and voluntary as he was not informed at the plea hearing that he was required to serve a three-year term of MSR following his prison term. He further alleged he was unaware of the MSR term until June 2009. The trial court summarily dismissed his petition. Padilla appealed.

¶ 5

ANALYSIS

¶ 6 On appeal, the issue is whether the trial court erred in summarily dismissing Padilla's postconviction petition as frivolous and patently without merit. Padilla argues that his postconviction petition stated the gist of a constitutional claim that he suffered a due process violation when the trial court failed to admonish him that he would be required to serve a MSR term after he completed his agreed-upon ten-year terms of imprisonment. He asserts that the trial court's failure to properly admonish him made his plea not knowing and voluntary.

¶ 7 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) provides a remedy for defendants who have suffered a substantial violation of their constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 243-44 (2001). In reviewing a first-stage dismissal of a postconviction petition, this court must determine whether the allegations in the petition are frivolous or patently without merit. *People v. Holt*, 372 Ill. App. 3d 650, 652 (2007). An allegation is frivolous or patently without merit when it fails to state the gist of a constitutional claim. *Holt*, 372 Ill. App. 3d at 652. To satisfy the gist standard, a petitioner need only set forth a limited amount of detail and is not required to present his claim in its entirety or include legal citation. *Edwards*, 197 Ill. 2d at 244. However, a petitioner must set forth some facts that may be corroborated and are objective in nature, or explain why the facts are absent. *People v. Delton*, 227 Ill. 2d 247, 254-55 (2008). The Act requires that the petition be accompanied by affidavits, records or other evidence supporting its

allegations. 725 ILCS 5/122-2 (West 2008). The accompanying documentation “must identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition’s allegations.” *Delton*, 227 Ill. 2d at 254. First-stage dismissal is appropriate only if the petition has no arguable basis in either law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). We review summary dismissal of a postconviction petition *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 8 In a memorandum in support of his *pro se* postconviction petition, Padilla asserts that “the docket shows that the court did not impose, as part of defendants [*sic*] sentence, any period of Mandatory Supervised Release (MSR) to be served at the conclusion of defendants [*sic*] sentence of imprisonment.” Padilla further asserts that the docket entry for his plea hearing does not mention or reference a MSR period, that the judgment, mittimus and sentence do not indicate or impose a MSR term, and that he first learned of the MSR term in 2009 from prison records. Padilla also asserts that the proceedings of the plea hearing established that the trial court addressed him regarding the charges and penalties but did not mention MSR and that the trial court did not impose a MSR term. Padilla argues that as a result of the imposition of the MSR term, his plea was not voluntary and knowing as he believed he would receive the 10-year sentences to which he agreed in exchange for his guilty plea.

¶ 9 The Supreme Court has asked us to reconsider our prior decision in this case in light of *People v. Guerrero*, 2012 IL 112020. In *Guerrero*, the petitioner sought leave to file a successive postconviction petition. *Guerrero*, 2012 IL 112020 at ¶ 1. In his postconviction petition, he argued for the first time that the trial court failed to properly admonish him that his sentence would include a three-year MSR term when it accepted his guilty plea. *Guerrero*, 2012 IL 112020 at ¶ 6. At issue was whether Guerrero demonstrated cause and prejudice sufficient for leave to file a successive

postconviction petition. *Guerrero*, 2012 IL 112020 at ¶ 13. The supreme court determined that Guerrero failed to establish cause because he was aware of the imposition of parole and his sentences, including the MSR term, did not exceed the maximum term he was admonished he could receive. *Guerrero*, 2012 IL 112020 at ¶ 16.

¶ 10 The *Guerrero* court reversed this court, which had previously found that leave for the defendant's successive postconviction petition should have been granted because the trial court's failure to admonish him as to his MSR term prevented him from entering a knowing and voluntary guilty plea. In doing so, the supreme court determined that this court erroneously relied on *People v. Whitfield*, 217 Ill. 2d 177 (2005), in finding cause and improperly applied a *Whitfield* remedy by reducing the defendant's term of imprisonment so that he would receive the " 'benefit of the bargain.' " *Guerrero*, 2012 IL 112020 at ¶¶ 21-22. In *Whitfield*, the supreme court held that a trial court's failure to admonish a defendant that the sentence to which he agreed in exchange for a guilty plea would include a term of MSR deprived him of the benefit of his bargain. *Whitfield*, 217 Ill. 2d at 190. In *People v. Morris*, 236 Ill. 2d 345, 360 (2010), the supreme court determined that *Whitfield* announced a new rule subject to prospective application.

¶ 11 Because *Whitfield's* application was found to be prospective only, the supreme court concluded in *Guerrero* that the defendant's and this court's reliance on *Whitfield* to establish cause and fashion a remedy was in error. *Guerrero*, 2012 IL 112020 at ¶¶ 22-23. The supreme court instructed that when a defendant is not afforded the benefit of his bargain, the appropriate remedies include the option of having the bargain fulfilled or the opportunity to withdraw his plea. *Guerrero*, 2012 IL 112020 at ¶ 23. When a defendant claims his plea was not knowing and voluntary because he was not admonished regarding the MSR term, the proper remedy is limited to allowing the

defendant leave to file a motion to withdraw his plea. *Guerrero*, 2012 IL 112020 at ¶ 23.

¶ 12 *Guerrero* is distinguished from the instant case in that cause and prejudice needed to bring a successive postconviction petition are not at issue. Rather, Padilla needs only to present the gist of a constitutional claim in order for his postconviction petition to survive first-stage proceedings. We consider that he has presented the gist of a constitutional claim. As argued by Padilla, the MSR term is not mentioned on the docket sheet, the mittimus, the judgment or the sentencing order. There is no transcript from the February 18, 1987, plea hearing. It is the petitioner's burden to provide a complete record to the appellate court in support of his claims. *People v. Barker*, 403 Ill. App. 3d 515, 523 (2010). In this case, however, the record establishes that while a court reporter was present during the plea hearing, the stenographic notes of the hearing were destroyed when the basement of the Will County courthouse flooded. Under the unique circumstances of this case, and in light of the fact that a term of MSR was not mentioned in the docket entries, mittimus, or judgment and sentencing orders, we conclude that Padilla raised the gist of a constitutional claim that his plea was not knowing and voluntary.

¶ 13 In support of our conclusion, we accept as true all allegations in Padilla's postconviction petition and attached memorandum of law, including that he was not informed of the MSR term at any time prior or subsequent to his plea. *Edwards*, 197 Ill. 2d at 244. Padilla maintains that he was unaware of the MSR term until one month prior to the filing of his postconviction petition. We acknowledge that the docket sheet provides that Padilla was "duly informed of and understands *** [the] minimum and maximum sentences prescribed by law for the offense he has pled guilty to" and that Padilla chose to plead guilty, "with a full understanding thereof and of the effects and consequences if the Court accepts his pleas." However, this court has long recognized that a

defendant's plea is not knowing and voluntary when he is not informed that his agreed sentence will include a MSR term. In *People v. Didley*, 213 Ill. App. 3d 910, 915 (1991), this court held that it is not permissible to add additional terms or conditions when a defendant who has pleaded guilty in exchange for a specific sentence. The *Didley* court relied on *People v. Wills*, 61 Ill. 2d 105, 109 (1975), in which the supreme court held that a defendant must be admonished regarding the MSR term in order for his plea to be considered knowing and voluntary. The defendants in both *Didley* and *Wills* argued that the addition of the MSR term rendered their pleas not knowing and voluntary and we rely on those decisions as instructive that a defendant must be admonished regarding the MSR term in order to ensure that he or she knowingly and voluntarily entered into the plea agreement. We thus find that Padilla presented the gist of a constitutional claim that his due process rights were violated when his sentence included a three-year MSR term about which he was not admonished. Accordingly, we reverse the summary dismissal of Padilla's postconviction petition and remand for second-stage proceedings.

¶ 14 For the foregoing reasons, the judgment of the circuit court of Will County is reversed and the cause remanded.

¶ 15 Reversed and remanded.

¶ 16 CARTER, J., dissenting:

¶ 17 I respectfully disagree with the majority's position in the above-referenced case and believe that we should affirm the trial court's dismissal of the postconviction petition. In my opinion, *People v. Morris*, 236 Ill. 2d 345 (2010), supports only one conclusion in this appeal—an affirmance. My reading of *Morris* is that claims of this nature may not be brought in a postconviction petition, if defendant's conviction was finalized before the decision in *People v. Whitfield*, 217 Ill. 2d 177

(2005), such as in the present case.

¶ 18 For the reasons stated, I respectfully dissent from the majority's order. I would affirm the dismissal of defendant's postconviction petition.