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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-2568
)	
NEDAL KAWASH,)	Honorable
)	Kathryn E. Creswell,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly summarily dismissed defendant's postconviction petition, which alleged that trial counsel was ineffective for not advising him of the deportation consequences of his guilty plea, as the trial court advised him of those consequences.

¶ 2 Defendant, Nedal Kawash, pleaded guilty to unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)). When he pleaded guilty, the court advised him that he most likely would be deported. Defendant assured the court that he was aware of this fact and that no promises had been made to him to get him to plead guilty. The court found defendant's plea knowingly and voluntarily made and sentenced defendant to the agreed-upon

term of two years' probation (see 720 ILCS 570/410 (West 2010)). Subsequently, defendant petitioned for postconviction relief (see 725 ILCS 5/122-1 *et seq.* (West 2012)), arguing that his counsel was ineffective for telling him that he would not be deported if he pleaded guilty. The court summarily dismissed the petition. Defendant timely appeals from that dismissal. For the reasons that follow, we affirm.

¶ 3 At the guilty plea proceedings, the court asked defendant, "Are you a United States citizen?" Defendant replied, "No." Given that response, the court asked defendant whether he "underst[oo]d that [his] plea of guilty may have consequences, such as deportation, or [he] could be excluded from admission to the United States or denied naturalization under the laws of the United States[?]" Defendant replied, "Yes." The court then advised defendant that "[he] should assume [that] by pleading guilty [he would] be deported." The court asked defendant if "[he] underst[oo]d that," and defendant said "[y]es." Based on this exchange, the court asked defendant whether "[he] still wish[ed] to plead guilty." Defendant again said "[y]es." After further admonishments, which included assurances from defendant that no one "promised [him] anything [other than the agreed-upon sentence] to induce [him] to plead guilty," and hearing a factual basis for the plea, the court accepted defendant's guilty plea and imposed the two-year term of probation.

¶ 4 Almost two years later, defendant petitioned for postconviction relief. In his petition, he claimed that his guilty plea was not knowingly and voluntarily entered. More specifically, defendant asserted that he "inquired of [his] attorney at the time whether or not a plea of guilty *** would cause [him] any negative immigration consequences or to be deported." Defendant alleged that his attorney told him that, because his probation "would not be considered as a conviction," he "[could not] be deported as a result of his plea of guilty." Although defendant

conceded that the court advised him of the deportation consequences of his guilty plea, defendant argued that “this admonishment was rendered meaningless by the direct words of his attorney on this point.”

¶ 5 The trial court summarily dismissed the petition, finding it frivolous and patently without merit.

¶ 6 On appeal, defendant argues that his petition should not have been summarily dismissed. The Post-Conviction Hearing Act (Act) provides a method by which a criminal defendant may assert that his or her conviction was the result of “a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both.” 725 ILCS 5/122-1(a)(1) (West 2012); see *People v. Tate*, 2012 IL 112214, ¶ 8. The Act establishes three stages to the proceedings. *Tate*, 2012 IL 112214, ¶ 9. This appeal concerns the dismissal of a petition at the first stage.

¶ 7 At the first stage, the trial court considers, without input from the State, whether the petition is “frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2012). In doing so, the court assesses whether the allegations in the petition, viewed liberally and taken as true, set forth a constitutional claim for relief. *People v. Hommerson*, 2014 IL 115638, ¶ 7. The fact that a defendant has presented a cognizable claim does not necessarily mean that the petition will advance to the second stage of postconviction proceedings. See *People v. Trujillo*, 2012 IL App (1st) 103212, ¶¶ 11, 12. Rather, “[w]here the record rebuts the allegations in a petition, summary dismissal is proper.” *Id.* ¶ 12. We review *de novo* the summary dismissal of a petition. *People v. Brown*, 236 Ill. 2d 175, 184 (2010).

¶ 8 Here, the record rebutted any contention that defendant was not aware of the deportation consequences of his guilty plea. That is, at the guilty plea proceedings, the court told defendant

that “[he] should assume [that] by pleading guilty [he would] be deported.” The court then asked defendant if “[he] underst[oo]d that,” and defendant said “[y]es.” Based on the deportation consequences defendant faced, the court inquired whether defendant “still wish[ed] to plead guilty,” and defendant again replied “[y]es.”

¶ 9 Defendant argues that his petition should not have been summarily dismissed, because, despite the court’s admonishments to the contrary, he relied on his counsel’s erroneous advice that he would not be deported if he pleaded guilty. The State claims that defendant’s petition was properly dismissed, as any error defense counsel made in advising defendant about whether to plead guilty was cured by the court’s admonishments about deportation. We agree with the State. See *People v. Hall*, 217 Ill. 2d 324, 339 (2005) (noting that any alleged error defense counsel makes in advising a defendant about consequences of his plea can be cured by the trial court’s explicit admonishments on the same matter).

¶ 10 For these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 11 Affirmed.