2016 IL App (1st) 141893-U

SIXTH DIVISION
October 14, 2016

Nos. 1-14-1893 and 1-15-0995
(CONSOLIDATED)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 22461
	)	
TERENCE TAYLOR,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** The Office of the State Appellate Defender's motion to withdraw as counsel is granted and the judgments of the circuit court are affirmed.

¶ 2 Following a jury trial in 2009, defendant Terence Taylor was convicted of attempted first-degree murder, aggravated battery with a firearm, and armed robbery, and sentenced to 33 years' imprisonment. The Office of the State Appellate Defender, who represents defendant on appeal from the circuit court's dismissal of his *pro se* petitions under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)) and section 2-1401 of the Code of Civil

Procedure (735 ILCS 5/2-1401 (West 2014)), has filed a motion to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), supported by a memorandum of law, based on his conclusion that no issues of merit exist that warrant argument on appeal. See *People v. Greer*, 212 Ill. 2d 192, 209 (2004) (applying *Finley* withdrawal procedure to Illinois postconviction appeals). Defendant has submitted two responses, raising numerous issues which, he claims, warrant argument. For the following reasons, we allow the Office of the State Appellate Defender's motion for leave to withdraw as counsel, and affirm the judgments of the circuit court.

¶ 3 Defendant was charged, in pertinent part, with attempted first-degree murder, aggravated battery with a firearm, and armed robbery. The evidence established that shortly before 11 p.m. on August 19, 2008, defendant and codefendant, Christopher Hillman, approached Paris Steele and Pierre Garth in an alley in Chicago. Hillman shot Steele in the arm, and defendant took Garth's car keys, garage door opener, and cell phone. The jury convicted defendant of first-degree murder, aggravated battery with a firearm, and armed robbery. After merging the convictions, the court sentenced defendant to consecutive terms of 12 years' imprisonment for attempted first-degree murder and 21 years' imprisonment for armed robbery, including a 15-year firearm enhancement. Additionally, the court found great bodily harm under section 5-4-1(c-1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-1(c-1) (West 2008)), requiring defendant to serve 85% of his sentence for the armed robbery conviction.

¶ 4 We affirmed defendant's convictions and sentence on direct appeal. *People v. Taylor*, 2012 IL App (1st) 100940-U.

¶ 5 In January 2013, defendant filed a *pro se* petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)), arguing that (1) he was not brought before a judge

within 48 hours of his arrest nor permitted to speak with his parents or an attorney; (2) lineup procedures were suggestive; (3) he consented to a pretrial fitness evaluation solely to proceed with trial and leave Cook County jail; (4) the trial court erred regarding the use of evidence of his prior convictions; (5) the indictment did not provide notice that he could be required to serve 85% of his sentence; (6) his convictions violated the one-act, one-crime rule; and (7) trial counsel and appellate counsel rendered ineffective assistance. The circuit court dismissed defendant's petition on April 9, 2013. Our supreme court issued a supervisory order directing us to accept defendant's late notice of appeal.

¶ 6 On July 29, 2014, defendant filed a *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)), again alleging that his convictions violated the one-act, one-crime rule, and further claiming that the 15-year firearm enhancement was unconstitutional. The circuit court dismissed defendant's petition on October 29, 2014. We allowed defendant's late notice of appeal. We consolidated defendant's appeals from the dismissals of both petitions.

¶ 7 Counsel filed a motion to withdraw, supported by a memorandum of law, based on his conclusion that no issues of merit exist that warrant argument on appeal. Counsel submits that the claims raised in defendant's petitions lacked merit and that the circuit court dismissed both petitions according to proper procedure. Copies of the memorandum and motion were sent to defendant, and he was advised that he might submit any points in support of his appeal. Defendant submitted two lengthy responses, along with records from his mental health care providers and unnotarized "affidavits" from his mother and father. Defendant raises several issues that, he claims, should be argued on appeal. He alleges that (1) he was denied the right to public trial; (2) the trial court erred in requiring him to serve 85% of his sentence for armed

robbery; and (3) trial counsel rendered ineffective assistance. None of defendant's claims are meritorious.

¶ 8 Defendant first argues that the trial court violated his right to "public trial" by discussing "jury instruction[s]" while he and his attorney were absent from the courtroom.[1] However, defendant did not raise this issue in either his postconviction petition or his petition for relief from judgment and, therefore, it is forfeited. *People v. Jones*, 211 Ill. 2d 140, 148 (2004) (holding that a defendant cannot raise an issue for the first time on appeal from the dismissal of a postconviction petition); see also 725 ILCS 5/122-3 (West 2014) ("[a]ny claim of substantial denial of constitutional rights not raised in the original or [in] an amended petition is waived").

¶ 9 Next, defendant contends that the trial court erred in requiring him to serve 85% of his sentence for armed robbery. Section 5-4-1(c-1) of the Code (730 ILCS 5/5-4-1(c-1) (West 2008)) provides that, in imposing sentence for certain offenses, including armed robbery, "the trial judge shall make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record." 730 ILCS 5/5-4-1(c-1) (West 2008). Section 3-6-3(a)(2)(iii) of the Code provides that, when the court has made the above finding under section 5-4-1(c-1), the prisoner "shall receive no more than 4.5 days of good conduct credit for each month of his or her sentence of imprisonment." 730 ILCS 5/3-6-3(a)(2)(iii) (West 2008). This means that the defendant "must serve at least 85% of his or her sentence and does not receive normal day-for-day good-conduct credit." *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 556 (2002).

[1] Although the pages in defendant's handwritten response are numbered consecutively, discussion of this issue ends midsentence at the bottom of one page and does not resume on the following page.

¶ 10 Defendant raises two arguments regarding these statutes. First, he claims that section 5-4-1(c-1) of the Code did not authorize the trial court to require him to serve 85% of his sentence for armed robbery because his indictment did not allege great bodily harm. This claim is foreclosed by *People v. Harris*, 2012 IL App (1st) 092251, ¶ 24.

¶ 11 Additionally, defendant claims that section 5-4-1(c-1) of the Code did not authorize the trial court to require him to serve 85% of his sentence for armed robbery because only Steele, the victim of the attempted first-degree murder, suffered great bodily harm. This issue is barred by the doctrine of *res judicata*, as defendant raised the claim on direct appeal and this court determined it lacked merit. *Taylor*, 2012 IL App (1st) 100940-U, ¶ 60.

¶ 12 Next, defendant raises four claims of ineffective assistance of counsel. To establish a claim for ineffective assistance, a defendant must establish both that (1) "counsel's performance fell below an objective standard of reasonableness," and (2) "a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Henderson*, 2013 IL 114040, ¶ 11 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)).

¶ 13 First, defendant contends that counsel was ineffective for "deliberately" failing to advise him that his sentence for armed robbery could include a 15-year firearm enhancement.[2] According to defendant, had he known the actual sentencing range for this offense, he would "have made a plea [bargain] or took a bench trial or prepared a defen[s]e." This claim rests entirely on the unnotarized "affidavits" from defendant's mother and father, which he attached to his *Finley* response. As he did not include these "affidavits" with his postconviction petition,

[2] Defendant also claims that counsel and the trial court were "unaware" that he was eligible for the 15-year firearm enhancement until "after trial." In defendant's handwritten response, the discussion of this issue ends at the bottom of one page and does not resume on the following page.

however, they are not properly before this court. See *People v. Anderson*, 375 Ill. App. 3d 121, 139 (2007) (appellate court cannot consider evidence "for the first time on appeal without it first being attached to defendant's postconviction petition for initial scrutiny and evaluation at the trial court level"). Based on the record before us, this claim for ineffective assistance is unsupported and, therefore, fails. See 725 ILCS 5/122-2 (West 2014) (postconviction petition must include "affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached").

¶ 14 Second, defendant contends that counsel was ineffective for failing to investigate and call his parents as witnesses at trial and at sentencing. This allegation, like defendant's first claim for ineffective assistance, depends solely on his parents' "affidavits," which are not properly before this court. *Anderson*, 375 Ill. App. 3d at 139. Additionally, defendant alleges that counsel was ineffective for failing to investigate and call his girlfriend as a witness. As defendant did not provide his girlfriend's affidavit with his postconviction petition, we need not consider this claim. See *People v. Guest*, 166 Ill. 2d 381, 402 (1995) ("To support a claim of failure to investigate and call witnesses, a defendant must introduce affidavits from those individuals who would have testified."). Consequently, this contention also fails for lack of support. 725 ILCS 5/122-2 (West 2014).

¶ 15 Third, defendant contends that counsel was ineffective for "forc[ing]" him to stand trial and failing to object to "false statements" made by the doctor who conducted his fitness examination. Prior to trial, counsel told the court that defendant's family "for the first time informed me that [defendant] some years ago had been diagnosed with being bipolar and that he had been prescribed psychotropic medication that he had not been taking." Following a court-ordered fitness examination where the doctor found defendant fit for trial, counsel told the court

that he "specifically advised [defendant] that I could request a hearing to have that doctor examined regarding his [fitness] findings," but that "at this point[ ] *** we would like to stipulate to that finding and proceed forward."

¶ 16 These facts do not support a claim for ineffective assistance. Although defendant asserts that he "told counsel of his mental state and that he did not understand trial [procedure]," he does not explain how this information would have alerted counsel that the doctor who conducted the fitness examination made "false statements." Defendant alleges that his parents' unnotarized "affidavits" support his contention, but, as we have established, these "affidavits" are not properly before this court and will not be considered. *Anderson*, 375 Ill. App. 3d at 139. Even assuming that counsel was deficient, however, defendant has not established prejudice where the reports do not demonstrate that he was unfit for trial. *People v. Graham*, 206 Ill. 2d 456, 476 (2003) ("if an ineffective-assistance claim can be disposed of because the defendant suffered no prejudice, we need not determine whether counsel's performance was deficient"). Consequently, this claim for ineffective assistance lacks merit.

¶ 17 Finally, defendant contends that counsel "disregarded his inqu[i]ries relating to the charges, his trial strategy and what if any offer was made by the [S]tate." As defendant provides no details for these allegations, they will not sustain a claim for ineffective assistance. See *People v. Williams*, 139 Ill. 2d 1, 12 (1990) (holding that "speculative allegations and conclusory statements" are insufficient to support a claim for ineffective assistance of counsel).

¶ 18 We have carefully reviewed the record in this case, counsel's memorandum, and defendant's responses, and we find no issue of arguable merit. Therefore, the Office of the State Appellate Defender's motion for leave to withdraw as counsel is allowed, and the judgment of the circuit court is affirmed.

¶ 19 Affirmed.