

NOTICE
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2016 IL App (5th) 130549-U

NO. 5-13-0549

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Franklin County.
)	
v.)	No. 98-CF-116
)	
CHARLES L. GEORGE,)	Honorable
)	T. Scott Webb,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Schwarm and Justice Goldenhersh concurred in the judgment.

ORDER

- ¶ 1 *Held:* Summary dismissal of the defendant's *pro se* postconviction petition is affirmed where the petition failed to state the gist of a constitutional claim.
- ¶ 2 The defendant, Charles L. George, appeals from the order of the circuit court of Franklin County, summarily dismissing his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2014). On appeal, the defendant contends that his petition stated the gist of a constitutional claim, wherein he alleged that his 60-year sentence for murder was grossly disparate to his codefendant's sentence of 45 years for the same crime. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Following a jury trial, the defendant was convicted of first-degree murder and robbery. The circuit court imposed a sentence of 60 years' imprisonment for the offense of murder and a concurrent 7-year sentence for the robbery. On appeal, this court affirmed the defendant's convictions and sentences. *People v. George*, No. 5-99-0377 (Dec. 12, 2001) (unpublished order pursuant to Supreme Court Rule 23).

¶ 5 Thereafter, on August 8, 2013, the defendant filed a *pro se* motion for leave to file a late postconviction petition. He alleged that his failure to file a timely petition was not due to his culpable negligence. Specifically, the defendant noted that his codefendant had entered into a plea agreement after the defendant went to trial. The trial court granted the defendant leave to file his petition out of time. Pursuant to the circuit court's order, the defendant filed his *pro se* petition for relief under the Act.

¶ 6 In the petition, the defendant alleged that his constitutional right to be free from cruel and unusual punishment had been violated in that his 60-year sentence for murder, imposed after a trial, was disproportionate and disparate to his codefendant's 45-year sentence for murder that was entered into pursuant to a negotiated plea agreement. The petition also stated that the codefendant had initiated the robbery, played a larger role in the commission of the murder, murdered the victim, and had a more serious criminal record compared to the defendant. In support of his petition, the defendant attached his own affidavit, attesting that his codefendant was sentenced to 45 years' imprisonment pursuant to a negotiated plea agreement. Also attached to the petition was a portion of the codefendant's transcript from his negotiated plea hearing.

¶ 7 On September 13, 2013, in a written order, the circuit court summarily dismissed the defendant's *pro se* postconviction petition as frivolous and patently without merit. In issuing its order, the court determined that the defendant's contentions were "blanket statements" that fell substantially short of raising the gist of a constitutional claim. The circuit court also found that a "sentence imposed on a codefendant who entered a guilty plea under a plea agreement cannot be compared to a sentence imposed after a trial." For these reasons, the circuit court summarily dismissed the defendant's petition. This appeal followed.

¶ 8 ANALYSIS

¶ 9 On appeal, the defendant admits that a sentence imposed on a codefendant who pled guilty does not provide a valid basis for comparison with a sentence entered after a trial. Nevertheless, the defendant contends that he stated the gist of a constitutional claim as his petition alleged that his 60-year sentence for murder was unconstitutionally disparate to his codefendant's sentence of 45 years for the same crime. The defendant also argues that his petition should not have been dismissed because he alleged that his codefendant was more culpable, and had a more substantial criminal history. In support of his argument, the defendant cites four cases in which he claims the appellate court found a defendant's sentence imposed after trial was impermissibly disparate with respect to a codefendant's sentence who pled guilty: *People v. Milton*, 182 Ill. App. 3d 1082 (1989); *People v. Daniels*, 173 Ill. App. 3d 752 (1988); *People v. Jackson*, 145 Ill. App. 3d 626 (1986); and *People v. Bishop*, 60 Ill. App. 3d 940 (1978).

¶ 10 The State counters, arguing that the trial court properly dismissed the defendant's postconviction petition as frivolous and patently without merit because the defendant could not establish an unconstitutional disparity between his sentence and the codefendant's sentence. In support of its argument, the State cites *People v. Caballero*, 179 Ill. 2d 205, 217 (1997).

¶ 11 We review the summary dismissal of a postconviction petition *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). At the first stage of a postconviction proceeding, the trial court is required to examine the petition independently, and without input from the parties. *Brown*, 236 Ill. 2d at 184. The petitioner needs to present only a limited amount of detail, and is not required to include legal argument or citation to legal authority. *Brown*, 236 Ill. 2d at 184. However, a *pro se* petitioner is not excused from providing any factual detail on the alleged constitutional violation. *Brown*, 236 Ill. 2d at 184. The allegations set forth in the petition, taken as true and liberally construed, need only present the gist of a constitutional claim. *Brown*, 236 Ill. 2d at 184. Presenting the gist of a constitutional claim is a low threshold. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A petition fails to meet the gist of a constitutional claim where it is frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 11 (2009). A petition is frivolous or patently without merit if it has no arguable basis either in law or in fact. *Hodges*, 234 Ill. 2d at 11-12.

¶ 12 Generally, similarly situated defendants should not receive grossly disproportionate sentences. *People v. Spriggle*, 358 Ill. App. 3d 447, 455 (2005). Equity in sentencing, however, is not required for all participants in the same crime. *People v.*

Martinez, 372 Ill. App. 3d 750, 760 (2007). Differences in sentencing may be justified by the relative character and history of the codefendants, the degree of culpability, rehabilitative potential, or a more serious criminal record. *Martinez*, 372 Ill. App. 3d at 760. Furthermore, "[a] sentence imposed on a codefendant who pleaded guilty as part of a plea agreement does not provide a valid basis of comparison to a sentence entered after a trial." *People v. Caballero*, 179 Ill. 2d 205, 217 (1997). Defendants who plead guilty are properly granted dispositional concessions when the interest of the public in the effective administration of criminal justice is served. *Caballero*, 179 Ill. 2d at 218. This is because a defendant who pleads guilty insures prompt and certain application of correctional measures, acknowledges his guilt, and demonstrates a willingness to assume responsibility for his conduct. *People v. Foster*, 199 Ill. App. 3d 372, 393 (1990). Thus, it is not the disparity of sentence that controls, but rather, it is the reason for the disparity that is important. *Martinez*, 372 Ill. App. 3d at 760.

¶ 13 In the instant case, even if all of the facts in the defendant's petition are taken as true, including his supporting exhibits, the defendant still cannot establish an unconstitutional disparity. The defendant was convicted of first degree murder and robbery after a trial, and was sentenced to a term of 60 years in prison for murder, and 7 years for robbery, to be served concurrently. His codefendant, on the other hand, was sentenced to 45 years in prison for murder after the entry of a negotiated plea of guilty. By agreeing to plead guilty, the codefendant insured prompt and certain application of correctional measures, acknowledged his guilt, and demonstrated a willingness to assume responsibility for his conduct. Thus, it would be improper to compare the sentence of the

defendant who was sentenced after a trial with the sentence of his codefendant who pled guilty as part of a plea agreement. See *Caballero*, 179 Ill. 2d at 217. Therefore, we find that the defendant cannot establish that his sentence is unconstitutionally disparate when compared to the sentence of his codefendant.

¶ 14 In making this finding, we are not persuaded by the defendant's argument that appellate courts have evinced a willingness to consider whether a sentence imposed after a trial can be compared to that of a codefendant who pled guilty. The defendant's reliance on *People v. Milton*, 182 Ill. App. 3d 1082 (1989), *People v. Daniels*, 173 Ill. App. 3d 752 (1988), *People v. Jackson*, 145 Ill. App. 3d 626 (1986), and *People v. Bishop*, 60 Ill. App. 3d 940 (1978), is misguided. As the State points out, these cases predate the Illinois Supreme Court's decision in *Caballero*, 179 Ill. 2d at 217, which stated the general rule that the sentence of a codefendant who pled guilty as part of a plea agreement could not provide a valid basis of comparison to a sentence imposed after a trial. Moreover, our appellate court in *People v. Scott*, 2012 IL App (4th) 100304, ¶¶ 26-29, rejected the very same argument now raised by this defendant. Therefore, in light of the foregoing, we find that the defendant's claim that his sentence was disparate to that of his codefendant, failed to state the gist of a constitutional claim. Accordingly, we affirm the summary dismissal of the defendant's postconviction petition.

¶ 15 Affirmed.