2016 IL App (5th) 140002-U

NO. 5-14-0002

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 88-CF-776
	)	
DOUGLAS K. WHITE,	)	Honorable
	)	Keith Jensen,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Stewart and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in dismissing the defendant's combined petitions for postconviction relief and for relief from judgment, for these petitions were, in effect, petitions for postconviction relief only, and the defendant failed to make a substantial showing of a constitutional violation in the proceedings that resulted in his conviction.

¶ 2 This case is before this court for the third time. The defendant, Douglas K. White, appeals from a judgment of the circuit court dismissing his combined petitions for postconviction relief and for relief from judgment. He has represented himself in this appeal. The defendant's combined petitions are, in effect, petitions for postconviction relief only; none of them can properly be construed as a petition for relief from judgment.

This court has examined with care the lengthy and complicated record of this case, and has concluded that the circuit court did not err in dismissing the defendant's petitions, for the defendant failed to make a substantial showing of any constitutional violation in the proceedings that resulted in his conviction. The judgment must be affirmed.

¶ 3 BACKGROUND

¶ 4 *Conviction and Direct Appeal*

¶ 5 In 1988, the defendant was charged with two counts of first-degree murder (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(a)(1)) and one count of concealment of a homicidal death (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-3.1(a)). He was accused of killing Adella Vallerius and Carroll Pieper and of concealing Pieper's death. In March 1989, the cause proceeded to trial by jury.

¶ 6 In this appeal, little needs to be said about the evidence adduced at the defendant's trial. However, a discussion of one small portion of the State's evidence is necessary. One witness for the State was the defendant's brother, Craig White, who had been charged with the same three offenses as the defendant and who was being held on those charges. In his testimony at the defendant's trial, Craig described how he and the defendant, acting in concert, killed Vallerius and Pieper and dumped Pieper's body into a lake, all for the purpose of ensuring that they would inherit money from Vallerius, their grandmother. Craig also testified that he, through his attorney, had negotiated a plea agreement with the State. According to Craig, he had agreed to plead guilty to the first-degree murder of Pieper and to be sentenced to 35 years of imprisonment for that offense; Craig would testify truthfully at the defendant's trial; the defendant, if convicted, would

not be sentenced to death, and would serve his sentence of imprisonment at a prison other than the one in which Craig would serve his own sentence. Craig identified a State's exhibit as the written plea agreement that he and his attorney had signed. The written agreement, dated February 28, 1989, specified that the other two charges against Craig–the first-degree murder of Vallerius and the concealment of Pieper's homicidal death–would be dismissed.

¶ 7 The jury found the defendant guilty on all three counts. The circuit court later sentenced the defendant to natural life imprisonment for each of the two first-degree murders and five years of imprisonment for the concealment of a homicidal death. This court affirmed the judgment of conviction in *People v. White*, 209 Ill. App. 3d 844 (1991). The opinion in that appeal includes a detailed summary of the trial evidence.

¶ 8 *The Defendant's First Collateral Attack*

¶ 9 *on the Judgment of Conviction*

¶ 10 In July 2001, the defendant filed with the circuit clerk a *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2000)). It was the defendant's first postconviction petition. In September 2001, the circuit court summarily dismissed the petition as frivolous and patently without merit. This court affirmed the judgment in *People v. White*, No. 5-01-0804 (Dec. 11, 2002) (unpublished order under Supreme Court Rule 23).

¶ 11 *The Defendant's Second Collateral Attack*

¶ 12 *on the Judgment of Conviction, Part 1*

¶ 13 In March 2002, nine months before this court in No. 5-01-0804 affirmed the dismissal of the defendant's first postconviction petition, the defendant initiated a second collateral attack on the judgment of conviction. He filed *pro se* a pleading that combined a successive petition for postconviction relief with a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2002)). In April 2002, the defendant filed *pro se* an amended combined petition for postconviction relief and for relief from judgment. Also in April 2002, the circuit court entered a written order continuing the case pending resolution of the appeal in No. 5-01-0804 (*i.e.*, the appeal from the summary dismissal of the defendant's first postconviction petition). Despite the order continuing the case, the State in May 2002 filed a motion to dismiss the postconviction aspect of the defendant's combined petition. In June 2002, the defendant filed *pro se* a second amended combined petition for postconviction relief and for relief from judgment. In October 2002, the court appointed the Madison County public defender to represent the defendant. This court notes that the circuit court, by appointing counsel, advanced the postconviction aspect of the combined petition to the second stage of postconviction proceedings, without first making a number of intermediate determinations.

¶ 14 With the appointment of the public defender in October 2002, the procedural history of this case became even more convoluted. The full history need not be recounted, but a few highlights need to be mentioned. On April 22, 2003, the defendant filed, by an assistant public defender, a third amended combined petition for postconviction relief and for relief from judgment. On December 22, 2005, the defendant

filed *pro se* a motion for leave to file *pro se* a supplemental combined petition for postconviction relief and for relief from judgment. Also on December 22, 2005, the circuit court, via a docket-entry order, granted the defendant's *pro se* motion to file the *pro se* supplemental combined petition, even though the defendant at that time was represented by a special public defender.

¶ 15 The defendant's supplemental combined petition presented eight claims, only one of which needs to be described briefly here. In claim 3 of the supplemental combined petition, the defendant claimed that the statute under which he had been sentenced to mandatory natural life imprisonment–section 5-8-1(a)(1)(c) of the Criminal Code of 1961 (Ill. Rev. Stat. 1989, ch. 38, ¶ 1005-8-1(a)(1)(c) (now codified, as amended, as section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2014))))–was void *ab initio* because the legislation that added it to section 5-8-1, Public Act 81-1118 (Pub. Act 81-1118 (eff. July 1, 1980)), was enacted in violation of article IV, section 9(e), of the Illinois Constitution (Ill. Const. 1970, art. IV, § 9(e)), which grants the Governor an amendatory veto power. This claim was unique to the supplemental combined petition; it was not included in any prior or subsequent petition.

¶ 16 On March 30, 2007, the State filed an amended motion to dismiss the defendant's combined petition for postconviction relief and for relief from judgment. The motion did not include any explicit reference to the third amended combined petition or to the supplemental combined petition. On May 1, 2007, the court heard arguments on the State's amended motion to dismiss. By that time, the defendant was represented by a different appointed attorney, one who did not file a certificate of compliance with

Supreme Court Rule 651(c) (eff. Dec. 1, 1984). On May 8, 2007, the court entered a written order granting the State's amended motion to dismiss. The defendant appealed to this court.

¶ 17 This court treated the State's amended motion to dismiss the combined petition as a motion to dismiss the third amended combined petition in particular, and treated the court's dismissal order as an order dismissing that same petition. Furthermore, this court treated the third amended combined petition as a postconviction petition solely, after concluding that none of the petition's claims implicated section 2-1401 of the Procedure Code. This court reversed the judgment dismissing the third amended combined petition. The basis for reversal was a lack of evidence that the attorney who represented the defendant at the hearing on the State's amended motion to dismiss had fulfilled his responsibilities under Supreme Court Rule 651(c) (eff. Dec. 1, 1984). This court remanded the cause to the circuit court "for the purpose of demonstrating appointed counsel's compliance" with the rule. *People v. White*, No. 5-07-0359 (Mar. 10, 2010) (unpublished order under Supreme Court Rule 23).

¶ 18 *The Defendant's Second Collateral Attack*

¶ 19 *on the Judgment of Conviction, Part 2*

¶ 20 Upon remand to the circuit court, the defendant filed on August 9, 2010, a *pro se* motion for leave to file *pro se* a sixth amended combined petition for postconviction relief and for relief from judgment under section 2-1401. The sixth amended combined petition raised 13 claims and was accompanied by a prodigious appendix. The instant

appeal is, for the most part, an appeal from the dismissal of that particular petition, and therefore its content will be described in detail.

¶ 21 The key factual allegations in the sixth amended combined petition concerned an alleged conspiracy between three people, *viz.*: the defendant's brother, Craig White; the prosecutor at the defendant's trial, assistant State's attorney Robert Trone; and the judge who presided at the defendant's trial, the Honorable Charles Romani, Jr. The defendant alleged that Craig's plea agreement with the State (described *supra*) had included a "secret" provision that Craig would be eligible to apply for a 5-year reduction in his agreed-upon 35-year prison sentence after he had served 10 years of that sentence, and that he would receive the 5-year reduction if he had maintained a clean record in prison. The defendant further alleged that Craig, assistant State's attorney Trone, and Judge Romani had conspired to prevent the defendant and the jury at the defendant's trial from learning about this secret sentence-reduction provision in Craig's plea agreement, in an effort to enhance Craig's credibility as a State's witness at the defendant's trial. Finally, the defendant alleged that in 1999, Judge Romani reduced Craig's prison sentence by five years, in accordance with the secret provision and in order to prevent Craig from becoming disgruntled and revealing the existence of the conspiracy.

¶ 22 The petition's appendix included five documents intended to support the allegations of a conspiracy: (1) A transcript of a June 6, 1989, hearing in the case of *People v. Craig White*, Madison County case number 88-CF-777. At the hearing, Craig's public defender informed the court that the parties had agreed that Craig would plead guilty to the first-degree murder of Pieper and would be sentenced to imprisonment for

35 years, and that the other two counts against Craig would be dismissed. Judge Romani accepted Craig's guilty plea, imposed the agreed-upon 35-year prison sentence for the Pieper murder, and dismissed the other two counts against Craig. There was no mention at the plea hearing of any potential 5-year reduction in Craig's 35-year sentence. (2) A written order in the case of *People v. Craig White*, Madison County case number 88-CF-777. The order, dated November 16, 1999, and signed by Judge Romani, directed the circuit court clerk to send the Illinois Department of Corrections a mittimus showing that Craig's sentence had been reduced from 35 years to 30 years "pursuant to prior agreement between the parties." (3) A letter dated January 25, 2005, purportedly written to the defendant by an erstwhile penpal named Liz. In her letter to the defendant, Liz quoted from an earlier letter that Craig allegedly had written to her. According to Liz, Craig wrote in the earlier letter that his sentence had been reduced pursuant to his plea agreement, which included a provision that his sentence would be reduced from 35 years to 30 years if he sought the reduction after 10 years in prison and had maintained a clean prison record, and Craig further wrote in his earlier letter that he was lucky to receive the reduction since he had not maintained a clean prison record. (4) A letter dated March 7, 2005, purportedly written to the defendant by erstwhile penpal Liz. In this letter, Liz quoted from another letter that she allegedly had received from Craig, wherein Craig wrote to Liz that his 5-year sentence reduction was legal, that he was lucky to get the reduction, and that the reduction was part of his plea agreement, though contingent upon his filing for it after 10 years in prison and a good record of prison behavior. (5) The written plea agreement between Craig and the State. This written agreement was the one

that Craig identified at the defendant's trial, as described *supra*. It did not contain any mention of a potential 5-year reduction in Craig's 35-year sentence.

¶ 23 Of the 13 claims presented in the sixth amended combined petition, 7 of them–specifically, claims 1, 2, 6, 8, 11, 12, and 13–depended on the above-described allegations of a conspiracy between Craig White, assistant State's attorney Trone, and Judge Romani. Those seven conspiracy-dependent claims were as follows.

¶ 24 In claim 1 of the sixth amended combined petition, which was titled "judicial disqualification" and was brought pursuant to the Post-Conviction Hearing Act, the defendant claimed that he had been deprived of due process when Judge Romani, a member of the conspiracy, failed to recuse himself from the defendant's case. The defendant sought vacatur of his convictions and dismissal of the indictment. In claim 2, titled "Lack of Proof Beyond a Reasonable Doubt" and brought pursuant to the Post-Conviction Hearing Act, the defendant alleged that but for the alleged conspiracy, the State's evidence would have been insufficient to prove the defendant guilty of any of the three charged offenses. The defendant sought dismissal of the charges against him. In claim 6, titled "Brady Violation" and brought pursuant to the Post-Conviction Hearing Act, the defendant claimed that he was deprived of due process when the State failed to disclose, prior to his trial, that Craig's plea agreement included a secret provision allowing for a 5-year reduction in Craig's 35-year prison sentence. The defendant sought vacatur of his convictions and dismissal of the indictment. In claim 8, titled "Intentional Use of Perjury False Argument and Fabricated Documentary Evidence, Substantive Due Process Violation Requiring Dismissal" and brought pursuant to the Post-Conviction

Hearing Act, the defendant claimed that the State, at the defendant's trial, improperly enhanced Craig White's credibility as a witness by concealing the fact that Craig's plea agreement with the State included a provision allowing for a potential 5-year reduction in Craig's 35-year prison sentence. The defendant sought the dismissal of the charges against him, with prejudice. In claim 11, titled "Use of Perjury, False Argument, and Fabricated Documentary Evidence Pursuant to §2-1401," the defendant claimed that concealment of the sentence-reduction provision of Craig's plea agreement was "error" that likely would have changed the result of the defendant's trial. In claim 12, titled "Judicial Bias/Disqualification Under Section 2-1401 and Attack on Void Judgment," the defendant alleged that Judge Romani, due to his participation in the conspiracy to conceal the sentence-reduction provision in Craig's plea agreement, should have recused himself from the defendant's trial, and if the defendant had known of the conspiracy, he could have taken steps that would have altered the outcome of his trial. The defendant sought dismissal of the charges against him. In claim 13, titled "Actual Innocence" and brought pursuant to the Post-Conviction Hearing Act, the defendant alleged that the "newly discovered evidence" of the conspiracy to conceal the sentence-reduction provision in Craig's plea agreement, a conspiracy that wrongly enhanced Craig's credibility as a witness at the defendant's trial, established the defendant's innocence. The defendant sought dismissal of the charges against him.

¶ 25 As for the six other claims in the sixth amended combined petition, *i.e.*, the six claims that did not depend on the allegations of a conspiracy between Craig White, assistant State's attorney Trone, and Judge Romani, they can be summarized as follows.

In claim 3, titled "Equal Protection Violations" and brought pursuant to both the Post-Conviction Hearing Act and section 2-1401 of the Procedure Code, the defendant alleged that he had learned of nine Illinois criminal cases in which an African-American or Hispanic defendant had been found guilty of murdering more than one victim and had been sentenced to imprisonment for terms of years, even though section 5-8-1(a)(1)(c) of the Criminal Code of 1961 (Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(1)(c)) mandated a prison term of natural life for any multiple murderer, while he had not found any Illinois case in which a Caucasian multiple murderer had been allowed to escape the mandate of section 5-8-1(a)(1)(c). The defendant, a Caucasian, claimed "discriminatory enforcement" of section 5-8-1(a)(1)(c) against him, and he sought vacatur of his life sentences and resentencing. In claim 4, titled "Vagueness" and brought pursuant to both the Post-Conviction Hearing Act and section 2-1401 of the Procedure Code, the defendant claimed that the statute under which he had been sentenced to natural life imprisonment, section 1005-8-1(a)(1) of the Criminal Code of 1961 (Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(1)), contained materially conflicting subsections. Specifically, he claimed that under subsection 5-8-1(a)(1)(c), a natural life sentence was mandatory for any multiple murderer not sentenced to death, but under subsection 5-8-1(a)(1)(b), a natural life sentence was discretionary with the court. According to the defendant, this alleged conflict between subsections 5-8-1(a)(1)(b) and 5-8-1(a)(1)(c) invited arbitrary application, violated due process, and rendered his life sentences void. The defendant sought vacatur of his life sentences and resentencing. In claim 5, titled "Proportionate Penalties" and brought pursuant to both the Post-Conviction Hearing Act and section 2-

1401 of the Procedure Code, the defendant claimed that section 5-8-1(a)(1) of the Criminal Code of 1961 (Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(1)) violated the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) because natural life imprisonment was discretionary under subsection 5-8-1(a)(1)(b) but mandatory under subsection 5-8-1(a)(1)(c), and thus the statute allowed for "different punishments" for the same criminal offense. In claim 7, titled "Article IV, Section 8(d) Violation" and brought pursuant to both the Post-Conviction Hearing Act and section 2-1401 of the Procedure Code, the defendant claimed that Public Act 81-1118, which created subsection 5-8-1(a)(1)(c) of the Criminal Code of 1961, was void because it was enacted in violation of section 8(d) of article IV of the Illinois Constitution. See Ill. Const. 1970, art. IV, § 8(d) ("A bill expressly amending a law shall set forth completely the sections amended."). The defendant sought resentencing. In claim 9, titled "First-Degree Murder is a Class 4 Felony," and brought pursuant to both the Post-Conviction Hearing Act and section 2-1401 of the Procedure Code, the defendant claimed that the statute defining first-degree murder, section 9-1 of the Criminal Code of 1961, did not specify a felony classification, and therefore first-degree murder was a Class 4 felony and he should have been sentenced accordingly. In claim 10, titled "Disparate Sentencing" and brought pursuant to the Post-Conviction Hearing Act, the defendant claimed that his two natural life sentences were "impermissably [*sic*] disparate" to Craig White's (reduced) sentence of 30 years of imprisonment. The defendant sought vacatur of his natural life sentences and resentencing.

¶ 26 On February 3, 2011, the State filed three motions to dismiss the sixth amended combined petition; each of the three motions addressed a different aspect of that petition. This court will treat those three motions as a single motion to dismiss the defendant's sixth amended combined petition. The State asserted that the defendant had not been granted leave to file a successive petition for postconviction relief and should be barred from filing one because the proceedings on his first postconviction petition had not been fundamentally unfair. The State also asserted that the defendant had missed the two-year deadline for filing a petition for relief from judgment under section 2-1401. Furthermore, the State asserted that the judgment under attack, *i.e.*, the judgment of conviction, was not void.

¶ 27 On November 16, 2011, the defendant's appointed postconviction counsel filed a certificate of compliance with Supreme Court Rule 651(c) (eff. Dec. 1, 1984). Counsel certified that he had consulted with the defendant in person in order to ascertain his contentions of deprivation of constitutional rights, had examined the record of the proceedings at trial, and had made any amendments to the petition filed *pro se* that were necessary for an adequate presentation of the defendant's contentions. At a hearing that same day, counsel informed the court that he had chosen not to amend the defendant's *pro se* pleadings because, in his estimation, they were satisfactory as written. Counsel also indicated that he adopted the defendant's *pro se* motion for leave to file the sixth amended combined petition.

¶ 28 On November 15, 2013, the court held a hearing on the State's motion to dismiss, at which the defendant appeared with counsel. The court queried counsel about the

alleged conspiracy involving Craig White, assistant State's attorney Trone, and Judge Romani. In response to a question from the court, it was revealed that Trone had died two years before Judge Romani reduced Craig's prison sentence by five years. The court suggested that the petition did nothing more than raise a "suspicion" of a conspiracy. The court asked postconviction counsel whether he had "any evidence" of the alleged conspiracy, and counsel answered, "No, your Honor." The court asked counsel whether he had any witnesses to support the allegation, and the defendant personally responded that he had "the letters that Craig White sent to [the defendant's erstwhile penpal, Liz] saying that the reduction was part of the plea deal" and "affidavits from inmates stating ... that Craig White told them that the reduction was part of his plea deal when he testified." The defendant then urged the court to examine the prodigious appendix to his sixth amended combined petition, asserting that "[t]here's a lot of evidence [of the alleged conspiracy]" and "[i]t's all there." After hearing arguments, the court took the matter under advisement.

¶ 29 On December 16, 2013, the circuit court entered a written order stating that "[the] third amended post-conviction petition, along with all subsequent amendments are hereby dismissed." From that judgment, the defendant now appeals.

¶ 30 ANALYSIS

¶ 31 This appeal is from a judgment dismissing the defendant's third amended combined petition and "all subsequent amendments." The "subsequent amendments" were two in number, *viz.*: the supplemental combined petition and the sixth amended combined petition. The sixth amended combined petition, which was the last-filed of all

the defendant's numerous petitions, subsumed within itself all of the claims contained in the third amended combined petition and all of the claims, except for claim 3, contained in the supplemental combined petition. Hence, this appeal amounts to an appeal from the dismissal of the sixth amended combined petition plus claim 3 of the supplemental combined petition.

¶ 32 Furthermore, none of the claims presented in the defendant's petitions implicates section 2-1401 of the Procedure Code. Section 2-1401 serves as a means by which to correct errors of fact, unknown to the petitioner and the court at the time of the judgment, that would have prevented the rendition of the judgment had they been known. *People v. Pinkonsly*, 207 Ill. 2d 555, 565-66 (2003). None of the defendant's claims alleged errors of that type, and therefore none of his petitions was cognizable as a section 2-1401 petition for relief from judgment. Hence, this appeal is essentially an appeal from the dismissal of petitions for postconviction relief only.

¶ 33 The Post-Conviction Hearing Act sets forth a procedural mechanism through which a defendant can claim that "in the proceedings which resulted in his or her conviction there was 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). The Act provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Boclair*, 202 Ill. 2d 89, 99 (2002). At the first stage, the trial court independently assesses the defendant's petition, and if the court determines that the petition is "frivolous" or "patently without merit," the court may summarily dismiss it. 725 ILCS 5/122-2.1(a) (West 2012); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). If

the petition is not dismissed at the first stage, it advances to the second stage, where the circuit court may appoint counsel for an indigent petitioner, and the State can move to dismiss the petition. 725 ILCS 5/122-2.1(b), 122-4, 122-5 (West 2012). At the second stage, the trial court determines whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). If a substantial showing is made, the petition advances to the third stage for an evidentiary hearing, but if a substantial showing is not made, the petition is dismissed. *Id.* The dismissal of a postconviction petition without an evidentiary hearing is reviewed *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 389 (1998).

¶ 34 In the instant case, the defendant's petitions were advanced to the second stage of postconviction proceedings and then dismissed on the State's motion. For the reasons that follow, this court concludes that the defendant failed to make a substantial showing of a constitutional violation and therefore the circuit court did not err in dismissing his petitions.

¶ 35 As discussed *supra*, 7 of the 13 claims presented in the sixth amended combined petition–specifically, claims 1, 2, 6, 8, 11, 12, and 13–depended on the allegation of a conspiracy between Craig White, the assistant State's attorney at the defendant's trial, and the judge at the defendant's trial, to hide from the defendant and from the defendant's jury the alleged secret provision in Craig's plea agreement allowing for a potential 5-year reduction in Craig's 35-year prison sentence. The defendant attempted to support his conspiracy allegation with various documents included in the appendix to his sixth amended combined petition, documents that were described in detail *supra*. However, as

the circuit court suggested, the most that these documents accomplished was to fuel a suspicion that such a conspiracy existed. The documents showed merely that Craig White pleaded guilty in June 1989 before Judge Romani and was sentenced, as agreed, to 35 years in prison, and Judge Romani in November 1999 reduced the sentence by 5 years. Some double hearsay, and nothing more, connected these two events. The defendant failed to present evidence sufficient to make a substantial showing that a conspiracy existed, and by extension he failed to make a substantial showing of a constitutional violation in any of the seven claims that depended on the conspiracy allegations. (Regardless of whether a conspiracy was indicated, it is difficult to imagine that the jury at the defendant's trial would have altered its assessment of Craig's credibility if it had known that his plea agreement included the possibility of a 5-year reduction in his 35-year sentence, conditioned upon his maintaining a clean prison record for 10 years.)

¶ 36 As for the six claims in the sixth amended combined petition that did not depend upon the conspiracy allegations, *i.e.*, claims 3, 4, 5, 7, 9, and 10, detailed *supra*, the defendant also failed to make a substantial showing of a constitutional violation.

¶ 37 In claim 3, the defendant stated that he had learned of several non-Caucasians who had committed multiple murders in Illinois but had been sentenced to imprisonment for terms of years, not for the remainder of their natural lives as required under section 5-8-1(a)(1)(c) of the Criminal Code of 1961. On that basis, the defendant, a Caucasian, sought vacatur of his natural life sentences and resentencing. Even if the defendant's allegations are true, and several non-Caucasians who should have been sentenced to

natural life were in fact sentenced to terms of years, the fact remains that the defendant was found guilty of multiple murders, and section 5-8-1(a)(1)(c) mandated natural life sentences for him. Nothing in the law supports the notion that the improper sentencing of other multiple murderers should somehow allow this multiple murderer to evade sentences that were mandated by statute.

¶ 38 Claims 4 and 5 of the sixth amended combined petition depended on the defendant's assertion that section 5-8-1(a)(1) of the Criminal Code of 1961 contained materially conflicting sections–specifically, that subsection 5-8-1(a)(1)(c) made a natural life sentence mandatory for any multiple murderer who was sentenced to prison while subsection 5-8-1(a)(1)(b) made a natural life sentence discretionary with the sentencing court. This selfsame argument has been rejected by Illinois courts of review on several occasions. See, *e.g.*, *People v. Creque*, 214 Ill. App. 3d 587, 599-601 (1991). The argument has not improved with age. Subsection 5-8-1(a)(1)(c) specifically and unambiguously required that any prison sentence for a defendant "found guilty of murdering more than one victim" had to be a natural life sentence. Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(1)(c).

¶ 39 In claim 7, the defendant alleged that subsection 5-8-1(a)(1)(c) was void because it was enacted in violation of the Illinois constitutional rule that "[a] bill expressly amending a law shall set forth completely the sections amended." Ill. Const. 1970, art. IV, § 8(d). Subsection 5-8-1(a)(1)(c) was added to section 5-8-1 by Public Act 81-1118 (Pub. Act 81-1118 (eff. July 1, 1980)), which was a very short piece of legislation that did nothing except amend section 5-8-1. See 1979 Ill. Laws 4286-87. The act clearly

and completely set forth the section amended, in full compliance with the constitutional command.

¶ 40 In claim 9 of the sixth amended combined petition, the defendant alleged that first-degree murder was a Class 4 felony, and he sought resentencing accordingly. This claim may be the most ridiculous of all the defendant's claims. First-degree murder was (and remains) in a felony class by itself. In the words of section 5-5-1(b) of the Criminal Code of 1961, first-degree murder was "a separate class of felony" for sentencing purposes. Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-5-1(b). First-degree murder was punishable, under certain specified circumstances, by death. Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(b). If the death penalty was not imposed, a prison sentence was required; probation was not a possibility. Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-5-3(c)(2)(A). The prison sentence could be for a term of 20 to 60 years or for a term of natural life, depending on circumstances. Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(1). First-degree murder plainly was not a Class 4 felony, which is a felony generally punishable by probation (Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-5-5(b), (c)(2)) or by imprisonment for a term of only one to three years (Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(7)).

¶ 41 In claim 10 of the sixth amended combined petition, the defendant claimed that his two natural life sentences were impermissibly disparate to the 30-year sentence imposed upon his brother and partner-in-crime Craig White. Craig pleaded guilty to one count of first-degree murder as part of a plea agreement; his sentence cannot validly be compared to the defendant's natural life sentences, which were imposed after a jury found him guilty of two first-degree murders. See, *e.g.*, *People v. Brown*, 267 Ill. App. 3d 482, 487

(1994) (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").

¶ 42 Finally, in claim 3 of the supplemental combined petition, the defendant claimed that section 5-8-1(a)(1)(c) of the Criminal Code of 1961, pursuant to which he was sentenced to mandatory natural life imprisonment, was void *ab initio* because the legislation that created it, Public Act 81-1118, was enacted in violation of article IV, section 9(e), of the Illinois Constitution. That provision authorizes the Governor to "return a bill together with specific recommendations for change to the house in which it originated." Ill. Const. 1970, art. IV, § 9(e). This authority is known as the amendatory veto power. "While the exact boundaries of the Governor's power under this section have not been totally defined, a Governor may not substitute a completely new bill [citation], or change the fundamental purposes of the legislation. [Citation.]" *Department of Central Management Services v. Illinois State Labor Relations Board*, 249 Ill. App. 3d 740, 745-46 (1993). The defendant here claimed that the Governor exceeded his amendatory veto powers. The history of Public Act 81-1118 includes an amendatory veto. Governor James R. Thompson exercised his amendatory veto power on September 14, 1979, in regard to Sentate Bill 32, the precursor bill to Public Act 81-1118. The General Assembly, also pursuant to article IV, section 9(e), accepted the Governor's changes on October 30, 1979. See 1979 Ill. Laws 4286-87. The Governor's changes, outlined by the defendant in his supplemental combined petition, were noteworthy, but they certainly did not render a completely new bill, and they certainly did not change the

fundamental purpose of the legislation, which was to mandate natural life imprisonment for any defendant who had murdered more than one person and who was not sentenced to death. See *People v. Winchel*, 159 Ill. App. 3d 892, 921 (1987) (summary of legislative history of Public Act 81-1118).

¶ 43 CONCLUSION

¶ 44 The defendant presented many claims, but he failed to make a substantial showing of any constitutional violation in the proceedings that resulted in his conviction. The circuit court did not err in dismissing his petitions, and the judgment must be affirmed.

¶ 45 Affirmed.