

**NOTICE**  
Decision filed 08/11/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 160114-U

NO. 5-16-0114

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).

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<i>In re</i> E.W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 13-JD-22
	)	
E.W.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

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

**ORDER**

¶1 *Held*: The circuit court's order is reversed and remanded for third-stage postconviction proceedings where the defendant made a substantial showing of a constitutional violation.

¶2 The defendant, E.W., appeals the circuit court's order dismissing his postconviction petition at the second-stage postconviction proceeding.

¶3 As a preliminary matter, because this appeal involves a final order from a delinquent minor proceeding arising out of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)), Illinois Supreme Court Rule 660A(f) (eff. July 1, 2013)

requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. The case was placed on the July 26, 2016, oral argument schedule, and we now issue this order.

¶ 4 This court previously detailed the evidence adduced at the defendant's extended jurisdiction juvenile (EJJ) prosecution and the circuit court's summary dismissal of the defendant's postconviction petition in a previous opinion on appeal. See *In re E.W.*, 2015 IL App (5th) 140341. Accordingly, we will reiterate here only those facts which are germane to the issues raised in this appeal.

¶ 5 On February 23, 2015, after a careful review of the defendant's postconviction petition and the record, this court concluded that the defendant's postconviction petition set forth the "gist" of a constitutional claim and that the circuit court erred in dismissing it at the initial stage of the postconviction proceeding. The case was remanded to the circuit court for second-stage proceedings under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)), finding that the court failed to correctly admonish the defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012), thus the court's summary dismissal of the respondent's postconviction petition was reversed.

¶ 6 Following remand from this court, the circuit court appointed counsel who filed an amended postconviction petition on October 21, 2015. The petition asserted that the defendant's guilty plea was unknowing and involuntary. The petition claimed that E.W. was not properly admonished as to the following: his right to a jury trial, the proper sentencing range, mandatory supervised release (MSR), his right to persist in his not

guilty plea, and that a written jury waiver was never executed. Moreover, the defendant asserted that had he been properly admonished, he would have not pled guilty and would have proceeded with a jury trial.

¶ 7 On November 17, 2015, the State filed a motion to dismiss the defendant's amended petition for postconviction relief. The motion to dismiss asserted that "when examining the entire record of proceedings, it is clear that Petitioner was advised and aware of all of his rights pursuant to Rule 402." The State further argued that the circuit court substantially complied with the requirements of Rule 402, arguing that the defendant understood all rights he was waiving, as it was clear that the defendant wished to plead guilty given that the court advised him "at length" about his constitutional rights.

¶ 8 On January 28, 2016, the circuit court held a second-stage postconviction proceeding regarding the defendant's postconviction petition. After taking the case under advisement, on February 18, 2016, the court granted the State's motion to dismiss the defendant's amended petition for postconviction relief, finding that the defendant failed to make a showing of a substantial denial of his state or federal constitutional rights. The defendant filed a timely notice of appeal on March 17, 2016.

¶ 9 We begin our review by recalling the familiar principles regarding postconviction proceedings. The Act provides a means by which a criminal defendant may challenge his conviction on the basis of a "substantial deprivation of federal or state constitutional rights." 725 ILCS 5/122-1 *et seq.* (West 2012). In a noncapital case, the Act creates a three-stage procedure of postconviction relief. *People v. Makiel*, 358 Ill. App. 3d 102, 104 (2005). The relevant question raised during a second-stage postconviction

proceeding is whether the allegations in the petition, supported by the trial record and accompanying affidavits, demonstrate a substantial showing of a constitutional deprivation, which mandates an evidentiary hearing. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001); *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006). All well-pleaded facts in the petition and affidavits are taken as true, but assertions that amount to conclusions add nothing to the required showing to trigger an evidentiary hearing under the Act. *People v. Coleman*, 183 Ill. 2d 366, 380-81 (1998). The inquiry into whether a postconviction petition contains sufficient allegations of constitutional deprivations does not require the court to engage in any fact-finding or credibility determinations. *Coleman*, 183 Ill. 2d at 381. If a substantial showing of a constitutional violation is set forth, then the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2012); *Edwards*, 197 Ill. 2d at 246. A second-stage dismissal of the defendant's petition presents a legal question we review *de novo*. *People v. Cheers*, 389 Ill. App 3d 1016, 1024 (2009).

¶ 10 On appeal, the defendant argues that had he been properly admonished, he would not have pled guilty at trial. The defendant argues that he has made a substantial showing of a constitutional deprivation where the court clearly failed several times to adequately admonish him and inform him that he could persist in his plea of not guilty. Thus, his guilty plea was unknowing and involuntary.

¶ 11 In response, the State argues that even if the admonishments were inadequate, as they likely were at the EJJ prosecution, the defendant has failed to show prejudice concerning any alleged inadequate admonishment. We disagree.

¶ 12 In our February 23, 2015, opinion, this court found that the defendant stated the "gist" of a constitutional claim that his plea was not knowing where the circuit court failed to properly admonish him regarding the maximum and minimum sentences, the period of MSR, his right to a jury trial, and his right to persist in his plea of not guilty. See *In re E.W.*, 2015 IL App (5th) 140341, ¶ 27. Regardless of our finding on review that the circuit court's admonishments were insufficient, neither the State nor the circuit court acknowledged our holding, other than the State's brief statement that the opinion merely told the State to examine the issues "so I don't think that the Appellate Court is necessarily saying one way or another other than to tell us we need to stop and take a look at these issues." We disagree with the State's notion.

¶ 13 Instead, we find that the defendant made a substantial showing of a constitutional violation. As we previously determined, it is the timing of the admonishment that counts and the circuit erred in this timing. See *In re E.W.*, 2015 IL App (5th) 140341, ¶¶ 28-30. The circuit court was required to admonish the defendant prior to the acceptance of the plea. Alternatively, if corrections were needed during sentencing, the court should have afforded the defendant a chance to affirm his guilty plea following the corrected admonishments. Although the court recognized the incorrect admonishments and then persisted to correct them, the court failed to inform and then ask the defendant whether he wished to persist in his plea of guilty following the corrections. Simply put, the court's failure resulted in the defendant not being informed that he had a right to withdraw his guilty plea in light of the court's error.

¶ 14 Lastly, the State argues that the defendant has failed to show prejudice where his only argument is that had he been properly admonished, he would not have pled guilty and would have gone forward with a jury trial. However, we cannot find that the defendant's guilty plea was "a knowing, intelligent act, done with sufficient awareness of the relevant circumstances and likely consequences," as required by Rule 402 (eff. July 1, 2012), given that the circuit court clearly failed to admonish the defendant on his right to persist in a plea of not guilty following the corrected admonishments pertaining to the sentencing range, MSR, and the jury trial. *People v. Fish*, 316 Ill. App. 3d 795, 799 (2000). Instead, we find the defendant's argument persuasive where he contends that the threat of a 30-year sentence, twice as long as his age, had the potential to compel him to enter into a negotiated plea. Thus, we find that in light of the defendant's improper admonishments, he has in fact made a good faith argument that he would not have pled guilty if proper admonishments had been given where the defendant lacked the correct information prior to entering his guilty plea. See *Fish*, 316 Ill. App. 3d at 800. Because it cannot be affirmatively determined from the record that defendant entered voluntarily or that he was aware of the consequences of his plea, we reverse and remand.

¶ 15 For the reasons stated, the circuit court's dismissal of the defendant's second-stage postconviction petition is reversed and the cause is remanded for third-stage postconviction proceedings under the Act.

¶ 16 Reversed and remanded.