FIRST DIVISION
June 29, 2017

No. 1-15-0820
2017 IL App (1st) 150820-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 10 CR 18863
THEODORE PARISH,	)	
	)	Honorable
Petitioner-Appellant.	)	James B. Linn,
	)	Judge Presiding.
	)	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's postconviction petition was barred by *res judicata* where it raised the same issues that were raised on direct appeal in response to appellate counsel's motion to withdraw; the circuit court did not err when it failed to enter a written order detailing its reasons for a summary dismissal of defendant's postconviction petition; and the Habitual Criminal Act is not facially unconstitutional.

¶ 2 Petitioner-appellant Theodore Parish (defendant) appeals from a summary dismissal of his petition for post-conviction relief. Defendant contends that: (1) he stated an arguable

substantive due process claim that he was not fit to stand trial because he had not taken the proper medication; (2) he stated the gist of an ineffective assistance of counsel claim in his petition where he alleged that trial counsel failed to investigate whether a police officer planted keys tying him to the crime; (3) the trial court erred when it failed to enter a written order detailing the reasons for the summary dismissal; and (4) Illinois's Habitual Criminal Act (730 ILCS 5/5-4.5-95 (West 2014)) (the Habitual Criminal Act) is unconstitutional where it mandates a sentence of natural life in prison upon defendant's third Class X conviction. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with one count of being an armed habitual criminal, one count of armed robbery, two counts of unlawful use or possession of a weapon by a felon, four counts of aggravated unlawful use of a weapon, and one count of aggravated unlawful restraint following the armed robbery of a GameStop store in Chicago on October 11, 2010. Prior to trial, defendant's trial counsel informed the court that defendant suffered from bipolar disorder and depression, and requested leave to file a motion for a Behavioral Clinic Examination (BCX), which the trial court granted. The BCX indicated that defendant was fit to stand trial with medication.

¶ 5 At trial, David Frazier testified that he was the store manager of the GameStop store in question. On October 11, 2010, he arrived at the store at approximately 8:45 a.m. He opened the store, took cash out of the store's safe and cash register, and went to make a deposit at TCF Bank. Frazier testified that as he was exiting the store, an individual approached him holding a gun. Frazier testified that he saw a bluish, metallic truck parked in front of the store. The individual asked Frazier, "Do you know what time it is?" Frazier testified that the gun pointed at

him was a dark color and had some scratches on it. Frazier did not look at the individual's face, but noticed that it was a man with brown skin, who was wearing a greenish-bluish long-sleeve shirt. Frazier testified that when he saw the gun, he put his hands up and walked back inside the store.

¶ 6 Frazier testified that the man with the gun made him lay face-down on the floor while he handcuffed Frazier. The man took both the store keys and Frazier's car keys from his pocket. Frazier testified that he could hear the locked drawers opening and when he heard the front door chime, he got up and called 9-1-1 to report the robbery. Frazier described the blue metallic truck to the police.

¶ 7 Frazier testified that he later identified his store keys and the gun used in the armed robbery. He also identified the handcuffs that had been placed on him. Frazier further testified that the store has a surveillance system in place, and that he had seen a copy of the video recording from the date in question. The recording was then played for the jury as Frazier described what was occurring. He testified that the man who held him at gunpoint was putting merchandise into a black bag, and from the other camera angle, two people could be seen leaving the store, and then the blue truck pulling away.

¶ 8 Frazier testified that he did not identify defendant as the individual with the gun. Frazier testified that he did not see the face of the individual and did not know defendant. He identified the gun and described the shirt of the perpetrator. His store keys were returned to him, but his car keys were never recovered.

¶ 9 Chicago Police Officer Tiffany Percy testified that on the date in question, she was on patrol with her partner, Derek Thomas, and they responded to a call about a robbery at approximately 9:15 a.m., which included a description of the blue truck. Officer Percy testified

that on their way to the store, they saw a blue pickup truck and followed it. They activated their emergency lights and the truck sped up. Officer Percy testified that a black male wearing a green shirt jumped out of the truck and started running. Officer Percy identified defendant as the black male she saw jump out of the truck wearing a green shirt. Officer Percy testified that defendant ran and she chased him on foot while her partner followed in their vehicle. Defendant ran down an alley, and then crossed a street where he crouched behind a Jeep. Officer Percy placed defendant in custody and drove him to the GameStop store.

¶ 10 Officer Percy testified that she then learned a gun had been used in the robbery, so she returned to where she had found defendant crouching behind a Jeep, and recovered a loaded nine-millimeter gun. Officer Percy further testified that when they searched defendant, they found the store keys in his pocket.

¶ 11 Chicago Police Officer James Bansley testified that on the date in question he was working with his partner, Officer Larry Dotson, on patrol. When they received a call about a robbery in progress, the officers drove to the store and the door was locked. They saw Frazier inside, handcuffed. Frazier was able to open the door, and the officer cut the handcuffs off of him. Officer Bansley testified that Officer Percy arrived with defendant in custody, and they asked Frazier if he recognized defendant. Officer Bansley testified that Frazier identified defendant.

¶ 12 The parties stipulated that defendant had two prior felony convictions (00 CR 22660 and 76 C 3006), which were qualifying offenses under the Armed Habitual Criminal statute.

¶ 13 Chicago Police Officer Derek Thomas then testified for the defense. He testified that on the date in question, at approximately 9:15 a.m., he was on patrol with Officer Percy when they received a call from the police dispatcher that a “hold up” was in progress. They were given a

description of a blue pickup truck. As they were driving to the store, they saw a blue pickup truck. Officer Thomas testified that the pickup truck sped up as soon as he activated the emergency lights. When the truck stopped, defendant jumped out and hid behind a Jeep. Officer Thomas tried to pursue the pickup truck but could not find it. The officers then went to the store with defendant.

¶ 14 The jury found defendant guilty of armed robbery and being an armed habitual criminal. Defendant filed a motion for a new trial, alleging that the State failed to prove him guilty beyond a reasonable doubt. Attached was a letter that Frazier had written to defendant stating that he knew defendant was not the person who robbed him. The trial court denied the posttrial motion, finding that the letter was consistent with Frazier's testimony that he had not identified defendant. The trial court ordered a Presentencing Investigation Report (PSI) on November 1, 2011. On December 2, 2011, the PSI was filed, indicating in part that defendant "added that he has been off of his medications and is now being prescribed them via Division 10." The trial court sentenced defendant to natural life in prison pursuant to the Habitual Criminal Act.

¶ 15 Defendant filed a *pro se* motion to reconsider, alleging ineffective assistance of counsel based on counsel's alleged failure to investigate other witnesses. This motion was denied and defendant filed a notice of appeal.

¶ 16 Defendant was assigned an Assistant State Appellate Defender, who then filed a motion for leave to withdraw as appellate counsel and a brief in support of the motion pursuant to *Anders v. California,* 386 U.S. 738 (1967), concluding that the appeal would be without arguable merit. Appellate counsel argued in part that he had considered raising the issue of whether a *bona fide* doubt existed as to defendant's fitness to stand trial and be sentenced where he was found fit with medication and the PSI suggested the possibility that he was not taking his

medication. However, appellate counsel noted that "there is nothing specific in the record to indicate when or if [defendant] did not take his medication, let alone what effect this might have on his fitness." Appellate counsel also noted that nothing in the record suggested that defendant had any difficulty understanding the nature and purpose of the proceedings or assisting in his own defense. Appellate counsel stated that at sentencing, defendant filed a sophisticated *pro se* motion alleging numerous grounds for overturning his conviction, which showed his awareness of what happened at his trial. Appellate counsel also noted the lack of statements from trial counsel suggesting unfitness.

¶ 17 Defendant filed a *pro se* response, arguing that the trial court failed to inquire into his fitness to stand trial upon learning that he had not been taking his medication. Defendant contended that while "appellate counsel may be correct in his assertion that the record is devoid of anything suggesting that [defendant] had difficulty understanding the nature and purpose of the proceedings or assisting in his defense, the record is also devoid of any evidence suggesting that [he] was not having difficulties." Defendant argued that counsel was basing his assertion on defendant's behavior after the trial had ended, which was a problem because he was "taking his medication during the sentencing phase of trial." Defendant argued that once he was "taken off his medications, a *per se bona fide* doubt to his fitness arose, and a hearing should have been conducted. Defendant also argued that the police officers committed police misconduct when they found the GameStop keys on the ground near where defendant was arrested and then placed them on his person.

¶ 18 In a summary order, this court addressed defendant's claims and found that Frazier's affidavit stating that defendant was not the perpetrator was unlikely to change the result on retrial where that was Frazier's testimony at trial. *People v. Parish*, 2013 IL App (1st) 120526-U, ¶ 4.

This court further found that defendant's contention that the trial court failed to conduct a sufficient inquiry into his *pro se* posttrial allegations of ineffective assistance of counsel was without merit where the trial court acknowledged the motion, expressly addressed some of defendant's claims, and found that trial counsel provided "excellent representation." *Id.* ¶ 5. This court further found that defendant's allegations regarding the trial court's failure to inquire into his fitness upon learning that he had not been taking his medications were not valid where the allegations were "devoid of any foundation or context of time" and did not create a *bona fide* doubt of his fitness. *Id.* ¶ 6. This court also found that further investigation was not required into defendant's claims of ineffective assistance of counsel for trial counsel's failure to investigate police misconduct in that the officers planted the keys on his person. *Id.* ¶ 8. This court granted the State Appellate Defender's motion for leave to withdraw and affirmed the judgment of the trial court.

¶ 19 Defendant then filed a *pro se* petition for postconviction relief on December 3, 2014, arguing that: (1) the identification outside of GameStop unnecessarily suggestive; (2) trial counsel was ineffective for failing to file motions to suppress his identification, suppress evidence, and for failing to object to hearsay; (3) appellate counsel was ineffective for filing a motion to withdraw; (4) he was actually innocent based on Frazier's affidavit; (5) there was a *bona fide* doubt that he could stand trial without medication; and (6) the offense of armed robbery is facially unconstitutional and unconstitutional as applied. Defendant attached his own affidavit to the petition.

¶ 20 On February 3, 2015, the trial court stated that the petition was merely "a restating of issues that were raised at trial and on this appeal." The trial court then dismissed the petition as "without merit." Defendant now appeals.

¶ 21 ANALYSIS

¶ 22 Defendant's first argument on appeal is that he stated the gist of a constitutional claim when he argued in his postconviction petition that he was not fit to stand trial because he had not taken the medication necessary for him to be fit. The State responds that defendant's claim should not be reviewed as it is *res judicata*. The State further contends that in the event this claim is not *res judicata*, defendant failed to state the gist of a constitutional claim because the use of psychotropic medication by itself does not raise a *bona fide* doubt of a defendant's fitness, and the record contradicts any suggestion that defendant was unfit to stand trial.

¶ 23 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2014)), provides a method by which persons under criminal sentence can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. A circuit court may summarily dismiss a postconviction petition if it determines that the petition is "frivolous or is patently without merit." 725 ILCS 5/122-2/1(a)(2) (West 2014). A petition is frivolous or patently without merit only if it has "no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). A petition lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16. A petition lacks an arguable basis in fact if it is based upon a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Id*. at 16-17. The summary dismissal of a postconviction petition is a legal question that is subject to *de novo* review. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010).

¶ 24 "The scope of the [postconviction] proceeding is limited to constitutional matters that have not been, nor could not have been, previously adjudicated." *People v. Harris*, 224 Ill. 2d 115, 124 (2007). Accordingly, issues that could have been raised on direct appeal, but were not,

are considered forfeited and therefore barred from consideration in a postconviction proceeding. *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010). A postconviction claim that depends on matters outside the record, however, is not ordinarily forfeited because such matters many not be raised on direct appeal. *People v. English*, 2013 IL 112890, ¶ 22.

¶ 25 Our supreme court, in *People v. Blair*, 215 Ill. 2d 427 (2005), noted that the doctrine of *res judicata* bars consideration of issues that were previously raised on direct appeal. *Blair*, 215 Ill. 2d at 443. The court held that the legislature intended the phrase "frivolous *** or patently without merit" to encompass *res judicata* and forfeiture. *Id.* at 445. The court stated, "*res judicata* and forfeiture fall within the plain language of 'frivolous or *** patently without merit' in section 122-2.1(a)(2), which permits summary dismissal." *Id.* at 450 (quoting 725 ILCS 5/122-2.1(a)(2) (West 2000)). The court noted that although the Act allows the State to raise these issues as defenses later in the second stage, it also allows the judge to consider these issues at the first stage. *Id.*

¶ 26 In the case at bar, defendant claims that he was unfit to stand trial. He argues that this claim is not barred by *res judicata* because it is a substantive due process claim, not a procedural due process claim. Defendant also argues that his claim is not forfeited because it is based on an additional allegation outside of the record: that prior to and during his trial, defendant was not taking his prescribed medication for his bipolar disorder. The State maintains that this issue is barred by *res judicata* because defendant raised an identical claim of error in response to his appellate counsel's motion to withdraw and his *Anders* brief. We agree with the State.

¶ 27 Defendant argued in his response to his appellate counsel's motion to withdraw, that the court failed to inquire into his fitness upon learning that he had not been taking his medication. Defendant relied on his PSI which included [defendant]'s self-reporting that "he has been off of

his medications and is now being prescribed them via Division 10" of the county jail. Defendant stated that "[w]hile appellate counsel may be correct in his assertion that the record is devoid of anything suggesting that [defendant] had difficulty understanding the nature and purpose of the proceedings or assisting in his defense, the record is also devoid of any evidence suggesting that [he] was not having difficulties." Defendant argued that appellate counsel "based his assertion on [defendant's] behavior after the trial had ended," and that "[t]he problem with this reliance is that [defendant] was taking his medication during the sentencing phase of trial." Defendant stated that his defense counsel waived a fitness trial because he had been found to be fit to stand trial with medication, but that once he "was taken off his medications, a per se *bona fide* doubt to his fitness arose, and a hearing should have been conducted." This court found that in light of defendant's coherent *pro se* posttrial motion, and in the absence of any post-BCX indication by trial counsel of his inability to cooperate, "we do not see how this reference, utterly devoid of any foundation or context of time, would create a *bona fide* doubt of his fitness."

¶ 28 Similarly, in his postconviction petition, defendant claimed that he was not taking his medication prior to and during trial, "as a matter of personal knowledge." He further claimed that this impeded his ability to communicate with his attorney and his ability to communicate claims that should have been raised in a timely manner. The trial court found that this was "a restating of issues that were raised at trial and on this appeal." The trial court then dismissed the petition as "without merit."

¶ 29 On appeal, defendant claims, relying on *People v. Rodriguez*, 2015 IL App (2d) 130994, that this issue is not barred by *res judicata* because it raised a new claim of a substantive due process violation, and that this issue was not forfeited because his petition contained additional evidence that was outside of the record on direct appeal, namely his affidavit stating that prior to

and during trial he was not taking his prescribed medication. The State responds that Illinois does not recognize a distinction between a procedural due process claim and a substantive due process claim when it comes to fitness to stand trial, and that in any event this is merely a rephrasing of an argument defendant already raised in his response to his appellate counsel's motion to withdraw on direct appeal.

¶ 30 We need not discuss whether Illinois recognizes a distinction between procedural and substantive due process in relation to fitness to stand trial. Both allegations by defendant are premised on the fact that his PSI stated he had stopped taking his bipolar medication, and thus defendant was free to have raised this issue on direct appeal at the same time he raised his procedural due process claim. A defendant cannot avoid the doctrine of *res judicata* by simply reframing an issue from the direct appeal in his postconviction petition. *People v. Simpson*, 204 Ill. 2d 536, 567 (2001) ("Although defendant's claim in the amended post-conviction petition is framed slightly different, the doctrine of *res judicata* still applies. As this court has emphasized, the Act was not intended to be used as a tool to gain access to another hearing upon a claim of denial of constitutional rights where there had already been a full review of the issue raised."). Here, defendant specifically argued in his response to appellate counsel's motion to withdraw that the record was devoid of any evidence suggesting that he was not having difficulties understanding the nature and purpose of the trial court proceedings or assisting in his defense. Defendant contended that appellate counsel was basing his assertion that defendant was fit to stand trial on posttrial motions, but that defendant was in fact taking his medication after trial. Defendant was arguing, in essence, that while he was taking his medication after trial, he had not been taking it during trial. In defendant's postconviction petition, he argued that he was not taking his medication before and during trial, which impeded his ability to communicate claims

that should have been raised in a timely manner. We find that this is simply the rephrasing of an issue he has already raised, and that the trial court properly dismissed this as frivolous and patently without merit because it was barred by *res judicata*.

¶ 31 We also note that the only additional "evidence" defendant has presented in his postconviction petition is his own, self-serving affidavit stating that he was not taking his medication before and at the time of trial. Section 122-2 of the Act provides that "[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2016). The purpose of requiring "affidavits, records, or other evidence" is to establish that the allegations in the postconviction petition are capable of objective or independent corroboration. *People v. Delton*, 227 Ill. 2d 247, 254 (2008). "Affidavits and exhibits which accompany a petition must identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations." *Id*. We find that defendant's affidavit did not provide independent corroboration of the facts alleged in his petition, and thus defendant's allegations were not sufficiently supported. Finding that this issue is barred by *res judicata*, we turn to defendant's next contention.

¶ 32 Defendant argues that his postconviction petition stated the gist of a claim of ineffective assistance of counsel where defendant alleged that "upon personal knowledge he observed [Officer Percy] recover [the store] keys from the (Grass) on somebody front lawn and place them with [defendant's] keys." The State initially responds that this claim is also barred by *res judicata* as it was raised on direct appeal. In defendant's response to appellate counsel's motion to withdraw as counsel, defendant argued that the police found the store keys on the ground nearby when he was detained rather than on his person as the officers testified. Defendant also

claimed during the hearing on his *pro se* posttrial motion that the police officers found the store keys on the ground nearby where he was detained rather than on his person as the officers testified. However, while he claimed generally that he "was instructed not to say anything or make an outburst" at trial, he at no time claimed that he had told trial counsel about the store keys. On direct appeal, defendant argued for the first time that he told trial counsel about the keys before trial. This court found that such assertion was "*dehors*" the record on appeal. *Parish*, 2013 IL App (1st) 120526-U, ¶ 8. This court noted that defendant "made his claim regarding the keys as one of various challenges to the evidence as insufficient to prove his guilt beyond a reasonable doubt." *Id*. This court stated that we "do not expect the trial court to spot an ineffective assistance of counsel claim hidden in the midst of an evidently meritless insufficiency claim so as to trigger further investigation under [*People v. Moore*, 207 Ill. 2d 68 (2003)]." *Id*.

¶ 33 In defendant's *pro se* postconviction petition, he alleged that he personally observed Officer Percy recover the store keys form the grass in a front lawn and place them on defendant's person with defendant's own keys. Defendant asserted that his trial attorney was ineffective for failing to raise this issue and challenge the evidence. The trial court stated that the petition was just "a restating of issues that were raised at trial and on this appeal" and dismissed the petition as "without merit." We agree with the State and the trial court that this was merely a restating of the issues and that this claim is barred by *res judicata*.

¶ 34 As stated above, our supreme court has noted that the doctrine of *res judicata* bars consideration of issues that were previously raised on appeal, and that *res judicata* falls within the plain language of "frivolous * * * or patently without merit." *Blair*, 215 Ill. 2d at 443. Defendant clearly raised this issue on direct appeal in his response to appellate counsel's motion to withdraw when he argued that he saw Officer Percy place the keys on his person. He also

indicated in that response that he told trial counsel about this and that trial counsel failed to investigate. The only difference now is that defendant is alleging it in a postconviction petition instead of on direct appeal, and with the support of his own affidavit stating the same. This is simply not permitted. See *Simpson*, 204 Ill. 2d at 567 ("The Act was not intended to be used as a tool to gain access to another hearing upon a claim of denial of constitutional rights where there had already been a full review of the issue raised.")

¶ 35 Defendant next argues that the trial court erred when it failed to enter a written order detailing the reasons for the summary dismissal and instead orally issued a "cursory" dismissal failing to acknowledge several claims in his petition. The State responds that the trial court properly dismissed defendant's petition on February 3, 2015.

¶ 36 Section 122-2.1(a) of the Act governs the first stage of postconviction proceedings and states: "Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to this Section." 725 ILCS 5/122-2.1(a) (West 2016). "If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision." 725 ILCS 5/122-2.1(a)(2) (West 2016).

¶ 37 However, our supreme court held in *People v. Porter*, 122 Ill. 2d 64, 81-82 (1988), that this particular provision is merely directory despite its use of "shall" because it does not provide that the summary dismissal is void for the lack of findings, a lack of findings does not prejudice a defendant's rights on appeal, and a construction that rendered the provision mandatory would violate the separation of powers. The *Porter* court did note that it was "advisable that the trial

court state its reasons for dismissal" and stated that the purpose of the provision for a written order with findings is to facilitate appellate review of summary dismissals. *Id*.

¶ 38 Here, the record on appeal contains the transcript from the hearing on defendant's postconviction petition, in which the trial court stated in open court that the petition was "a restating of issues that were raised at trial and on this appeal" and was dismissed "without merit." This satisfies the requirements under section 122-2.1(a).

¶ 39 Defendant nevertheless contends, relying on *People v. Perez*, 2014 IL 115927, that the trial court was required to enter a written order explaining its findings. However, the issue in *Perez* was "what it means to 'enter' an order for purposes of section 122-2.1(a) of the Act." *Id.* ¶ 10. The court concluded that under Illinois law, "a written judgment order is 'entered' when it is entered of record." *Id*. ¶ 29. Accordingly, this does not call into doubt the holding in *Porter*, stated above, that while advisable, a lack of findings does not prejudice a defendant's rights on appeal, and a construction of section 122-2.1(a) that rendered the provision mandatory would violate the separation of powers. *Porter*, 122 Ill. 2d at 81-82.

¶ 40 Defendant's final argument on appeal is that the Habitual Criminal Act (730 ILCS 5/5-4.5-95 (West 2014)), which explicitly prohibits prior felonies from being submitted to the jury, is facially unconstitutional because it is in direct conflict with a recent United States Supreme Court case that came down while defendant's direct appeal was pending – *Alleyne v. United States*, 133 S. Ct. 2151 (2013). In *Alleyne*, the Court held that any facts contributing to the penalty range of a crime must be proven to the jury. 133 S. Ct. at 2158.

¶ 41 However, in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), relying on A*lmendarez-Torres v. United States*, 523 U.S. 224 (1998), the Supreme Court held: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory

maximum must be submitted to a jury, and proved beyond a reasonable doubt." In *Alleyne*, when finding that any facts contributing to the penalty range of a crime must be proven to the jury, the Court stated: "In *Almendarez-Torres*, 523 U.S. 224 (1998), we recognized a narrow exception to this general rule for the fact of a prior conviction. Because the parties do not contest that decision's vitality, we do not revisit it for purposes of our decision today." *Id*. at 2160. Accordingly, *Alleyne* did not alter the current legal analysis for us in any way. It reiterated the general rule and the exception to that rule, both of which are still in place. Prior convictions do not need to be submitted to the jury, and are only required at sentencing. Thus, the Habitual Criminal Act, which states that "[a] prior conviction shall not be alleged in the indictment, and no evidence or other disclosure of that conviction shall be presented to the court or the jury during the trial of an offense set forth in this Section unless otherwise permitted by the issues properly raised in that trial," is not facially unconstitutional.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.