

2017 IL App (1st) 163166-U

No. 1-16-3166

Order filed October 27, 2017

Fifth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 01 CR 2495
)	
PEDRO DELGADO,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's first-stage summary dismissal of defendant's postconviction petition affirmed where defendant lacked standing.

¶ 2 Defendant, Pedro Delgado, appeals from the first-stage dismissal of his postconviction petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). Defendant contends that the trial court erred in dismissing his petition for lack of standing because his petition was based on actual innocence. We affirm.

¶ 3 The State charged defendant with three counts of manufacture or delivery of cocaine in January 2001. In June 2002, the defendant plead guilty to one count of delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2002)) and the State nol-prossed the remaining charges. The trial court sentenced him to 36 months' probation. In June 2005, defendant's term of probation was satisfactorily terminated.

¶ 4 In August 2016, defendant filed a postconviction petition raising a claim of actual innocence. In his petition, defendant stated he was not a naturalized citizen of the United States and was in immigration custody, "in proceedings to remove him from the United States."

¶ 5 The trial court summarily dismissed defendant's postconviction petition, concluding that he "completed his sentence in 2005" and, therefore, "no longer has standing to raise his claim of actual innocence." This appeal followed.

¶ 6 On appeal, defendant argues that the trial court erred when it found that he lacked standing to bring a petition under the Act. The State responds that the court properly dismissed defendant's postconviction petition for lack of standing because he had already completed his sentence when he filed his petition. We agree with the State.

¶ 7 The Act provides a method by which a criminal defendant may collaterally attack his conviction or sentence. *People v. Jones*, 211 Ill. 2d 140, 143 (2004). In order to secure postconviction relief, a defendant must demonstrate a substantial constitutional deprivation in the proceedings that resulted in the conviction or sentence. *Id.* at 143-44. A defendant institutes a postconviction proceeding by filing a petition in the trial court. 725 ILCS 5/122-1(b) (West 2016). Once the petition has been filed, the circuit court has 90 days in which to review the petition and to enter an order thereon. 725 ILCS 5/122-2.1(a) (West 2016). If the court

determines that the petition is frivolous or patently without merit, it must summarily dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2016).

¶ 8 Section 122-1(a)(1) specifies who has standing to file a petition for relief under the Act: “Any person imprisoned in the penitentiary may institute a proceeding ***.” 725 ILCS 5/122-1(a) (West 2016). For purposes of section 122-1(a), a person is “imprisoned in the penitentiary” not only if currently incarcerated in a correctional facility, but also if released from the correctional facility while a timely filed petition is pending, on appeal bond, on mandatory supervised release, or sentenced to probation. See *People v. West*, 145 Ill. 2d 517, 519 (1991).

¶ 9 In *People v. Carrera* 239 Ill. 2d 241 (2010), our supreme court held that a person in custody of federal immigration authorities—even if due to an Illinois conviction—is not “imprisoned in a penitentiary” under the Act and therefore lacks standing to bring a postconviction petition. See *Carrera*, 239 Ill. 2d at 253 (holding that the “[d]efendant’s detention by the INS [wa]s not imprisonment within the meaning of the Act, however, because defendant has already served his Illinois sentence.”). Defendant acknowledges that he filed the instant petition in 2016, while in federal custody, over a decade after his probation terminated satisfactorily. He was thus not “imprisoned in a penitentiary” under the Act—federal detention notwithstanding—when he filed his petition. *Id.* Accordingly, we agree with the trial court’s conclusion that defendant lacked standing to initiate a proceeding under the Act. *Id.*

¶ 10 Defendant distinguishes *Carrera*, however, on the basis that *Carrera* did not involve a postconviction claim of actual innocence. Defendant argues that, in section 122-1(c) of the Act, the legislature has given “special protection” to individuals, such as defendant, seeking postconviction relief based upon their actual innocence. He points to the last sentence in section

122-1(c): “This limitation does not apply to a petition advancing a claim of actual innocence.” 725 ILCS 5/122-1(c) (West 2016).

¶ 11 Defendant appears to argue that, under this provision in section 122-1(c), a postconviction claim of actual innocence trumps the requirement in section 122-1(a) that only a person “imprisoned in the penitentiary” has standing to file a petition under the Act. But section 122-1(c) is solely addressed to the limitations period for filing an initial postconviction petition. It provides, *inter alia*, that an initial petition must be filed six months after proceedings in the United States Supreme Court have concluded, or six months from the date for filing a *certiorari* petition, if none has been filed, or three years from the conviction if no appeal has been filed. See *People v. Simms*, 2017 IL App (2d) 141251, ¶ 32 (citing 725 ILCS 5/122-1(c) (West 2014)). Section 122-1(c) then concludes with the phrase: “This limitation does not apply to a petition advancing a claim of actual innocence.” 725 ILCS 5/122-1(c) (West 2016).

¶ 12 Given the context, “*This* limitation” (emphasis added) (725 ILCS 5/122-1(c) (West 2016)) unambiguously refers only to the *time* limitations set forth in section 122-1(c), not to any other limitations set forth in section 122-1. The phrase means that the section 122-1(c) “deadlines do not apply to actual innocence claims, which are not subject to time constraints” (*People v. Evans*, 2017 IL App (1st) 143268, ¶ 24), nothing more. It clearly does not apply to the limitation that a postconviction proceeding can only be initiated by one “imprisoned in penitentiary,” which is set forth in an entirely different subsection of the Act, section 122-1(a). Accordingly, nothing in section 122-1(c) supports the conclusion that defendant’s claim of actual innocence somehow negates the requirement that he had to be “imprisoned in the penitentiary” when he filed his petition. Following *Carrera*, we therefore find that defendant had no standing

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to file his petition as his federal detention did not satisfy the requirement that he be “imprisoned in the penitentiary” when he filed his petition.

¶ 13 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.