2017 IL App (3d) 150581-U

Order filed September 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0581 Circuit No. 13-CF-1980
LOUIS D. JONES,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by summarily dismissing defendant's *pro se* postconviction petition.

¶ 2 Defendant, Louis D. Jones, appeals the summary dismissal of his *pro se* postconviction petition. Defendant argues his petition alleged the gist of a claim of ineffective assistance of plea counsel. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)), unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), and unlawful use of a weapon (720 ILCS 5/24-1(a)(7)(ii) (West 2012)). The charges were based on the allegation defendant, a previously convicted felon, discharged a firearm in the direction of a vehicle he knew or should have known to be occupied.

¶ 5 Initially, defendant (who was represented by counsel) entered a plea of guilty to the offense of aggravated discharge of a firearm in exchange for a seven-year sentence. The parties agreed defendant would be eligible for day-for-day good conduct credit based on the State's indication defendant did not cause great bodily harm. The circuit court accepted the plea, and the State dismissed the two remaining counts.

¶ 6 When the parties returned to court, plea counsel informed the circuit court the parties were incorrect in believing defendant was eligible for day-for-day good conduct credit. The court allowed defendant to withdraw his guilty plea. The State did not object, and reinstated the original charges.

¶ 7 Next, the State charged defendant by superseding indictment with the three original charges (aggravated discharge of a firearm, unlawful use of a weapon by a felon, and unlawful use of a weapon) and added an additional charge of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)). The attempted first degree murder charge alleged defendant "fired a shotgun into an occupied vehicle."

¶ 8 The cause proceeded to a jury trial. Midway through the trial, the parties announced they had reached a plea agreement. Pursuant to the agreement, defendant would plead guilty to the

offense of aggravated discharge of a firearm, and the State would recommend a 15-year sentence. The remaining counts would be dismissed.

¶ 9 The circuit court read the charge, the State presented the factual basis for the charge, and the court admonished defendant of the potential sentence. The court also advised defendant of the rights he was waiving by pleading guilty. Defendant then made the following statement in open court:

> "I just want to apologize, you know. I mean, I was wrong, and I know I got to accept full responsibility for my actions, and I wasn't expecting for this to come this far and, of course, I was tricked into believing that she was not going to show up. Only reason I went to trial. Other than that I would have copped out, but I want to let you know I apologize and this was never my intention was to never hurt her or the pretty little girl that she do have."

Ultimately, the circuit court imposed the 15-year sentence recommended by the State.

¶ 10 Subsequently, defendant sent a *pro se* letter to the circuit court seeking to withdraw his guilty plea. Defendant claimed he was coerced into pleading guilty. The court held a hearing to discuss the letter. The court informed defendant that he would have received a 40-year sentence for the attempted first degree murder charge had he continued through the trial. The State responded, argued the firearm enhancement applied, and therefore the maximum sentence defendant faced was 50 years' imprisonment. Plea counsel agreed the range could have been 26 to 50 years and that he had explained it to defendant. Defendant agreed. However, plea counsel then stated he believed the firearm enhancement could not be imposed because the State failed to provide defendant with written notice of its intent to seek the enhancement. Counsel asserted that he would object to the firearm enhancement if the State sought to impose it at sentencing. Thus,

according to plea counsel, defendant only faced a sentence ranging from 6 to 30 years' imprisonment. After this discussion, defendant told the court he no longer wanted to withdraw his guilty plea.

¶ 11 Defendant then filed a notice of appeal. However, the appeal was dismissed on the motion of the Office of the State Appellate Defender for lack of appellate jurisdiction. *People v. Jones*, No. 3-14-0772 (Jan. 26, 2015) (dispositional order).

¶ 12 Thereafter, defendant filed a *pro se* postconviction petition. Relevant to this appeal is defendant's allegation that plea counsel provided ineffective assistance for informing him that he only faced a 6 to 30-year sentence on the attempted first degree murder charge.[1] Defendant alleged plea counsel erroneously advised him the State could not seek a firearm enhancement because it failed to provide defendant with written notice of its intention to seek the enhancement. According to defendant, plea counsel was incorrect and he was actually eligible for a sentence of 26 to 50 years with the firearm enhancement. Defendant asserted he rejected plea offers of 6 and 10 years' based on plea counsel's incorrect assessment of the potential sentence.

¶ 13 Accompanying defendant's *pro se* postconviction petition is an affidavit of defendant. Defendant averred that plea counsel never informed him that he was eligible for the firearm enhancement. Defendant stated he did not learn of this fact until the circuit court considered his *pro se* letter which claimed he was coerced into pleading guilty. According to defendant, but for plea counsel's erroneous assessment of the potential sentence, he would have accepted the offer of a six-year sentence.

[1]On appeal, defendant does not raise any arguments as to the other claims in his postconviction petition.

¶ 14 On July 29, 2015, the circuit court summarily dismissed defendant's petition as frivolous and patently without merit.

¶ 15 ANALYSIS

¶ 16 On appeal, defendant argues the circuit court erred by dismissing his postconviction petition at the first stage of the proceedings because it presented the gist of a claim that he received ineffective assistance of plea counsel. Specifically, defendant contends his petition sufficiently alleged he received ineffective assistance based on plea counsel's incorrect advice as to the potential sentencing range applicable to defendant.

¶ 17 At the first stage of postconviction proceedings, a defendant need only allege a "gist" of a claim, *i.e.*, enough facts to assert an arguable violation of his constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Id*. at 16. The "gist" standard is a low threshold that does not require a defendant to set forth the constitutional claim in its entirety but, instead, requires only a limited amount of detail. *People v. Scott*, 2011 IL App (1st) 100122, ¶ 24. This court reviews *de novo* a first-stage dismissal of a postconviction petition. *People v. Dorsey*, 404 Ill. App. 3d 829, 833 (2010).

¶ 18 Claims of ineffective assistance of plea counsel are governed by the two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). See *Hill v. Lockhart*, 474 U.S. 52, 57 (1985). This requires defendant to show that plea counsel's performance fell below an objective standard of reasonableness and defendant was prejudiced by counsel's deficient performance. *Strickland*, 466 U.S. at 687-688. "[A] petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an

objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17.

¶ 19 Defendant points out that he rejected plea offers of 6 or 10 years' imprisonment. Defendant contends he received ineffective assistance of plea counsel because counsel erroneously advised him that he faced a sentencing range of 6 to 30 years' imprisonment, when he actually faced a sentencing range of 26 to 50 years' imprisonment. Thus, defendant argues he was prejudiced by plea counsel's performance because he pled guilty and received a 15-year sentence on an open plea.

¶ 20 Even assuming plea counsel's advice was deficient, defendant's claim on appeal fails because he cannot establish reliance on counsel's deficient advice caused defendant to suffer prejudice. *People v. Graham*, 206 Ill. 2d 465, 476 (2003) (if an ineffective assistance claim can be disposed because defendant suffered no prejudice, we need not determine whether counsel performed deficiently).

¶ 21 To show prejudice, there must be "independent, objective confirmation that defendant's rejection of the proffered plea was based upon counsel's erroneous advice," and not on other considerations. *People v. Hale*, 2013 IL 113140, ¶ 18 (quoting *People v. Curry*, 178 Ill. 2d 509, 532 (1997)). To demonstrate prejudice, defendant must show a reasonable probability he would have accepted the prior plea offer absent plea counsel's deficient performance; and defendant must also demonstrate that the plea offer would have been entered without the State rescinding the offer or the circuit court refusing to accept the plea agreement. *Hale*, 2013 IL 113140, ¶ 15. However, defendant's own statements in open court contradict his claim that plea counsel's sentencing advice influenced his decision to accept or reject the State's plea offers. When

defendant pled guilty, he explicitly stated, "I was tricked into believing that she was not going to show up. Only reason I went to trial. Other than that I would have copped out."

¶ 22 This statement demonstrates the range of sentencing options discussed with plea counsel did not play a role in defendant's decision to reject the prior plea offers. The fact that defendant now alleges he rejected other plea offers based on plea counsel's advice is directly contradicted by his prior statement that he rejected all plea offers based solely on his belief a witness would not appear at trial and he would be acquitted. Accordingly, defendant cannot show prejudice. We therefore conclude defendant's *pro se* postconviction petition was properly dismissed.

¶ 23 CONCLUSION

¶ 24 The judgment of the circuit court of Will County is affirmed.

¶ 25 Affirmed.