

**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).

2017 IL App (4th) 140948-U

NO. 4-14-0948

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 10, 2017

Carla Bender

4<sup>th</sup> District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JOHN HENRY GRIFFIN,	)	No. 11CF242
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Harris and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment.

¶ 2 Following a guilty plea in August 2011, defendant, John Henry Griffin, was convicted of robbery. The trial court sentenced him to 20 years in prison. In June 2014, defendant filed a *pro se* postconviction petition, which the court dismissed as frivolous and patently without merit.

¶ 3 On appeal, the office of the State Appellate Defender (OSAD) moves to withdraw its representation of defendant, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be without merit. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4

## I. BACKGROUND

¶ 5 In April 2011, the State charged defendant by indictment with one count of robbery. Based upon his prior record, defendant was to be sentenced as a Class X felon upon conviction. The State alleged defendant knowingly and with force took a purse from a 60-year-old victim (720 ILCS 5/18-1(a) (West 2010)).

¶ 6 In August 2011, defendant pleaded guilty to the offense and the State agreed to cap its sentencing recommendation at 25 years. Prior to accepting defendant's plea, the trial court thoroughly admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997). In October 2011, the court sentenced defendant to 20 years in prison and ordered the imposition of court costs, fines, and fees. The court informed defendant of his right to appeal. Defendant responded: "I don't want to appeal nothing." Thereafter, the court mentioned it may have forgotten to include restitution, and ordered that the same be included.

¶ 7 Three years later, in June 2014, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)), claiming, *inter alia*, (1) his counsel rendered ineffective assistance, (2) his sentence constituted cruel and unusual punishment, (3) the indictment did not mention he was Class X eligible for sentencing purposes, (4) his guilty plea was not voluntarily entered, (5) the State did not provide certified copies of prior convictions to support his Class X sentencing status, (6) the State failed to offer evidence of the victim's age, (7) he was improperly punished as a habitual offender, and (8) the trial court failed to consider his substance abuse as a factor in mitigation. In September 2014, the trial court reviewed defendant's petition and stated:

"That the court has spent considerable time reading and re-reading the instant pleading and endeavoring to understand the basis for the petition. Frankly,

discerning that basis has proven difficult because much of the petition consists of disjointed and somewhat random pages that do not seem to follow logically, and appear to be a compilation of various wirings made at different times by different persons and then stapled together in this petition, including copies of some of the filings or parts thereof which are referred to in the preceding paragraph.”

The court concluded the petition was frivolous and patently without merit, finding defendant’s guilty plea had effectively waived all nonjurisdictional errors, including constitutional errors. The court noted defendant’s claim challenging the voluntariness of his plea was not supported by any factual allegation, and the remainder of defendant’s claims were clearly refuted by the record. The court *sua sponte* dismissed defendant’s petition.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum. Proof of service has been shown on defendant. This court granted defendant leave to file additional points and authorities. Defendant filed a response, and the State filed a brief as well. Based on our examination of the record, we conclude, as has OSAD, that an appeal in this cause would be meritless.

¶ 11 The Act “provides a mechanism for criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitutions.” *People v. Morris*, 236 Ill. 2d 345, 354 (2010). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v.*

*English*, 2013 IL 112890, ¶ 21. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights. *People v. Caballero*, 228 Ill. 2d 79, 83 (2008).

“Because this is a collateral proceeding, rather than an appeal of the underlying judgment, a post-conviction proceeding allows inquiry only into constitutional issues that were not, and could not have been, adjudicated on direct appeal. [Citation.] Thus, issues that were raised and decided on direct appeal are barred from consideration by the doctrine of *res judicata*; issues that could have been raised, but were not, are considered waived.” *People v. Pitsonbarger*, 205 Ill. 2d 444, 455-56 (2002).

¶ 12 The Act establishes a three-stage process for adjudicating a postconviction petition. *English*, 2013 IL 112890, ¶ 23. At the first stage, the trial court must review the postconviction petition and determine whether “the petition is frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2012). The court did so and dismissed defendant’s petition on these grounds. OSAD argues no meritorious arguments can be made that the trial court’s dismissal was error. Our review of the record reveals OSAD’s argument is correct.

¶ 13 We conclude defendant’s claims are either (1) without merit, (2) could have been previously raised, but were not, and are therefore forfeited, or (3) specifically belied by the record. Accordingly, we find no colorable claim can be made that the court erred in dismissing defendant’s postconviction petition as frivolous and patently without merit.

¶ 14

### III. CONCLUSION

¶ 15 For the reasons stated, we grant OSAD's motion and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 16 Affirmed.