NOTICE
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FILED
November 3, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150576-U

NO. 4-15-0576

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Jersey County
RICKY E. CALLAHAN,	)	No. 97CF147
Defendant-Appellant.	)	
	)	Honorable
	)	Joshua A. Meyer,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The *pro se* petition for postconviction relief is frivolous and patently without merit, and therefore the summary dismissal of the petition, within 90 days of its docketing, is affirmed.

¶ 2 Defendant, Ricky E. Callahan, is serving a sentence of 60 years' imprisonment for first degree murder (720 ILCS 5/9-1(a)(2) (West 1996)). On April 27, 2015, he filed a petition for postconviction relief. On May 20, 2015, the trial court summarily dismissed the petition as frivolous and patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2014). Defendant appeals.

¶ 3 The office of the State Appellate Defender (appellate counsel) moves to withdraw from representing defendant, because appellate counsel does not believe that any reasonable argument could be made in support of this appeal. See *People v. Greer*, 212 Ill. 2d 192, 209 (2004) ("[T]he legislature did not intend to require appointed counsel to continue representation

of a postconviction defendant after counsel determines that [the] defendant's petition is frivolous and patently without merit."). Along with its motion, appellate counsel has filed a supporting memorandum. We notified defendant of his right to file a response by a certain date. He has not done so.

¶ 4 After reviewing the *pro* se petition, we agree it is inarguable on its face. Therefore, we grant appellate counsel's motion to withdraw, and we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 Defendant makes two claims in his *pro se* petition.

¶ 7 The first claim raises an *ex post facto* theory. See *People v. Cornelius*, 213 Ill. 2d 178, 207 (2004) (the elements of an *ex post facto* violation). The theory is as follows—and we merely state the theory without necessarily being convinced of its accuracy. Under the version of section 3-6-3(a)(3) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(3) (West 1996)) that was in effect in December 1997, when defendant committed the first degree murder, "inmates were *automatically* given their 90-day Meritorious Good Time." (Emphasis added.) That changed with the passage of Public Act 97-697 (eff. June 22, 2012), which amended section 3-6-3(a)(3) so as to add specific criteria for the award of these 90 days of credit. See 730 ILCS 5/3-6-3(a)(3) (West 2014) ("The good conduct may include, but is not limited to, compliance with the rules and regulations of the Department, service to the Department, service to a community, or service to the State."). Defendant now is eligible for 90 days of "Supplemental Service Credit" only if he meets the new criteria, which were not in section 3-6-3(a)(3) when he committed the offense. But see 730 ILCS 5/3-6-3(a)(3) (West 1996) ("[N]o more than 90 days of *good conduct credit for meritorious service* shall be awarded to any prisoner who is serving a

sentence for conviction of first degree murder ***." (Emphasis added.)); 20 Ill. Adm. Code 107.210(a)(2), (3) (4) (1996) ("In determining whether or not to award good conduct credits for meritorious service, the Director may examine or consider" listed criteria, including "[r]eports or recommendations," "[t]he fact that the committed person has not violated any rule," and "job performance").

¶ 8 The trial court held this first claim to be frivolous and patently without merit because Public Act 97-697 had nothing to do with "the proceedings which resulted in [defendant's] conviction." 725 ILCS 5/122-1(a)(1) (West 2014). The court was correct. Section 122-1(a) of the Post-Conviction Hearing Act provides:

> "(a) Any person imprisoned in the penitentiary may institute a proceeding under this Article if the person asserts that:
>
> (1) in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both; or
>
> (2) the death penalty was imposed and there is newly discovered evidence not available to the person at the time of the proceeding that resulted in his or her conviction that establishes a substantial basis to believe that the defendant is actually innocent by clear and convincing evidence." 725 ILCS 5/122-1(a) (West 2014).

The first claim in defendant's postconviction petition fits into neither subsection (a)(1) (725 ILCS 5/122-1(a)(1) (West 2014)) nor subsection (a)(2) (725 ILCS 5/122-1(a)(2) (West 2014)). Therefore, the first claim does not "arguably" state a claim for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)). See *People v. Tate*, 2012 IL 112214, ¶ 19.

¶ 9 The second claim in defendant's postconviction petition is that the "State's Attorney of Jersey County lacked the Constitutional and statutory authority to charge, indict[,] and prosecute [him] on behalf of the People of the State of Illinois" and that "the proper prosecuting authority in the State of Illinois" was, instead, "the Illinois Attorney General."

¶ 10 We agree with appellate counsel that this claim likewise is inarguable. See *id.* As appellate counsel correctly notes, the State's Attorney of Jersey County was a member of the executive branch (see *Nelson v. Kendall County*, 2014 IL 116303, ¶ 27) upon whom statutory law explicitly conferred authority to prosecute criminal cases (see 55 ILCS 5/3-9005(a)(1) (West 1996)). See also *People v. Buffalo Confectionery Co.*, 78 Ill. 2d 447, 454 (1980) ("[The common-law power of the Attorney General to initiate and prosecute litigation on behalf of the People] may be exercised concurrently with the power of the State's Attorney to initiate and prosecute all actions, suits, indictments[,] and prosecutions in his county as conferred by statute [citation]."); *People v. Knippenberg*, 325 Ill. App. 3d 251, 257 (2001) ("The Attorney General has exclusive authority to initiate and prosecute cases only when a statute so provides.").

¶ 11 In sum, the *pro se* petition for postconviction relief is frivolous and patently without merit, as the trial court correctly held (see 725 ILCS 5/122-2.1(a)(2) (West 2014)), and we agree with appellate counsel that it would be impossible to make a reasonable argument in support of the petition (see *Greer*, 212 Ill. 2d at 209).

¶ 12 III. CONCLUSION

¶ 13 For the foregoing reasons, we grant appellate counsel's motion to withdraw, and we affirm the trial court's judgment.

¶ 14 Affirmed.