

**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) 150678-U

NO. 4-15-0678

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

October 20, 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.	)	Sangamon County
LAMONT NORWOOD,	)	No. 10CF903
Defendant-Appellant.	)	
	)	Honorable
	)	Peter C. Cavanagh,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Harris and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court (1) granted appellate counsel’s motion to withdraw and (2) affirmed the trial court’s judgment dismissing defendant’s petition for postconviction relief.

¶ 2 In May 2011, defendant, Lamont Norwood, pleaded guilty to manufacture or delivery of 1 gram or more but less than 15 grams of a substance containing cocaine (720 ILCS 570/401(c)(2) (West 2010)). The trial court later denied defendant’s motion to withdraw his plea. On appeal, this court granted appointed counsel’s motion to withdraw because no meritorious issue could be raised on appeal. *People v. Norwood*, 2013 IL App (4th) 4110765-U.

¶ 3 In March 2012, defendant filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). In October 2012, the trial court dismissed that petition, and we affirmed. *People v. Norwood*, No. 4-12-1066 (Jan. 24, 2014) (unpublished summary order under Supreme Court Rule 23(c)(6)).

¶ 4 In April 2013, defendant *pro se* filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)). In September 2015, the trial court granted the State’s motion to dismiss that petition.

¶ 5 This appeal followed. On appeal, appointed counsel has moved to withdraw, arguing that the appeal is without arguable merit. Defendant has filed no response. We grant counsel’s motion to withdraw and affirm the trial court’s judgment dismissing defendant’s postconviction petition.

¶ 6 I. BACKGROUND

¶ 7 A. Defendant’s Guilty Plea

¶ 8 In December 2010, the State charged defendant with manufacture or delivery of 1 gram or more but less than 15 grams of a substance containing cocaine (720 ILCS 570/401(c)(2) (West 2010)) and possession of less than 15 grams of a substance containing cocaine (720 ILCS 570/402(c) (West 2010)). The charges were filed after police conducted a traffic stop and search of defendant’s vehicle, during which they discovered crack cocaine, a digital scale, and plastic Baggies.

¶ 9 In March 2011, the trial court conducted a conference under Supreme Court Rule 402(d) (eff. July 1, 1997) to discuss plea negotiations. Defendant—through private counsel—denied that he intended to distribute the cocaine and expressed his desire for a plea deal with a sentence of less than 10 years in prison. The State explained that if defendant agreed to plead guilty, the State would offer a sentence of 15 years in prison. After considering defendant’s criminal history, the court stated that it would concur with a negotiated plea deal that included a 15-year sentence.

¶ 10 At an April 2011 hearing, defense counsel explained that he had recently received

a video recording of the traffic stop, which he needed to review with defendant. The trial court continued the case and informed defendant that he would need to decide at the next hearing whether to plead guilty or proceed to trial.

¶ 11 At a May 2011 hearing, defendant complained that he had given counsel motions to file but that counsel refused to file them. Counsel explained that, after viewing the recording of the traffic stop, he did not believe defendant's motions—including a motion to suppress—would be successful. In addition, counsel explained that the State had extended an 11-year negotiated plea deal that would be revoked if defendant filed a motion to suppress. The trial court granted a recess to allow defendant and defense counsel to discuss their options.

¶ 12 After the recess, defendant pleaded guilty to manufacture or delivery of a controlled substance in exchange for a sentence of 11 years in prison. The factual basis alleged that in December 2010, Springfield police officers initiated a traffic stop on defendant's vehicle. One officer looked inside the vehicle and saw a digital scale and plastic Baggies. When asked about those items, defendant ran from the vehicle. A later search of the vehicle revealed a clear plastic bag that contained two individually wrapped pieces of a substance containing crack cocaine that weighed 6.3 grams. Officers also discovered numerous empty plastic Baggies in the vehicle. The trial court accepted defendant's plea and sentenced him to 11 years in prison.

¶ 13 Later in May 2011, defendant *pro se* filed a motion to withdraw his guilty plea. In it, he argued that (1) he was denied the right to effective assistance of counsel in plea negotiations; (2) the March 2011 Rule 402 conference was conducted without his consent; and (3) he should not have been subject to Class X sentencing.

¶ 14 The trial court appointed counsel to represent defendant. Counsel filed an amended motion to withdraw defendant's guilty plea, arguing ineffective assistance of counsel.

¶ 15 In August 2011, the trial court held a hearing on defendant's amended motion to withdraw his guilty plea. At the conclusion of the hearing, the court denied the motion.

¶ 16 B. Defendant's Direct Appeal

¶ 17 Defendant appealed, and the trial court appointed the appellate defender. In June 2013, this court granted appointed counsel's motion to withdraw because counsel could find no meritorious issue to raise on appeal. *Norwood*, 2013 IL App (4th) 4110765-U.

¶ 18 C. Defendant's Section 2-1401 Petition

¶ 19 In March 2012, defendant filed a petition for relief from judgment under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). In it he raised the following claims: (1) trial counsel concealed a forensic report showing that the cocaine weighed 1.78 grams instead of 6.3 grams; (2) counsel neglected defendant's related traffic case; (3) the trial court never ruled on defendant's motion for reduction of sentence and therefore jurisdiction remained in the trial court; and (4) the "extended term" portion of his sentence was void because it was based on prior convictions that were more than 10 years old.

¶ 20 In October 2012, the trial court granted the State's motion to dismiss defendant's petition for relief from judgment.

¶ 21 In January 2014, this court affirmed the trial court's judgment. *Norwood*, No. 4-12-1066 (Jan. 24, 2014) (unpublished summary order under Supreme Court Rule 23(c)(6)).

¶ 22 D. Defendant's Petition for Postconviction Relief

¶ 23 In April 2013, defendant *pro se* filed a petition for postconviction relief under the Act (725 ILCS 5/122-1 to 122-7 (West 2012)). In it, he argued that trial counsel was ineffective for (1) not filing a motion to suppress arguing that the officer who claimed defendant was speeding was not using a radar gun; (2) failing to discover and explain to the trial court that the co-

caine in defendant's possession weighed 3.56 grams, not 6.3 grams; and (3) failing to challenge the chain of custody of the seized cocaine.

¶ 24 The trial court appointed counsel, who filed an amended postconviction petition in March 2015. In the amended motion, defendant continued to pursue claims of ineffective assistance related to (1) the radar gun and (2) the failure to discover the accurate weight of the seized cocaine. Defendant did not pursue his argument about the chain of custody. In July 2015, defendant, through counsel, filed a supplemental postconviction petition, adding additional claims. The State responded by filing a motion to dismiss.

¶ 25 At a September 2015 hearing, the trial court heard argument from the parties. At the conclusion of the hearing, the court granted the State's motion to dismiss defendant's petition for postconviction relief.

¶ 26 This appeal followed.

¶ 27 **II. ANALYSIS**

¶ 28 On appeal, appointed counsel moves to withdraw. Attached to her motion is a brief explaining that after reviewing the record and applicable law, she has determined that an appeal is without arguable merit. She informed defendant of her decision and advised him that he could respond to the motion and raise any issues he deemed reviewable. This court granted defendant leave to file additional points and authorities. Defendant has not filed a response. After examining the record, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 29 **A. The Post-Conviction Hearing Act**

¶ 30 The Act (725 ILCS 5/122-1 to 122-7 (West 2012)) provides a remedy for defendants whose convictions resulted from substantial violations of their constitutional rights. *People*

*v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). The Act sets up a three-stage process for adjudicating postconviction petitions. *People v. Boclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002). At the first stage, the trial court shall dismiss the petition if it is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2014). Otherwise, the court appoints counsel, who makes any necessary amendments to the petition. The petition then proceeds to the second stage, where the petition must establish a "substantial showing of a constitutional violation." (Internal quotation marks omitted.) *People v. Tate*, 2012 IL 112214, ¶ 10, 980 N.E.2d 1100. If the petition fails to make a substantial showing, the court should dismiss it on the State's motion. *Id.* Otherwise, the petition proceeds to the third stage for an evidentiary hearing. *Id.*

¶ 31 In determining whether a defendant has made a substantial showing of a constitutional violation, the trial court must take all well-pleaded allegations as true unless positively rebutted by the record. *People v. Knight*, 405 Ill. App. 3d 461, 470, 937 N.E.2d 789, 796 (2010). Postconviction proceedings are limited to claims that were not, and could not have been, adjudicated on direct appeal. *People v. Petrenko*, 237 Ill. 2d 490, 499, 931 N.E.2d 1198, 1204 (2010).

¶ 32 B. Defendant's Allegations in This Case

¶ 33 Defendant's petition for postconviction relief failed to make a substantial showing of a constitutional violation.

¶ 34 Defendant's claim that testing revealed he possessed 1.8 grams instead of 6.3 grams of cocaine was meritless. At the May 10, 2011, guilty plea hearing, the trial court stated, "[Y]ou're charged with the offense of Manufacture and Delivery of Controlled Substance, a Class 1. That's the charge in which you're pleading guilty to." Likewise, the written judgment stated that defendant was convicted under section 401(c)(2) of the Illinois Controlled Substance

Act (720 ILCS 570/401(c)(2) (West 2010)), which criminalizes possession with the intent to deliver 1 gram or more but less than 15 grams of any substance containing cocaine. Thus, even assuming *arguendo* that defendant possessed merely 1.8 grams of cocaine, he was nonetheless in violation of the statutory offense to which he pleaded guilty.

¶ 35 Nor was there merit to defendant’s argument that trial counsel was ineffective for failing to file a motion to suppress. In support of that argument, defendant attached the Springfield police department’s response to his Freedom of Information Act request for a “radar report” from the officer who claimed to have used a radar device to determine that defendant’s vehicle was speeding. The police department’s response stated that “there is no radar report for the period requested.” Defendant, however, has not established the relevancy of the police department’s response. As appellate counsel explains in her brief, “[T]here is nothing to indicate that such a report was required or would otherwise normally exist.”

¶ 36 We agree with appellate counsel that an appeal in this case is without arguable merit. We therefore grant counsel’s petition to withdraw and affirm the trial court’s judgment dismissing defendant’s postconviction petition.

¶ 37 III. CONCLUSION

¶ 38 For the foregoing reasons, we grant counsel’s motion to withdraw and affirm the trial court’s judgment.

¶ 39 Affirmed.