2017 IL App (4th) 150777-U

NOS. 4-15-0777, 4-15-0778 cons.

FILED
November 27, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
CORDARIO TOWNSEND,	)	Nos. 14CF39
Defendant-Appellant.	)	14CF170
	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: (1) The trial court did not err in summarily dismissing defendant's *pro se* petition for postconviction relief.

(2) The appellate court vacated various fines improperly imposed by the circuit clerk.

¶ 2 Defendant, Cordario Townsend, appeals from the first-stage dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2014)), claiming the trial court erroneously concluded his petition failed to set forth an arguable claim that his guilty plea was not voluntarily made and he did not receive the benefit of his plea bargain. He also challenges the imposition of certain fines. We affirm the court's dismissal and vacate the improperly imposed fines.

¶ 3 I. BACKGROUND

¶ 4 In January 2014, defendant was charged with two counts of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1 (West 2014)) in Vermilion County case No. 14-CF-39. He was also charged with 15 traffic citations. While out on bond on those charges, defendant was arrested and charged with two counts of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)), two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)), and one count of mob action (720 ILCS 5/25-1(a)(1) (West 2014)) in Vermilion County case No. 14-CF-170.

¶ 5 In April 2015, in a combined fully negotiated plea agreement, defendant pleaded guilty to one count of aggravated fleeing or attempting to elude a peace officer for a two-year prison term in case No. 14-CF-39 in exchange for the State's dismissal of the other count and all 15 traffic citations, and guilty to one count of aggravated discharge of a firearm for a consecutive eight-year prison term in case No. 14-CF-170 in exchange for the State's dismissal of the remaining counts. According to the parties and the court, all agreed defendant would be given pretrial credit for 377 days in case No. 14-CF-39 and 355 days in 14-CF-170. During the trial court's admonitions, the following exchange occurred:

"THE COURT: Have you had enough time to talk to your attorneys, Mr. Christoff and Mr. Patel?

THE DEFENDANT: No.

THE COURT: Do you need more time to talk to them?

THE DEFENDANT: No, I'm ready to take the plea.

THE COURT: So have you had enough time to talk to them?

THE DEFENDANT: Yes.

THE COURT: Okay. Have they answered all of your questions?

THE DEFENDANT: Yes.

THE COURT: Do you need to ask them anything else?

THE DEFENDANT: No.

THE COURT: Because if you do, this is the time to do it, sir.

THE DEFENDANT: No.

THE COURT: I don't want you to go back out of here and think, oh gosh, that's not what I really wanted to do, I needed to ask them some more questions.

So, do you need to ask them some more questions?

THE DEFENDANT: No.

* * *

THE COURT: *** Other than all of that, has anything been promised to you to get you to enter into this plea agreement?

THE DEFENDANT: No.

THE COURT: Is anyone forcing you to do this?

THE DEFENDANT: No.

THE COURT: Are you doing this freely and on your own?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions?

THE DEFENDANT: No."

¶ 6 The trial court considered the factual bases for both cases and proceeded directly to the sentencing phase, sentencing defendant in accordance with the plea agreement—two years

in case No. 14-CF-39, and a consecutive eight years in case No. 14-CF-170. Defendant did not file a direct appeal.

¶ 7 In August 2015, in case No. 14-CF-170, defendant filed a *pro se* postconviction petition, alleging his counsel was ineffective for failing to investigate the case, failing to communicate with him, and coercing him into pleading guilty. Defendant also alleged his due-process rights were violated, claiming he did not receive the benefit of his plea bargain and did not voluntarily enter into the plea agreement. On September 1, 2015, the trial court entered an order encompassing both cases, Nos. 14-CF-170 and 14-CF-39, and summarily dismissing defendant's petition as frivolous and patently without merit. Defendant appealed in both cases. This court docketed the appeals as Nos. 4-15-0777 (Vermilion County case No. 14-CF-170) and 4-15-0778 (Vermilion County case No. 14-CF-39). We have consolidated the cases for the purpose of these appeals which follow.

¶ 8 II. ANALYSIS

¶ 9 Defendant claims the trial court erred in dismissing his petition at the first stage of the postconviction proceedings when he had presented the gist of a meritorious claim that his guilty plea was not voluntarily made and he did not receive the benefit of his bargain. He also claims the circuit clerk improperly imposed a number of fines and miscalculated fees. The State disagrees with defendant's contentions regarding his postconviction petition, maintaining summary dismissal was proper because defendant's petition was frivolous and patently without merit. However, the State concedes the circuit clerk imposed certain fines without authority. As set forth below, we affirm the trial court's first-stage dismissal and we vacate the improperly imposed fines.

¶ 10 A. First-Stage Dismissal

¶ 11 1. *Voluntariness of Defendant's Guilty Plea*

¶ 12 The Act (725 ILCS 5/122-1 to 122-7 (West 2014)) provides a defendant with a collateral means to challenge his or her conviction or sentence for violations of federal or state constitutional rights. *People v. Guerrero*, 2012 IL 112020, ¶ 14. When a case does not involve the death penalty, the adjudication of a postconviction petition follows a three-stage process. *People v. Tate*, 2012 IL 112214, ¶ 9. Here, defendant's postconviction petition was dismissed at the first stage. We review a first-stage dismissal *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010).

¶ 13 At the first stage of postconviction proceedings, the trial court must decide whether the defendant's petition is "frivolous or *** patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2014). If the court determines the petition is either frivolous or patently without merit, it must dismiss the petition in a written order. 725 ILCS 5/122-2.1(a)(2) (West 2014). A petition is frivolous or patently without merit if it fails to "present the gist of a constitutional claim." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). A petition's well-pleaded allegations must be taken as true unless they are affirmatively contradicted by the record. *Brown*, 236 Ill. 2d at 189. Where a voluntary plea of guilty has been entered and accepted, nonjurisdictional constitutional errors or irregularities are considered waived, and "the petitioner cannot complain of any denial of constitutional rights unless there is some substance to his claim, implied in the petition, that his guilty plea was involuntary." *People v. Newell*, 41 Ill. 2d 329, 331 (1968).

¶ 14 In his petition, defendant alleged trial counsel threatened that if defendant did not plead guilty, counsel would lose his case at trial and defendant would "receive the maximum punishment for making the State spend over $30,000 for [defendant's] stupidity." Defendant claims he did not mention the threats to the court because he "feared turning down the plea and

facing a guaranteed maximum sentence on all counts at trial[.]" Defendant argues the trial court should "dig deeper" into the voluntariness of his plea in light of his postconviction allegations and despite his answers on the record to the court during the plea hearing.

¶ 15 There is no dispute defendant's coercion claim is belied by the record. The trial court specifically asked defendant if anything had been promised to him; he said no. The court asked if anyone was forcing him to plead guilty; he said no. The court asked if he was doing this of his own free will, and he stated he was. The record is clear that, at the time of entering his plea, defendant indicated he was pleading guilty freely and voluntarily.

¶ 16 Defendant argues that, despite his conversation with the trial court on the record, the allegations in his postconviction petition refute his earlier answers to the court's questions. Citing *People v. Crislip*, 20 Ill. App. 3d 175 (1974), defendant argues the allegations in his petition should override his answers to the court's questions. In *Crislip*, the Fifth District reversed the trial court's dismissal of the defendant's postconviction petition, wherein the defendant had alleged he was induced to plead guilty by police threats. *Crislip*, 20 Ill. App. 3d at 180. The court concluded an evidentiary hearing was necessary to determine whether the defendant was, in fact, coerced by police and whether his allegation rebutted his negative answer to the trial court when asked if his guilty plea was involuntary. *Crislip*, 20 Ill. App. 3d at 180. The court found the defendant's fear of reprisal by police would "very likely impel him to answer negatively when asked by the trial judge whether his plea was induced in any way." *Crislip*, 20 Ill. App. 3d at 180.

¶ 17 Unlike *Crislip*, defendant's allegations that counsel threatened and coerced him into a plea were completely uncorroborated and rebutted by the record. Here, unlike in *Crislip*, the trial court diligently questioned and admonished defendant regarding his knowledge and

voluntariness of the plea. *Cf. Crislip*, 20 Ill. App. 3d at 179 ("The trial court's pro forma inquiry into the voluntariness of the pleas should not impede an evidentiary hearing whereby Crislip could present evidence to prove coercion.") The *Crislip* court distinguished the facts before it relating to threats by police from cases addressing alleged coercion by defense counsel. See *Crislip*, 20 Ill. App. 3d at 179-80 (citing *People v. Harris*, 50 Ill. 2d 31 (1971) and *People v. Spicer*, 47 Ill. 2d 114 (1970)). The court noted that, if promised something by counsel or coerced by counsel, a defendant would likely simply tell the trial court that things were not going as he had been told they would. *Crislip*, 20 Ill. App. 3d at 180. Promises or coercion by counsel would have a different effect upon a defendant than would coercion or threats by the police. As the court stated:

> "In *Spicer*, after the defendant had been sentenced to a term of imprisonment, there was nothing to prevent him from informing the judge that he had been promised probation. In *Harris*, if the defendant believed that his retained counsel was forcing him to plead guilty, nothing precluded him from hiring a new attorney or informing the judge of the situation when he was asked whether he was satisfied with his representation. It cannot be stated with certainty in the instant case, however, that the defendant was not deterred from answering truthfully when asked by the trial judge whether his guilty plea was induced by threats, force or promises [by the police]." *Crislip*, 20 Ill. App. 3d at 180.

¶ 18 Likewise, in this case, defendant could have very easily responded to the trial court that his guilty plea was a direct result of counsel's threat that he would intentionally lose the case if defendant did not enter the plea, if in fact that was so. Defendant did not do so. Instead, he specifically and repeatedly told the judge he was entering the plea of his own free

will and had no question about the terms of the agreement, consequences of his plea, or the rights he was waiving. In light of defendant's responses to the court, his testimony to the contrary at an evidentiary hearing would likely seem incredible and unbelievable. See *Crislip*, 20 Ill. App. 3d at 180.

¶ 19 We agree with the trial court that defendant's claim is without merit and is belied by the record. The record gives more than an adequate foundation for the trial court to find that defendant's statements during the plea hearing clearly contradict the allegations averred in the petition and affidavit. We conclude the trial court did not abuse its discretion in summarily dismissing that allegation. See *People v. Wright*, 154 Ill. App. 3d 962, 967 (1987) ("The trial court's admonitions pursuant to Supreme Court Rule 402 (87 Ill. 2d R. 402) were thorough. Defendant's responses indicated his plea was made knowingly, willingly, and voluntarily. The record made at the time defendant entered his plea negates his claims of constitutional error."). Accordingly, we affirm.

¶ 20 2. *Benefit of The Bargain*

¶ 21 Defendant also contends he did not receive all of the presentence credit the trial court had awarded as a result of the plea agreement. He supports this claim with a printout of his individual information taken from the Illinois Department of Correction's (DOC) website. This page shows his discharge date of 2022, which, he claims, proves he was not awarded all of his presentence credit.

¶ 22 This page from DOC's website is insufficient evidence to demonstrate defendant did not receive the benefit of his bargain. The docket entries and the written sentencing judgments in each case specifically indicate the appropriate sentencing credit was awarded. The sentencing judgment from case No. 14-CF-39 specifically stated defendant was "entitled to

receive credit for time actually served in custody (of 377 days as of the date of this order)[.]" The sentencing judgment from case No. 14-CF-170 specifically stated defendant was "entitled to receive credit for time actually served in custody (of 355 days as of the date of this order)[.]" Defendant's benefit of the bargain, *i.e.*, the specific terms of the sentence imposed, was clearly specified on the face of the sentencing judgment. That is, the sentencing judgment specifically rebuts defendant's postconviction claim that he did not receive the benefit of his bargain. The court clearly awarded the amount of credit defendant believed he would be awarded pursuant to the plea agreement. Therefore, any argument that he did not receive the benefit of his bargain was clearly frivolous and patently without merit.

¶ 23 B. Fees and Fines

¶ 24 Last, defendant contends the circuit clerk, not the trial court, imposed the following fines: (1) $20 Violent Crime; (2) $2 Anti-Crime Fund; (3) $4 Youth Diversion; (4) $15 State Police Ops; (5) $4 Drug Court; (6) $10 State's Attorney; and (7) $50 court finance fee.

¶ 25 This court has previously addressed the impropriety of the circuit clerk imposing judicial fines. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 55-73. "Although circuit clerks can have statutory authority to impose a fee, they lack authority to impose a fine, because the imposition of a fine is exclusively a judicial act." (Emphases omitted.) *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18. Thus, "any fines imposed by the circuit clerk are void from their inception." *Larue*, 2014 IL App (4th) 120595, ¶ 56. The propriety of the imposition of fines and fees presents a question of law, which we review *de novo*. *People v. Guja*, 2016 IL App (1st) 140046, ¶ 69.

¶ 26 The State concedes six out of the seven fines mentioned by defendant were improperly imposed by the circuit clerk and must be vacated as void. We agree, accept the State's concession and vacate those fines.

¶ 27 The State disputes the $50 court finance fee is a fine. Citing *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 109, the State contends the circuit clerk can properly impose the fee for each judgment of guilty. However, this court recently noted *Warren* did not address whether the assessment constituted a fee or fine. *In re Dustyn W.*, 2017 IL App (4th) 170103, ¶ 33. Instead, this court pointed to *Smith*, 2014 IL App (4th) 121118, ¶¶ 47-54, which found the court finance assessment constituted a fine. *Dustyn W.*, 2017 IL App (4th) 170103, ¶ 33. We continue to follow *Smith* and *Dustyn W.* and find the circuit clerk improperly imposed the court finance assessment. Thus, it must be vacated.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we vacate the contested fines. We otherwise 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.

¶ 30 Affirmed in part and vacated in part.