

No. 1-17-0372

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS, )  
 ) Appeal from the  
 ) Circuit Court of  
 Plaintiff-Appellee, ) Cook County.  
 )  
 v. ) Nos. 08 CR 5581  
 ) 08 CR 5582  
 ) 08 CR 5588  
 ) 08 CR 5589  
 )  
 GUSTAVO DOMINGUEZ, ) Honorable  
 ) Geary W. Kull,  
 Defendant-Appellant. ) Judge, presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Delort and Justice Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The circuit court’s order granting the State’s motion to dismiss the defendant’s petition for relief filed under the Postconviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)) is affirmed where he was not serving any part of his sentence at the time he filed the petition and therefore lacked standing to file it.
- ¶ 2 Defendant Gustavo Dominguez appeals the circuit court’s grant of the State’s motion to dismiss his 2014 petition seeking relief under the Postconviction Hearing Act (the Act) (725

ILCS 5/122-1 *et seq.* (West 2014)). In the petition, defendant asserted that when he entered a guilty plea in 2009, his attorney did not advise him that his plea could subject him to deportation and he thus was denied the effective assistance of counsel. The circuit court granted the State's motion to dismiss defendant's petition, finding that he lacked standing to file a claim under the Act. On appeal, defendant contends that the dismissal violated his right to equal protection under the law and requests that this court revisit and modify the legal precedent that denies him standing to file the petition. We affirm.

¶ 3 On March 26, 2009, defendant pled guilty to three counts of burglary and was sentenced to three years of probation. Defendant did not move to withdraw his plea. Defendant completed his probation satisfactorily on March 22, 2012.

¶ 4 On January 24, 2014, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). In that filing, defendant asserted his plea was involuntary because he was innocent of the crimes and was coerced by his counsel into pleading guilty, his counsel did not advise him of the effect of his plea on his immigration status, and he was in the custody of the Immigration and Customs Enforcement agency (ICE) facing deportation. On January 31, 2014, the circuit court dismissed that petition *sua sponte*.

¶ 5 Defendant appealed, and on October 22, 2015, this court entered an agreed order for summary disposition, vacating the circuit court's order pursuant to *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009), which prohibits the dismissal of a section 2-1401 petition before the expiration of a 30-day period for the State to answer or otherwise plead. The case was remanded to the circuit court for further proceedings in accordance with section 2-1401. *People v.*

*Dominguez*, No. 1-14-0870 (dispositional order). On remand, the circuit court dismissed defendant's section 2-1401 petition on January 8, 2016. It found the transcript of the plea hearing showed the trial court sufficiently admonished defendant regarding the possible deportation consequences.

¶ 6 On January 29, 2016, new counsel for defendant filed a motion to reconsider the dismissal of his section 2-1401 petition, arguing the attorney who filed the section 2-1401 petition was the same counsel that defendant deemed deficient at his plea hearing. The circuit court denied defendant's motion to reconsider. Defendant did not appeal that ruling.

¶ 7 On June 14, 2016, defendant filed a petition for postconviction relief that is the subject of this appeal. In that filing, defendant repeated the claims included in his section 2-1401 petition that he was innocent of the charges to which he pled guilty and was coerced into pleading guilty. He asserted he remained in ICE custody awaiting deportation and counsel "never advised him of the direct collateral consequence of the plea on his immigration status." Defendant maintained he would not have pled guilty had he known of the consequences of his plea. He further asserted that at his plea hearing, "the trial court admonished [him] that if he was not a U.S. citizen the conviction could result in his deportation."

¶ 8 On December 2, 2016, the State filed a motion to dismiss defendant's petition, arguing he lacked standing to seek relief under the Act because his sentence was complete when he filed his petition. Following a hearing, the circuit court granted the State's motion to dismiss defendant's petition.

¶ 9 On appeal, defendant argues his petition should not have been dismissed based on his lack of standing. In setting forth this argument, he acknowledges that the supreme court held in

*People v. Carrera*, 239 Ill. 2d 241 (2010), that a defendant's status in ICE detention did not allow him to seek a remedy under the Act when he was no longer incarcerated or serving any portion of his sentence. Defendant nevertheless asks this court to revisit and modify that holding.

¶ 10 The Act provides a criminal defendant the means to redress substantial violations of his constitutional rights. 725 ILCS 5/122-1 (West 2014). Where, as here, a petition is not dismissed within 90 days of its filing, the petition advances to the second stage, where it is docketed for further consideration. 725 ILCS 5/122-2.1(b) (West 2014). At the second stage, the defendant bears the burden of a substantial showing of a constitutional violation. *People v. Allen*, 2015 IL 113135, ¶ 21. If that burden is met, the circuit court advances the petition to the third stage and the court conducts an evidentiary hearing on the defendant's claims. The trial court's dismissal of a postconviction petition at the second stage is reviewed *de novo*. *People v. Cotto*, 2016 IL 119006, ¶ 24.

¶ 11 Here, we find the circuit court did not err in granting the State's motion where the record showed that defendant had completed his sentence at the time he filed his postconviction petition and therefore lacked standing to file it under the Act. As defendant concedes, *Carrera* governs the outcome of this case. There, the defendant pled guilty to the unlawful possession of a controlled substance and served a sentence of probation, which was completed in 2006. *Carrera*, 239 Ill. 2d at 243. Deportation proceedings began against the defendant in 2007, and he filed a petition seeking postconviction relief. *Id.* at 244. The defendant argued in his petition that his guilty plea was not voluntary because it was made in reliance on his counsel's assurance that no immigration consequences would result from his plea. *Id.*

¶ 12 The supreme court noted in *Carrera* that the defendant was not imprisoned in the penitentiary and had fully served his sentence, and his “liberty was not curtailed by the state in any way.” *Id.* at 253. The supreme court stated that even though defense counsel is required to advise a defendant of the risks of deportation arising from a guilty plea pursuant to *Padilla v. Kentucky*, 559 U.S. 356, 373-74 (2010), *Padilla* does not provide standing to a defendant to file a petition under the Act if the defendant’s sentence had been served. *Carrera*, 239 Ill. 2d at 255-56.

¶ 13 When the Illinois Supreme Court has “declared law on any point,” this court is bound to follow supreme court precedent. *In re A.C.*, 2016 IL App (1st) 153047, ¶ 43. Thus, this court has consistently followed *Carrera* in holding that a defendant only has standing to bring a claim under the Act if he is serving some part of a sentence. *People v. Huerta-Perez*, 2017 IL App (2d) 161104, ¶ 13 (and cases cited therein); see also *People v. McDonald*, 2018 IL App (3d) 150507, ¶ 23 (a defendant can obtain relief under the Act even after being released from custody if his petition was filed while he was in custody). Applying that precedent, defendant lacked standing to file a postconviction petition in 2016 as he was no longer completing any part of his sentence, having completed his probation satisfactorily in 2012.

¶ 14 Furthermore, defendant stated in his petition that the judge who accepted his plea admonished him that “if he was not a U.S. citizen the conviction could result in his deportation.” Section 113-8 of the Code of Criminal Procedure of 1963, which took effect in 2004, provides that before the trial court accepts a guilty plea, the court shall advise the defendant that if he is not a United States citizen, a conviction of the offense for which he has been charged “may have the consequences of deportation, exclusion from admission to the United States, or denial of

naturalization under the laws of the United States.” 725 ILCS 5/113-8 (West 2014). The court’s giving of that admonishment regarding the potential consequences of a conviction here cured any claim of prejudice caused by counsel’s failure to advise defendant on those grounds. See *People v. Unzueta*, 2017 IL App (1st) 131306-B, ¶ 34.

¶ 15 In conclusion, defendant lacked standing to bring a petition under the Act where his term of probation had ended and he was no longer serving any part of his sentence when he filed the petition. Moreover, defendant did not sustain prejudice from counsel’s failure to advise him of the consequences of his guilty plea where the court admonished him of the possibility of deportation.

¶ 16 Accordingly, the judgment of the circuit court is affirmed.

¶ 17 Affirmed.