2018 IL App (2d) 151266-U
No. 2-15-1266
Order filed May 18, 2018

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).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-1867
CATHERNE-GAIL WINTERS,	)	Honorable Liam C. Brennan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in summarily dismissing defendant's postconviction petition: her allegations that counsel assured her that he would file an appeal, but then did not, stated a sufficient claim that counsel was ineffective for failing to perfect an appeal, including by filing the required postplea motion.

¶ 2 Defendant, Catherine-Gail Winters, appeals the trial court's order dismissing her postconviction petition. She contends that she stated the gist of meritorious claims that her attorney was ineffective for failing to perfect her appeal and that her plea was involuntary given that at the plea hearing she was experiencing hallucinations as a result of taking psychotropic medication. Because we agree with defendant's first contention, we reverse and remand.

¶ 3 Defendant was charged with 35 counts of various financial crimes. Those counts were dismissed, however, and she was reindicted on counts 36 through 70. The defense requested a psychological evaluation. The psychiatrist diagnosed defendant with bipolar disorder, which "likely affected her motivation and decisions involving the pending offenses."

¶ 4 Defendant, represented by public defender Matt Guerrero, entered a blind plea of guilty to count 36, which alleged a continuing financial crimes enterprise (720 ILCS 5/17-10.6(h) (West 2014)). The State agreed to dismiss counts 37 through 70. The parties stipulated to a factual basis. The court advised defendant of the charges, the sentences applicable to the Class 1 felony (720 ILCS 5/17-10.6(j)(3) (West 2014)) to which she was pleading, and the rights she was giving up by entering the plea. Defendant said that she had no questions and that no threats or promises had been made to induce her plea. Defendant told the court that she was a college graduate and that she understood what was going on that day.

¶ 5 When asked if she was taking prescription medication, defendant responded that she had a heart condition and asthma and that she was taking Seroquel for bipolar disorder. The court asked whether any of the medicines affected her ability to "understand what's going on here today." Defendant replied, "No." The court accepted defendant's plea and continued the case for sentencing.

¶ 6 The court sentenced defendant to eight years in prison and ordered her to pay $16,100 in restitution. The court admonished defendant as follows about her right to appeal:

> "You have the right to appeal. To do so you must within 30 days file a written motion asking the Court to reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty. If the motion is allowed, the sentence will be modified, the plea, sentence, and judgment vacated. A trial date will be set. All the

> charges that were dismissed by the State would be reinstated and also set down for trial. If you are indigent, counsel and a transcript will be provided for you. Any issue not raised in the written motion is waived. If you do nothing, you give up your right to appeal. Do you understand?"

Defendant said that she understood.

¶ 7 On March 2, 2015, defendant filed a *pro se* notice of appeal and a "written statement for an appeal" in the Third District. She stated that she "requested an appeal [but] none was filed." This court, on April 13, 2015, granted defendant leave to file a late notice of appeal and appointed the appellate defender to represent her.

¶ 8 On August 5, 2015, defendant filed a postconviction petition. She alleged, *inter alia*, that Guerrero had told her that there was an agreement by which she would receive probation. She further alleged that she was on medication and "was totally confused as to anything [she] was doing." She was on Seroquel and Wellbutrin, the latter of which had her "seeing trees growing out the walls, Ice walls that would dispear [*sic*] when [she] tried to touch them, TV's in a bubble, flowers growing out the walls." After two weeks, she asked her doctor to stop that medication and her "understanding became all right." She alleged that with her "lack of understanding [she] would have agreed to any questions placed before [her]."

¶ 9 On September 8, 2015, defendant filed another document, which the trial court construed as an amendment to her petition. In this document, she alleged that Guerrero was unprepared for the sentencing hearing and told her that she would get probation on count 36, leading her to believe that he had a deal with the State. Defendant reiterated that she "was under the influence of psychological drugs" such that her "ability to comprehend was confused." When she tried to speak with Guerrero during the hearing, he told her not to say anything.

¶ 10 Defendant alleged that, after the sentencing hearing, she immediately asked Guerrero if he "was *** going to appeal [her] conviction." He said that he would and promised to get back to her within a week, but he never followed up.

¶ 11 The court dismissed the amended petition as frivolous and patently without merit. The court found that the court's exhaustive admonishments at the plea hearing belied defendant's claim that she believed that she would get probation. The court noted that defendant had been expressly admonished that the plea was blind and informed of the possible sentences. Moreover, defendant had assured the court that she had not been threatened or promised anything in exchange for the plea.

¶ 12 The court found that defendant's claim that she was unable to knowingly plead due to the side effects of her psychotropic medications was belied by the record, because the court had questioned defendant about her medications and defendant had assured the court that she understood the proceedings. The court further noted that "[d]efendant's answers to the court's various questions throughout the plea colloquy demonstrate that defendant knowingly entered her plea of guilty." Finally, the court found that, even if defendant's allegations that Guerrero ignored her request to file an appeal were true, she was not prejudiced where she successfully filed an appeal *pro se*.

¶ 13 Defendant timely appealed the dismissal of her postconviction petition. On April 15, 2016, this court dismissed defendant's direct appeal on the ground that she had not filed a postplea motion. *People v. Winters*, No. 2-15-0267 (2016) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 14 In this appeal, defendant contends that the trial court erred by summarily dismissing her petition. She argues that it contained at least the gist of viable claims that counsel was

ineffective for failing to perfect an appeal and that her plea was involuntary due to hallucinations caused by her psychotropic medications.

¶ 15 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) allows convicted defendants to assert that their convictions resulted from substantial denials of their constitutional rights. *People v. Delton*, 227 Ill. 2d 247, 253-54 (2008). When a petition is filed, the trial court has 90 days in which to review it and decide whether, on its face, it is " 'frivolous or is patently without merit.' " *People v. Collins*, 202 Ill. 2d 59, 65 (2002) (quoting 725 ILCS 5/122-2.1(a)(2) (West 2000)). If the court so finds, it should dismiss the petition. *Id.* at 65-66.

¶ 16 A petition is frivolous or patently without merit if its allegations, taken as true, fail to present the "gist of a constitutional claim." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). A petitioner "need only present a limited amount of detail" in the petition and need not make legal arguments or cite to legal authority. *Id.* We review the dismissal of a petition *de novo*. *Collins*, 202 Ill. 2d at 66.

¶ 17 We consider first defendant's contention that Guerrero was ineffective for failing to perfect her appeal. *People v. Edwards*, 197 Ill. 2d 239 (2001), held that an attorney who ignores a client's request to perfect an appeal following a guilty plea renders ineffective assistance. *Id.* at 250-52 (citing *Roe v. Flores-Ortega*, 528 U.S. 470 (2000)).

¶ 18 *Roe* held that the familiar *Strickland* standard applies to such cases. In other words, a defendant must establish that her attorney's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's substandard performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). To establish prejudice, however, a defendant need not demonstrate that her hypothetical appeal has merit. *Edwards*, 197 Ill. 2d at 251-52, 254. Rather,

prejudice is presumed: the result of the proceeding is presumptively unreliable because counsel's conduct led to the forfeiture of the proceeding itself. *Id.* at 251-52.

¶ 19 Here, defendant alleged that she asked Guerrero if he "was *** going to appeal [her] conviction." He allegedly replied that he would and that he would get back to her within a week. Thus, defendant alleged a mutual understanding that Guerrero would pursue an appeal. But he never did so. Thus, defendant stated at least the gist of a claim that Guerrero was ineffective for failing to follow up on perfecting an appeal.

¶ 20 We note that the trial court dismissed this claim only because, when the court ruled, defendant's *pro se* appeal was still pending. Several months later, however, this court summarily dismissed defendant's appeal for having been improperly perfected. Thus, defendant was effectively denied an appeal.

¶ 21 The State argues, however, that the mere fact that defendant's appeal was unsuccessful does not entitle her to a second one. We disagree.

¶ 22 *Edwards* plainly held that perfecting an appeal following a guilty plea includes filing a postplea motion. Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) provides, "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence *** or *** a motion to withdraw the plea of guilty." Thus, although the defendant in *Edwards* alleged that he asked his attorney " 'to file an appeal' " (*Edwards*, 197 Ill. 2d at 242), the court made clear that this includes the obligation to file the required Rule 604(d) motion. *Id.* at 253; see also *Evitts v. Lucey*, 469 U.S. 387, 392 (1985) (counsel was ineffective for failing to "obey a simple court rule" that resulted in the dismissal of client's appeal).

¶ 23 Given our disposition of this issue, we need not consider defendant's remaining issue. A trial court may not dismiss a postconviction petition piecemeal. *People v. Rivera*, 198 Ill. 2d 364, 370-71 (2001). Thus, we reverse the summary dismissal of defendant's petition and remand the cause for second-stage proceedings.

¶ 24 The judgment of the circuit court of Du Page County is reversed and the cause is remanded.

¶ 25 Reversed and remanded.