2018 IL App (3d) 150862-U

Order filed April 25, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0862
v.	)	Circuit No. 14-CF-209
	)	
RYAN A. LAKIN,	)	Honorable
	)	David A. Brown,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in summarily dismissing defendant's *pro se* postconviction petition.

¶ 2 Defendant, Ryan A. Lakin, appeals the summary dismissal of his *pro se* postconviction petition, arguing that his petition alleged the gist of a claim of ineffective assistance of plea counsel. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant with armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)) and aggravated robbery (*Id.* § 18-1(b)(1)). Defendant appeared in court with plea counsel. Counsel informed the court that defendant negotiated a plea agreement with the State. Pursuant to the agreement, defendant would plead guilty to the charge of aggravated robbery, in exchange for the dismissal of the armed robbery charge and a recommendation for a sentence of 15 years' imprisonment.

¶ 5 After the State presented the factual basis for the charge, the court asked counsel if the defense waived evidence in mitigation and a presentence investigation report (PSI). Counsel responded, "We do waive." The court then accepted the negotiated plea agreement and imposed a 15-year sentence. Defendant did not appeal.

¶ 6 Subsequently, defendant filed a *pro se* postconviction petition. In the petition, defendant alleged that plea counsel provided ineffective assistance. Defendant attached an affidavit to his petition, which stated that when he met with plea counsel, counsel informed defendant that they would appear before the court to enter a negotiated plea agreement offered by the State to the charge of aggravated robbery in exchange for the dismissal of the charge for armed robbery and an agreed sentence of imprisonment. According to defendant, counsel did not advise him of any options other than accepting the plea offer. Defendant claimed that counsel failed to tell him he could: (1) have a PSI prepared to put mitigating evidence before the court, (2) enter a "direct plea" or, (3) request a pretrial conference in which mitigating evidence to support a reduced sentence could be presented. Defendant also noted that defendant's family had sent counsel letters in support of defendant and his character that could have been used to obtain a more favorable sentence, but counsel failed to use the information during the plea negotiations.

¶ 7 Ultimately, the circuit court summarily dismissed defendant's *pro se* postconviction petition as frivolous and patently without merit.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues the circuit court erred in dismissing his postconviction petition at the first stage of the proceedings because it presented the gist of a claim that he received ineffective assistance of plea counsel. Specifically, defendant contends that the allegations made in his petition, taken as true, create a basis on which it can be argued both that counsel's performance was deficient and that but for the deficiency, there is a reasonable probability that he "may have asked his attorney to pursue a course that gave him a chance at receiving less than the maximum sentence."

¶ 10 At the first stage of postconviction proceedings, a defendant need only allege a "gist" of a claim, *i.e.*, enough facts to assert an arguable violation of his constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). To demonstrate ineffective assistance of counsel, defendant must show counsel's (1) performance fell below an objective standard of reasonableness, and (2) deficient performance resulted in prejudice to the defendant such that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Put in the context of postconviction proceedings, "a petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17.

¶ 11 Defendant contends that the affidavit attached to his petition sufficiently alleged that he received ineffective assistance from plea counsel where counsel advised defendant that the only option was to accept the State's plea offer of a 15-year sentence. According to defendant, it is

arguable counsel was ineffective for failing to discuss or pursue other plea options, such as entering a "an open plea to the lesser charge and having a full sentencing hearing, where a PSI would have been prepared and mitigating evidence could be offered." Defendant also contends that counsel also failed to discuss another plea option, such as requesting a pretrial conference with the trial court "to obtain the judge's assessment of the case and seek a possible resolution by plea, taking into account the mitigating information." We acknowledge that the deficient performance prong of the *Strickland* standard requires counsel to convey any formal plea offer from the prosecution to his client. See *People v. Trujillo*, 2012 IL App (1st) 103212, ¶ 9. However, no specific corresponding right exists to ongoing plea negotiations.

¶ 12 Here, defendant's *pro se* petition did not allege that the State offered either of the plea options defendant now claims counsel should have pursued. Moreover, the record does not support any claim that alternative plea options were available. Therefore, counsel cannot be found to have performed deficiently for failing to convey offers that never existed. Defendant also did not allege that the State sought a counteroffer to the plea agreement defendant ultimately accepted. In other words, defendant did not allege that counsel failed to pursue ongoing plea negotiations with the State. By defendant's own *pro se* allegations, the plea agreement he accepted was fully negotiated and the new options defendant desires to pursue were never available. It is therefore not arguable that plea counsel performed deficiently for failing to convey alternative plea options that never existed.

¶ 13 We also note that counsel could not be ineffective for misadvising defendant that he was eligible to have a PSI prepared prior to the disposition of the guilty plea. No PSI was necessary because both parties agreed to the imposition of a specific 15-year sentence and a finding was made for the record regarding defendant's criminal history. *People v. Harris*, 105 Ill. 2d 290, 300

(1985). Defendant's choice to accept the fully negotiated plea offer effectively admitted the sentence offered by the State is reasonable and not manifestly unjust. *People v. Evans*, 273 Ill. App. 3d 252, 255-56 (1994). Therefore, a PSI and mitigating evidence were irrelevant to the sentencing hearing.

¶ 14 Even assuming plea counsel performed deficiently for failing to discuss or pursue other plea options, defendant's *pro se* allegations fail to allege an arguable claim that he was prejudiced by counsel's performance. Instead, defendant generically asserts that had he "been notified of an option other than accepting the plea, [defendant] may have asked his attorney to pursue a course that gave him a chance at receiving less than the maximum sentence." To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. In other words, the defendant must establish that there is a reasonable probability that, absent his attorney's deficient advice, he would have accepted the plea offer. *People v. Curry*, 178 Ill. 2d 509, 531 (1997). Defendant's contention that he *may* have pursued a course that would have provided him the chance to receive a lesser sentence does not constitute prejudice.

¶ 15 Moreover, had defendant decided to reject the plea offers and gone to trial, he would have been subject to a longer term of imprisonment than the 15-year sentence he accepted. Defendant was charged with armed robbery, which provides a minimum sentence of 6 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2014). Defendant would also have been subject to a mandatory 15-year enhancement for perpetrating the crime while armed with a firearm. 720 ILCS 5/18-2(b) (West 2014). Thus, defendant faced a minimum of 21 years' imprisonment if convicted of armed robbery, which is 6 years more than what counsel negotiated with the State.

In light of these facts, we cannot say that defendant's *pro se* postconviction petition alleged the gist of a claim of ineffective assistance.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Peoria County is affirmed.

¶ 18 Affirmed.