

NOTICE

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FILED

June 18, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 150890-U

NO. 4-15-0890

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Champaign County |
| STEVEN D. MONROE, |) | No. 11CF511 |
| Defendant-Appellant. |) | Honorable |
| |) | John R. Kennedy, |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Harris and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel’s motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987) and the Post-Conviction Hearing Act (725 ILCS 5/122-2.1 (West 2014)) and affirm the circuit court’s judgment where no meritorious issues could be raised on appeal.

¶ 2 In December 2012, defendant, Steven D. Monroe, was convicted of first degree murder. 720 ILCS 5/9-1(a) (West 2010). On direct appeal, defendant challenged the sufficiency of the evidence used to convict him. We affirmed. In September 2015, defendant sought postconviction relief, arguing the State did not prove him guilty beyond a reasonable doubt. The circuit summarily dismissed defendant’s petition at the first stage on the basis of *res judicata*. Defendant appealed the circuit court’s dismissal and the office of the State Appellate Defender (OSAD) was appointed to represent him. In September 2017, OSAD filed a motion to withdraw.

¶ 3 I. BACKGROUND

¶ 4 In March 2011, the State charged defendant by information with first degree murder (720 ILCS 5/9-1(a) (West 2010)) for the death of Marcus Brown in Champaign County case No. 11-CF-511. The charging instrument alleged defendant, or one for whose conduct he was legally responsible, while armed with a firearm and with the intent to do great bodily harm to Brown, shot Brown with a firearm, resulting in Brown's death.

¶ 5 In January 2011, the State charged defendant by information with unlawful possession of a weapon by a felon (UUW-felon) (720 ILCS 5/24-1.1(a), (e) (West 2010)) in Champaign County case No. 11-CF-49. This charge was based on defendant's accidental shooting of a friend with the same gun used to kill brown. *People v. Monroe*, 2013 IL App (4th) 120274-U, ¶¶ 7-10 (Oct. 31, 2013) (unpublished order under Supreme Court Rule 23).

¶ 6 In December 2011, the two cases were consolidated, and the State tried defendant before a jury. The jury found defendant guilty of UUW-felon but was unable to reach a verdict as to murder. Due to prior convictions, defendant was subject to Class X sentencing on UUW-felon. *Monroe*, 2013 IL App (4th) 120274-U, ¶ 29. See 730 ILCS 5/5-4.5-95 (West 2010). The trial court sentenced defendant to the maximum term of 30 years' imprisonment. On direct appeal of his UUW-felon conviction, OSAD filed a motion to withdraw under *Anders v. California*, 386 U.S. 738 (1967), which this court granted. *Monroe*, 2013 IL App (4th) 120274-U, ¶ 47.

¶ 7 Defendant was retried for first degree murder three times, the third time in December 2012, resulting in a conviction for murder.

¶ 8 A. Defendant's Jury Trial

¶ 9 The following is a summary of evidence presented at defendant's December 2012 trial pertinent to this appeal.

¶ 10 On January 7, 2011, defendant, Roy Duckworth, Darren Mosley, and Joseph Emery sought to obtain marijuana. After procuring a .22-caliber handgun, the four friends drove to Brown's apartment complex in Rantoul. Brown occasionally sold marijuana. The evidence was unclear as to who went into Brown's apartment, but defendant admitted he and Duckworth entered the apartment to purchase marijuana. The evidence was unclear as to what happened after defendant entered Brown's apartment. The four men left the complex and went their separate ways.

¶ 11 Defendant then met up with Dennis Droughns. Defendant had the .22-caliber handgun in his pocket when he entered the back seat of Droughns' vehicle. The gun discharged, and a bullet struck Droughns in the back. No gunshot residue was found on defendant's hands. Defendant left the vehicle, hid the handgun in a barbecue grill, and went into another house in the neighborhood.

¶ 12 On January 8, 2011, police officers found the handgun. Later, police discovered Brown lying on the floor in his apartment. He had suffered a single gunshot to the head. Forensic evidence indicated Brown was shot from close range with the same .22-caliber handgun found in the grill. Police noted a laptop computer, Xbox 360 video game system, and a safe used to store marijuana were missing from Brown's apartment.

¶ 13 Portions of defendant's January 13, 2011, statement to detectives were played for the jury. At the beginning of the interview, defendant denied being at Brown's apartment on January 7, being involved in the shooting, or knowing who shot Brown. He admitted being with his friends that evening. Later, defendant told detectives if they wanted to know more, they should call Emery because "you might get the right person." Defendant recounted his evening for the detectives but left out any mention of going into Brown's apartment. He said he was in the car "rappin'" when Emery told defendant he tried to "hit a lick," Brown tried to "wrestle"

him, and Emery shot Brown in the head. Emery told defendant he took a video game and marijuana. Defendant denied leaving anything out of his story.

¶ 14 Portions of defendant's July 26, 2011, interview with the police were played for the jury. Defendant's demeanor was noticeably different from his prior interview. Now, he admitted he, Duckworth, Mosley, and Emery were at Brown's apartment. He admitted he and Duckworth went into Brown's apartment to purchase marijuana but Brown did not have the amount they wanted. They returned to the car. Before leaving, Emery said he needed to use the bathroom and exited the car. He returned shortly after with a video game, Xbox game system, and laptop. Emery told the others he robbed Brown. The four friends left, and defendant met up with Droughns. Defendant denied being in the apartment when Brown was shot.

¶ 15 Segments of defendant's December 14, 2011, statement at his first trial were played for the jury. Defendant testified Mosley obtained the handgun from someone else during the evening of January 7, 2011. The four friends drove to Brown's apartment complex. Defendant testified he and Duckworth exited the car and went into Brown's apartment to purchase marijuana. Brown did not have the amount they wanted, so they purchased a lesser amount. Defendant testified he and Duckworth returned to the car. As the friends were leaving the complex, Emery said he needed to use the bathroom and exited the vehicle. Defendant testified he did not see Emery carrying anything with him when he returned to the vehicle. Emery told the others he had robbed Brown after the friends reached their destination. Defendant testified Mosley asked him to take possession of the gun, which he placed in his pocket. Defendant then met up with Droughns.

¶ 16 B. Jury Verdict, Posttrial Motion, and Sentencing

¶ 17 Following deliberations, the jury found defendant guilty of first degree murder on a theory of accountability.

¶ 18 In January 2013, defendant filed a motion for a new trial, arguing the evidence was insufficient. In February 2013, the trial court held a hearing on the motion. The court denied the motion and held a sentencing hearing. The trial court sentenced defendant to 52 years' imprisonment for first degree murder to be served concurrently with the 30 years' imprisonment he was already serving on UUW-felon conviction in Champaign County case No. 11-CF-49.

¶ 19 C. Direct Appeal

¶ 20 On appeal defendant argued the State failed to prove beyond a reasonable doubt he was guilty of the actions of another. Specifically, he challenged the sufficiency of the evidence to demonstrate (1) he shared the criminal intent of the principal, and (2) a common design existed to rob Brown. In reviewing defendant's challenge, this court applied the following standard: " 'we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Monroe*, 2014 IL App (4th) 130108-U, ¶ 17 (Sept. 16, 2014) (unpublished order under Supreme Court Rule 23) (quoting *People v. Fernandez*, 2014 IL 115527, ¶ 13, 6 N.E.3d 145.)

¶ 21 This court concluded the jury could infer common design for purposes of accountability from the contradictions and omissions in defendant's statements discussed above, as well as from defendant's admitted visit to Brown's apartment on the evening of Brown's murder, his possession of the gun used to kill Brown, and his attempt to hide the gun. *Monroe*, 2014 IL App (4th) 130108, ¶ 27.

¶ 22 D. Postconviction Petition and First-Stage Dismissal

¶ 23 On September 16, 2015, defendant filed a *pro se* postconviction petition for relief. In his petition, defendant challenged his conviction for murder under an accountability theory, asserting he was not proved guilty beyond a reasonable doubt.

¶ 24 On October 5, 2015, the circuit court summarily dismissed defendant's postconviction petition at the first stage, barring it on the grounds of *res judicata* as defendant raised the issue of reasonable doubt on direct appeal. Additionally, the circuit court noted reasonable doubt is an issue for direct appeal, not postconviction relief.

¶ 25 Notice of appeal was timely filed on November 3, 2015, and OSAD was appointed to represent defendant. In September 2017, OSAD filed a motion to withdraw. Defendant had the opportunity to respond by December 25, 2017. On October 27, 2017, defendant filed a *pro se* motion opposing OSAD's motion to withdraw. On December 11, 2017, defendant filed with this court claiming her never received a copy of OSAD's motion to withdraw. On December 22, 2017, OSAD sent defendant a copy of the motion to withdraw and apologized defendant did not receive a copy sooner. In January 2018, the State's Attorney Appellate Prosecutor filed a brief. On March 30, 2018, this court gave defendant until May 11, 2018, to respond to OSAD's motion because defendant did not have a meaningful opportunity to do so earlier. He filed none.

¶ 26 II. ANALYSIS

¶ 27 OSAD has moved to withdraw pursuant to *Pennsylvania v Finley*, 481 U.S. 551 (1987), alleging the trial court properly dismissed defendant's postconviction petition on the basis of *res judicata* and arguing an appeal of the dismissal would be meritless. Defendant responded to OSAD's motion for leave to withdraw, asserting *res judicata* does not apply where his postconviction petition raised the issue of reasonable doubt, not sufficiency of the evidence.

¶ 28 A. Standard for Withdrawal of Counsel

¶ 29 In *Finley*, 481 U.S. at 557, the United States Supreme Court addressed the withdrawal of counsel in collateral postconviction proceedings and held the United States Constitution does not require the full protection of *Anders v. California*, 386 U.S. 738 (1967),

with such motions. The Court noted the respondent did not present a due-process violation when her counsel withdrew because her state right to counsel and direct appeal had been satisfied. *Finley*, 481 U.S. at 556. Thus, state law dictates counsel’s performance in a postconviction proceeding.

¶ 30 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2014)) of this state provides a remedy to criminal defendants alleging a substantial violation of their constitutional rights occurred at trial. *People v. Brisbon*, 164 Ill. 2d 236, 242, 647 N.E.2d 935, 937 (1995). Here, defendant’s petition was dismissed at the first stage. At this stage, the trial court must determine whether the petition is “frivolous or is patently without merit” by looking at defendant’s petition without considering any argument by the State. 725 ILCS 5/122-2.1(a)(2) (West 2014). The terms “frivolous” and “patently without merit” in the Act encompass claims already litigated or which could have been raised in prior proceedings but were not. *People v. Blair*, 215 Ill. 2d 427, 442, 831 N.E.2d 604, 614 (2005). To survive dismissal at the initial stage of the postconviction proceeding, the petition need only present the gist of a constitutional claim. *People v. Palmer*, 352 Ill. App. 3d 877, 883, 817 N.E.2d 129, 135 (2004). A circuit court may review prior proceedings in a case to determine whether the court already decided defendant’s postconviction claims or whether defendant could have raised the issue and thus rebut the presumption the petition states the gist of a constitutional claim. *Blair*, 215 Ill. 2d at 446. “In considering a petition pursuant to [section 122-2.1 of the Act], the [trial] court may examine the court file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding and any transcripts of such proceeding.” 725 ILCS 5/122-2.1(c) (West 2014). “The court should examine those records to determine whether the allegations are positively rebutted by the record.” *Palmer*, 352 Ill. App. 3d at 883. We will

review *de novo* defendant's claim in his postconviction petition to determine whether to grant postconviction counsel's motion to withdraw. *People v. Ligon*, 239 Ill. 2d 94, 104, 940 N.E.2d 1067, 1074 (2010).

¶ 31 B. Reasonable Doubt

¶ 32 Defendant argues the State failed to prove him guilty beyond a reasonable doubt for the crime of murder under an accountability theory. Postconviction counsel moves to withdraw on the basis of *res judicata* as defendant's identical claim was raised on direct appeal. On direct appeal, this court stated "[a]fter reviewing the evidence in the light most favorable to the State, we conclude the evidence is sufficient to permit a rational jury to find defendant guilty of first degree murder under an accountability theory premised on the common-design rule." *Monroe*, 2014 IL App (4th) 130108-U, ¶ 27.

¶ 33 "The purpose of a post-conviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal." *People v. Harris*, 206 Ill. 2d 1, 12, 794 N.E.2d 314, 323 (2002). It is well-established any issues considered by the reviewing court on direct appeal are barred by the doctrine of *res judicata*. *Ligon*, 239 Ill. 2d at 103. Defendant cannot avoid *res judicata* by adding additional allegations encompassed by a previously adjudicated issue. *Palmer*, 352 Ill. App. 3d at 884.

¶ 34 Defendant, in his response to postconviction counsel's petition to withdraw, argues his "post-conviction claim was based upon reasonable doubt (NOT) sufficiency of the evidence." He attempts to separate reasonable doubt and sufficiency of the evidence into two standards. His argument fails to realize reasonable doubt is encompassed in a challenge to the sufficiency of the evidence. Our Supreme Court has held when a reviewing court considers a

challenge to the sufficiency of the evidence it must determine, “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 35 Because defendant based his postconviction petition on a claim of reasonable doubt and the issue was thoroughly addressed on direct appeal, postconviction counsel cannot make a meritorious argument on defendant’s behalf.

¶ 36 III. CONCLUSION

¶ 37 We agree with OSAD no meritorious issues can be raised on appeal, grant OSAD’s motion to withdraw, and 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.

¶ 38 Affirmed.