

NOTICE
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2018 IL App (4th) 160097-U

OS. 4-16-0097, 4-16-0098, 4-16-0745, 4-16-0760 cons.

FILED
October 19, 2018
Carla Bender
4th District Appellate
Court, IL

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
TAVARIS HUNT,)	Nos. 12CF1867
Defendant-Appellant.)	12CF1868
)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant has failed to show any error related to the circuit court’s summary dismissal of his postconviction petition or to the denial of his motion for leave to file a successive postconviction petition.

¶ 2 In December 2015, defendant, Tavaris Hunt, filed a *pro se* postconviction petition in the following cases: (1) People v. Hunt, No. 12-CF-1867 (Cir. Ct. Champaign Co.) (hereinafter case No. 1867) and (2) People v. Hunt, No. 12-CF-1868 (Cir. Ct. Champaign Co.) (hereinafter case No. 1868). On December 15, 2015, the Champaign County circuit court summarily dismissed defendant’s postconviction petition, finding it was frivolous and patently without merit. Defendant appealed the dismissal in both cases, and this court docketed defendant’s appeal in case No. 1867 as No. 4-16-0097 and docketed the appeal in case No. 1868 as 4-16-0098.

¶ 3 In September 2016, defendant filed a joint petition for leave to file a successive postconviction petition in both cases, asserting ineffective assistance of trial counsel because counsel failed to inform him the sentences for his aggravated domestic battery convictions had to be served at 85%. On September 21, 2016, the circuit court denied defendant's request to file a successive postconviction petition. Defendant appealed the denial in both cases, and this court docketed defendant's appeal in case No. 1867 as No. 4-16-0745 and docketed the appeal in case No. 1868 as 4-16-0760.

¶ 4 In January 2018, this court granted defendant's request to consolidate the appeals in appellate court case Nos. 4-16-0097, 4-16-0098, 4-16-0745, and 4-16-0760. On appeal, defendant contends *pro se* this court should void all orders and judgments in the two cases, as well as the orders and judgments in *People v. Hunt*, No. 12-CF-1869 (Cir. Ct. Champaign Co.) (hereinafter case No. 1869) and *People v. Hunt*, No. 12-CF-1870 (Cir. Ct. Champaign Co.) (hereinafter case No. 1870). We affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Case No. 1867

¶ 7 In November 2012, the State initially charged defendant by information with one count of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010) (as amended by Pub. Act 96-1551, § 5 (eff. July 1, 2011))) for defendant's actions on November 12, 2012. On December 18, 2012, defendant pleaded guilty to aggravated domestic battery in case No. 1867, and the circuit court sentenced him to five years' imprisonment to run concurrently with the sentence imposed in case No. 1868. In February 2013, defendant filed a motion to withdraw his guilty plea and vacate the judgment in case No. 1867. After a hearing on the defendant's motion, the circuit court allowed defendant to withdraw his December 2012 guilty plea and accepted

defendant's guilty plea to a new charge of domestic battery with a prior domestic battery conviction (720 ILCS 5/12-3.2(a)(1) (West 2010) (as amended by Pub. Act 96-1551, § 1035 (eff. July 1, 2011))). The court again sentenced defendant to five years' imprisonment with a sentencing credit of 106 days. It also found defendant was eligible for impact incarceration. In May 2013, the Department of Corrections accepted defendant into the impact incarceration program.

¶ 8 In December 2015, defendant filed a joint *pro se* postconviction petition for both case Nos. 1867 and 1868, which is at issue in this appeal. In his petition, defendant appears to have raised the following claims: (1) general denial of effective assistance of trial counsel, (2) the State improperly obtained a video of him, (3) he was not informed of his right to a preliminary hearing, and (4) his sentence violates the eighth amendment prohibition of cruel and unusual punishment. The circuit court found the petition was frivolous and patently without merit and dismissed the petition at the first stage of the proceedings. In February 2016, this court allowed defendant to file an amended notice of appeal, which was essentially a timely late notice of appeal as defendant's prior two notices of appeal were untimely. See Ill. S. Ct. R. 651(d) (eff. Feb. 6, 2013); R. 606(c) (eff. Dec. 11, 2014). Accordingly, we have jurisdiction of defendant's appeal from the dismissal of his postconviction petition under Illinois Supreme Court Rule 651(a) (eff. Feb. 6, 2013). As stated, we docketed the aforementioned appeal in case No. 1867 as case No. 4-16-0097.

¶ 9 In August 2016, defendant filed an amended joint postconviction petition for both case Nos. 1867 and 1868, and the circuit court denied the amended postconviction petition. The next month, defendant filed a joint motion for leave to file a successive postconviction petition for both case Nos. 1867 and 1868, which is also at issue in this appeal. In his motion, defendant

asserted ineffective assistance of counsel based on counsel's failure to inform defendant he had to serve 85% of his aggravated domestic battery sentence. The court denied the motion. In October 2016, defendant filed a timely notice of appeal from the denial of his petition for leave to file a successive postconviction petition. See Ill. S. Ct. R. 651(d) (eff. Feb. 6, 2013); R. 606 (eff. Dec. 11, 2014). Accordingly, we have jurisdiction of defendant's appeal from the denial of his petition for leave to file a successive postconviction petition under Illinois Supreme Court Rule 651(a) (eff. Feb. 6, 2013). As stated, we docket the aforementioned appeal in case No. 1867 as case No. 4-16-0745.

¶ 10 In January 2017, defendant filed a joint petition for *mandamus* for both case Nos. 1867 and 1868, which the circuit court *sua sponte* denied. He did not appeal the denial of the *mandamus* petition in case 1867.

¶ 11 That same month, defendant also filed a joint motion for posttrial discovery for both case Nos. 1867 and 1868, and the circuit court denied the motion. Defendant appealed the denial of his motion for posttrial discovery in case No. 1867 only, and this court docketed that appeal as No. 4-17-0150. On April 13, 2017, this court dismissed the appeal in No. 4-17-0150 on defendant's motion. *People v. Hunt*, No. 4-17-0150 (Apr. 13, 2017) (nonprecedential motion order dismissing the case on defense counsel's motion, explaining the appeal was taken from the denial of discovery motion, which is not a final order for purposes of appeal).

¶ 12 In June 2017, defendant filed a joint section 2-1401 petition for both case Nos. 1867 and 1868, which this court docketed as No. 4-17-0775 in case No. 1867. Defendant alleged his decision to plead guilty was the result of ineffective assistance of counsel because trial counsel failed to inform him he had to serve 85% of his aggravated domestic battery sentence and could not receive any good-time credit. He also alleged counsel incorrectly told him the

State could use the cell phone video at his trial. Defendant later filed a supplement to his section 2-1401 petition. The State filed a motion to dismiss defendant's section 2-1401 petition, which the court granted in September 11, 2017. Defendant appealed the dismissal of his section 2-1401 petition, and this court affirmed the circuit court's judgment. *People v. Hunt*, 2018 IL App (4th) 170775-U.

¶ 13 B. Case No. 1868

¶ 14 In November 2012, the State charged defendant by information with six counts of domestic battery with a prior domestic battery conviction (counts I through VI) (720 ILCS 5/12-3.2(a)(1) (West 2010) (as amended by Pub. Act 96-1551, § 1035 (eff. July 1, 2011))) and one count of aggravated domestic battery (count VII) (720 ILCS 5/12-3.3(a-5) (West 2010) (as amended by Pub. Act 96-1551, § 5 (eff. July 1, 2011))). All seven counts related to a series of incidents occurring on September 27, 2012. In December 2012, pursuant to a plea agreement, defendant pleaded guilty to count VII, and the State dismissed the other charges as well as the charges in case Nos. 1869 and 1870 and recommended defendant serve 48 months' probation. The circuit court accepted the guilty plea and sentenced defendant to the 48 months' probation.

¶ 15 In January 2014, the State filed a petition to revoke defendant's probation, alleging he violated the conditions of his probation when he consumed alcohol and committed the offenses of domestic battery and resisting a peace officer. In February 2014, defendant agreed to admit the allegations in the State's petition, and the circuit court revoked defendant's probation. The next month, the court conducted the resentencing hearing. After hearing the parties' arguments, the court resentenced defendant to seven years' imprisonment. Defense counsel filed a motion to reconsider sentence. Defendant later filed a *pro se* letter with the court, asserting ineffective assistance of trial counsel. In April 2014, the court held the hearing on

counsel's motion to reconsider sentence, and defendant did not appear. Defense counsel did not add anything to the motion to reconsider based on defendant's letter. The court denied the motion to reconsider defendant's sentence.

¶ 16 Defendant appealed, asserting the circuit court erred by failing to conduct a preliminary examination into his ineffective assistance of counsel claims as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). On December 1, 2015, this court entered an order, agreeing with defendant and remanding the case for the limited purpose of allowing the circuit court to perform the required preliminary investigation. *People v. Hunt*, 2015 IL App (4th) 140313-U, ¶ 16.

¶ 17 As mentioned with case No. 1867, in December 2015, defendant filed a joint *pro se* postconviction petition for both case Nos. 1867 and 1868, and the circuit court dismissed the petition at the first stage of the proceedings. In both cases, defendant appealed the dismissal of his postconviction petition, which is one of judgments at issue in this appeal. The appeal in case No. 1868 is docketed as No. 4-16-0098.

¶ 18 In February 2016, while the case was on remand, defendant filed a *pro se* amended ineffective assistance claim adding additional claims of ineffective assistance of counsel. On February 29, 2016, the circuit court held a *Krankel* hearing and denied defendant's claim. Defendant appealed. On October 18, 2016, this court entered an order, in which we again remanded the case for another *Krankel* hearing because the circuit court failed to address defendant's claims concerning counsel's performance at the resentencing hearing. *People v. Hunt*, 2016 IL App (4th) 160183-U, ¶ 18.

¶ 19 In September 2016, defendant filed a joint motion for leave to file a successive postconviction petition for both case Nos. 1867 and 1868. The circuit court denied the motion.

In both cases, defendant appealed the dismissal of his postconviction petition, which is one of the judgments at issue in this appeal. This court docketed the appeal in case No. 1868 as No. 4-16-0760.

¶ 20 In January 2017, defendant filed a joint petition for *mandamus* for both case Nos. 1867 and 1868, which the circuit court *sua sponte* denied. He appealed the denial of the *mandamus* petition in case No. 1868 only. This court docketed that appeal as No. 4-16-0694. On April 26, 2017, this court *sua sponte* dismissed defendant's appeal in No. 4-16-0694 because he failed to file an appellant's brief. *People v. Hunt*, No. 4-16-0694 (Apr. 26, 2017) (nonprecedential order dismissing the case).

¶ 21 On February 21, 2017, while the case was on remand, defendant again filed an amended claim of ineffective assistance of counsel. In March 2017, the circuit court held a *Krankel* hearing and again denied defendant's ineffective assistance of counsel claims. Defendant appealed, asking this court to, once again, remand this case for a new *Krankel* hearing because the circuit court did not address all of defendant's ineffective assistance of counsel claims raised in the amended motion. On February 23, 2018, we entered an order, again finding the circuit court failed to conduct an adequate inquiry into defendant's ineffective assistance of counsel claims related to the resentencing hearing. *People v. Hunt*, 2018 IL App (4th) 170213-U, ¶ 22. Thus, we once again remanded the case to the circuit court for it to conduct an adequate inquiry under *Krankel*. *Hunt*, 2018 IL App (4th) 170213-U, ¶ 22.

¶ 22 In June 2017, defendant filed the joint section 2-1401 petition for both case Nos. 1867 and 1868 at issue in this appeal, which we previously described. The circuit court granted the State's motion to dismiss on September 11, 2017. Defendant appealed the dismissal of his section 2-1401 petition, and this court affirmed the circuit court's judgment. *People v. Hunt*,

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¶ 23 On October 30, 2017, defendant filed a motion for a *nunc pro tunc* order, contending he was entitled to 352 additional days of sentencing credit based on his concurrent imprisonment in case No. 1867. He argued it was part of the plea agreement and should be doubled to 704 days based on day-for-day credit. On November 8, 2017, the circuit court entered a docket entry denying defendant's motion. Defendant appealed the denial of his motion for a *nunc pro tunc* order, and this court affirmed the circuit court's judgment. *People v. Hunt*, 2018 IL App (4th) 170775-U. Defendant appealed, and this court vacated the circuit court's denial of defendant's *nunc pro tunc* motion and dismissed defendant's October 30, 2017, motion for a *nunc pro tunc* order due to lack of jurisdiction. *People v. Hunt*, 2018 IL App (4th) 170775-U.

¶ 24

II. ANALYSIS

¶ 25 In March 2018, the office of the State Appellate Defender filed a motion to withdraw as counsel, noting defendant had asked to proceed *pro se*. In April 2018, defendant himself filed a motion to dismiss counsel, asserting his desire to proceed *pro se*. This court allowed both motions. In May 2018, defendant filed his *pro se* appellant brief. While he notes in the nature of the case he is appealing an order denying his petition for postconviction relief (the denial of his request to file a successive postconviction petition is not mentioned), the rest of the brief is written like an original pleading. As previously stated, he asks this court to vacate all of the circuit court's judgments and orders in case Nos. 1867 and 1868, as well as those in case Nos. 1869 and 1870, asserting the circuit court committed fraud. Defendant also requests compensatory and punitive damages. He does not set forth any case law addressing original and successive postconviction petitions or the standard of review applicable to appeals in such

proceedings. Additionally, his arguments are difficult to understand.

¶ 26 We emphasize this court is entitled to have all issues raised on appeal clearly defined with citations to pertinent authority and supported by a cohesive legal argument. *People v. Macias*, 2015 IL App (1st) 132039, ¶ 88, 36 N.E.3d 373. A reviewing court is not a depository for which the appellant, in this case defendant, may dump his burden of argument and research. *Macias*, 2015 IL App (1st) 132039, ¶ 88. Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) requires defendant to include in his brief “[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” A party’s failure to comply with Rule 341(h)(7) results in forfeiture of the argument. *Macias*, 2015 IL App (1st) 132039, ¶ 88. Moreover, arguments not raised in the appellant’s initial brief are forfeited and cannot be raised in the reply brief or a petition for rehearing. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). Illinois courts do not treat *pro se* litigants more lenient than attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78, 987 N.E.2d 1. A party who chooses to represent himself or herself without a lawyer must comply with the same rules and is held to the same standards as licensed attorneys. *Holzrichter*, 2013 IL App (1st) 110287, ¶ 78.

¶ 27 We note a defendant cannot raise an issue for the first time on appeal from the dismissal of a postconviction petition. *People v. Jones*, 213 Ill. 2d 498, 508, 821 N.E.2d 1093, 1099 (2004). The only issue we can discern from defendant’s appellant brief that was also raised in his postconviction petition is his argument the circuit court failed to advise defendant of his right to a preliminary hearing. We note defendant cites no legal authority in support of his contention, and thus the issue is forfeited. Regardless, as the State points out, defendant pleaded guilty in both case Nos. 1867 and 1868. “[A] voluntary plea of guilty waives all

nonjurisdictional errors, including violations of constitutional rights.” *People v. Hobson*, 185 Ill. App. 3d 54, 56, 540 N.E.2d 1030, 1032 (1989) (citing *People v. Ondrey*, 65 Ill. 2d 360, 357 N.E.2d 1160 (1976)). Thus, by pleading guilty, defendant waived any challenge he had to the circuit court’s failure to admonish him of his right to a preliminary hearing.

¶ 28 Defendant does not appear to address in his appellant brief the circuit court’s denial of his motion for leave to file a successive postconviction petition. Thus, he has forfeited any claims of error related to that judgment.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the Champaign County circuit court’s December 15, 2015, dismissal of defendant’s postconviction petition and its September 21, 2016, denial of defendant’s petition for leave to file a successive postconviction petition in both cases. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 31 Affirmed.