

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).

2018 IL App (4th) 160596-U

NO. 4-16-0596

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 17, 2018

Carla Bender

4th District Appellate

Court, IL

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| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Woodford County |
| SHANE STEHLE, |) | No. 15CF119 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Charles M. Feeney III, |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court’s summary dismissal of defendant’s postconviction petition at the first stage where defendant’s claim of ineffective assistance of counsel failed to state the gist of a constitutional claim.

¶ 2 Defendant argues the trial court erred in summarily dismissing his *pro se* postconviction petition as frivolous and patently without merit. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2015, police obtained a warrant to search the mobile home of defendant, Shane Stehle. Defendant lived with Shelley Carroll, Shelley’s five-year-old child, and Shelley’s one-year-old child.

¶ 5 On August 7, 2015, police searched defendant’s mobile home, seized muriatic and sulfuric acid, aluminum foil, two hypodermic syringes loaded with methamphetamine, burnt lithium strips, and lithium battery casings, and arrested defendant.

¶ 6 The State charged defendant by information with one count of aggravated participation in methamphetamine manufacturing while a child under the age of 18 years was present, a Class X felony (720 ILCS 646/15(b)(1)(B), (b)(2) (West 2014)), two counts of methamphetamine-related child endangerment, a Class 2 felony (720 ILCS 646/50(a)(1), (2) (West 2014)), and one count of unlawful possession of a controlled substance for possessing less than five grams of a substance containing methamphetamine, a Class 3 felony (720 ILCS 646/60(a), (b)(1) (West 2014)).

¶ 7 A grand jury found probable cause and defendant was indicted on the charges from the August 8, 2015, information. Later, defendant was indicted on a second count of aggravated participation in methamphetamine manufacturing while a child under the age of 18 years was present (720 ILCS 646/15(b)(1)(B) (West 2014)) and one count of participation in manufacturing less than 15 grams of methamphetamine, a Class 1 felony (720 ILCS 646/15(a)(1), (a)(2)(A) (West 2014)).

¶ 8 On January 19, 2016, defendant entered an open guilty plea to one count of aggravated participation in methamphetamine manufacturing while a child under the age of 18 years was present in exchange for all other counts and an unrelated traffic ticket to be dismissed.

¶ 9 On March 21, 2016, the trial court acknowledged receiving defendant's letter alleging ineffective assistance of trial counsel. The court told defendant *ex parte* communications were inappropriate and to speak with his counsel or one of the attorneys involved in the case.

¶ 10 On March 25, 2016, the trial court conducted defendant's sentencing hearing. Defendant's trial counsel told the court defendant desired a different attorney and to withdraw his guilty plea. The court told defendant his motion to withdraw his guilty plea must be in writing. The court declined appointing different counsel after inquiring into defendant's

ineffective assistance of counsel allegation. The court sentenced defendant to 15 years' imprisonment with a 3-year term of mandatory supervised release, and ordered defendant to pay various fines and fees. The court ordered defendant to pay the fines and fees within three years after defendant's prison release. The court admonished defendant as to his right to appeal.

¶ 11 On May 6, 2016, defendant filed a *pro se* motion for reduction of sentence and a notice of appeal. The trial court held it did not have jurisdiction because of the filed notice of appeal and appointed the office of the State Appellate Defender (OSAD) to represent defendant on appeal.

¶ 12 Later in May, defendant filed a motion to dismiss his appeal because defendant had not timely filed a motion to withdraw his guilty plea or a timely notice of appeal. This court granted defendant's motion to dismiss his appeal. *People v. Stehle*, No. 4-16-0367 (May 31, 2016) (nonprecedential order under Supreme Court Rule 23.)

¶ 13 On July 13, 2016, defendant filed a *pro se* postconviction petition alleging ineffective assistance of counsel based upon trial counsel's failure to file a notice of appeal.. On July 15, 2016, the trial court summarily dismissed defendant's postconviction petition as frivolous and patently without merit. Defendant filed a *pro se* notice of appeal, and OSAD was appointed to represent defendant.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues the trial court erred in summarily dismissing his *pro se* postconviction petition as frivolous and patently without merit. Defendant argues he presented the gist of a constitutional claim of ineffective assistance of counsel because his trial counsel failed to file a motion to withdraw his guilty plea and "did not file for an appeal." Defendant

requests this court to reverse and remand for second-stage postconviction proceedings. We disagree and affirm the trial court's dismissal of defendant's postconviction petition.

¶ 17 A postconviction petition proceeding not involving the death penalty has three distinct stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). In stage one,

“[T]he defendant files a petition and the circuit court determines whether it is frivolous or patently without merit. At this stage, the Act does not permit any further pleadings from the defendant or any motions or responsive pleadings from the State. Instead, the circuit court considers the petition independently, without any input from either side. To survive dismissal at this stage, a petition need only present the gist of a constitutional claim.” *Id.*

¶ 18 In stage two, “the circuit court appoints counsel to represent an indigent defendant. [Citation.] Counsel may file an amended post-conviction petition. Also, at this second stage, the Act expressly provides that the State may file a motion to dismiss or answer to the petition. [Citation.]” *Id.*

¶ 19 In stage three, “the circuit court conducts an evidentiary hearing. [Citation.] If the circuit court dismisses the petition or denies post-conviction relief at any stage, the defendant may appeal.” *Id.* at 418-19. “[R]eversal is required where the record shows that the circuit court sought or relied on input from the State when determining whether the petition is frivolous.” *Id.* at 419.

¶ 20 To survive dismissal at stage one, defendant was required to present the gist of a constitutional claim, which is a limited amount of factual detail setting forth the ways in which defendant's constitutional rights were violated and meeting the pleading requirements of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). *People v. Hodges*,

234 Ill. 2d 1, 9 (2009). In stage one, formal legal arguments and citation to legal authority are not required. *Id.* The gist of a constitutional claim requirement is a low threshold. *Id.* at 10.

¶ 21 A court may dismiss a postconviction petition as frivolous or patently without merit only if the petition has no arguable basis in law or fact. *Id.* at 11-12. “A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation.” *Id.* at 16.

¶ 22 Defendant argues trial counsel was ineffective because counsel knew defendant wanted to withdraw his guilty plea but counsel filed neither a timely motion to withdraw defendant’s plea nor a timely notice of appeal. On March 25, 2016, at defendant’s sentencing hearing, defendant’s counsel told the trial court defendant wanted different counsel and defendant wanted to withdraw his guilty plea. After the court informed defendant that his motion to withdraw his guilty plea had to be in writing and admonished defendant as to his appeal rights, trial counsel informed the court defendant “did not wish a motion to reconsider our motion to withdraw guilty plea filed.” Defendant did not disagree with counsel’s statement.

¶ 23 The trial court then told defendant,
“You have thirty days. So if you change your mind, you have thirty days in which to take action. But you have to take action in that thirty day time frame. I want to emphasize that. Okay? Because even if the court has made some or, you know, the court maybe should let you draw your plea of guilty, for instance, if you don’t file that motion within thirty days, you don’t get it.”

Defendant conceded he had thirty days to file his motions.

¶ 24 On May 6, 2016, defendant filed a notice of appeal. On May 26, 2016, defendant filed a motion to dismiss his appeal because he did not did not timely file a motion to withdraw

his guilty plea, which was 62 days after March 25, 2016, and 32 days beyond when the trial court informed defendant he could file his motion to withdraw his guilty plea.

¶ 25 The trial court informed defendant he had to file a motion to vacate his guilty plea to perfect an appeal. “At the first stage of postconviction proceedings under the Act, 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.” *Id.* at 17. Since defendant renounced his motion to vacate his guilty plea, did not file a motion to vacate his guilty plea within the 30-day period, and presented no affidavits he told trial counsel he wanted to vacate his guilty plea during the 30-day period, counsel’s performance did not fall below an objective standard of reasonableness. Defendant was not prejudiced because the trial court informed defendant about the motion to withdraw his guilty plea needing to be in writing, his appeal rights, and the 30 day period for filing his motions, which defendant acknowledged.

¶ 26 Defendant’s postconviction petition failed to raise the gist of an arguably meritorious claim of ineffective assistance of counsel. The court did not err in summarily dismissing defendant’s postconviction petition.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we 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. (55 ILCS 5/4-2002(a) (West 2016)).

¶ 29 Affirmed.