2018 IL App (4th) 170398-U

NO. 4-17-0398

FILED
September 4, 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.	)	McLean County
CHARLES HAMILTON,	)	No. 11TR27250
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court's dismissal of defendant's *pro se* postconviction petition is affirmed.

¶ 2 Defendant, Charles Hamilton, was convicted of driving with a suspended license (625 ILCS 5/6-303(a) (West 2010)) and ordered to pay court costs. He filed a postconviction petition, alleging he was innocent of the charged offense and his right to a speedy trial had been violated. The trial court summarily dismissed defendant's petition and he appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2011, defendant received a traffic citation for driving with a suspended license (case No. 11-TR-27250). *Id.* The record reflects the State also charged him with three drug-related felony offenses (case No. 11-CF-989)—unlawful possession of cannabis with

intent to deliver, unlawful possession of cannabis, and cannabis trafficking. All of the charges arose out of the same underlying factual circumstances.

¶ 5 In March 2013, defendant's jury trial was conducted with defendant proceeding *pro se*. The record reflects that defendant's traffic and felony cases were consolidated for purposes of trial. At trial, the State presented evidence that, on November 6, 2011, defendant had a suspended Florida driver's license. A police officer observed defendant driving in Illinois and initiated a traffic stop during which defendant presented a Florida driver's license to the officer. Subsequently, defendant's vehicle was searched and a large amount of cannabis was discovered in the vehicle's auxiliary fuel tank. Defendant testified on his own behalf, asserting he had a valid Texas driver's license at the time of the alleged offense. On cross-examination, however, he acknowledged that his Florida license was suspended. At the conclusion of the trial, the jury found defendant guilty of each charged offense.

¶ 6 In April 2013, defendant's sentencing hearing was conducted. The trial court sentenced him to 22 years in prison for cannabis trafficking. With respect to the offense of driving with a suspended license, the court stated it would "order court costs and a conviction" with "[n]o other penalty or sentence." Although the record on appeal does not show that defendant filed a direct appeal, it does reflect that, in July 2015, the supreme court issued a supervisory order directing the trial court to reconsider defendant's sentence for cannabis trafficking on the basis that the criminal history set forth in defendant's presentence investigation report had been incorrect. In March 2016, the court reduced defendant's sentence for cannabis trafficking to 19 years in prison. Later that month, defendant filed a *pro se* motion for reconsideration or reduction of sentence. In June 2016, the court conducted a hearing. Defendant elected to proceed *pro*

se, and the court denied his motion. The same month, defendant filed a notice of appeal, citing both his felony and traffic case numbers. In August 2016, this court entered an order dismissing an appeal in defendant's traffic case on defendant's own motion.

¶ 7 In February 2017, defendant filed a *pro se* postconviction petition in his traffic case. He alleged he was innocent of driving with a suspended license because he had a valid Texas driver's license at the time of the alleged offense. Defendant asserted he "provided the [c]ourt" with a certified copy of his Texas license but that he was not permitted to present such evidence to the jury at the time of his trial. He also alleged that he was denied his right to a speedy trial on the basis that his traffic case was inappropriately combined with his felony case without notice to him and during the course of a "secret" hearing.

¶ 8 Along with his postconviction petition, defendant filed a motion for leave to file a successive postconviction petition. He alleged that he previously filed a postconviction petition that was denied and inconsistently claimed that he had both raised and not raised the claims contained within his "current petition." In asserting that his claims were not previously raised, defendant argued as follows:

> "There is cause for my failure to bring the claim contained in the current petition ***, in that the court refused to offer relief requested due to '*res judicata*,' and that argument does not apply to claims of *actual innocence*." (Emphasis in original.)

Defendant further asserted prejudice, which resulted from the failure to bring his claims earlier "because the claim[s] so infected [his] judgment of conviction that [his] conviction violated due process." Defendant attached his own affidavit to his filings along with a copy of a document

that purported to be from the Texas Department of Public Safety. According to that document, defendant was issued a Texas driver's license on May 11, 2005, which expired on November 26, 2011.

¶ 9 In May 2017, the trial court issued an order addressing defendant's postconviction petition. Initially, it found defendant lacked standing to file a petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2016)) because driving with a suspended license is a misdemeanor offense and not one for which defendant faced a sentence of imprisonment. The court then noted that, under certain circumstances, a person convicted of a misdemeanor offense could obtain postconviction relief; however, it determined that the filing of defendant's petition was "outside of the [six] month requirement for commencement" for such proceedings. The court held that because defendant's petition was untimely, it could not be considered under the Act and it ordered the petition "stricken."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant appeals *pro se*, arguing the trial court erred in dismissing his postconviction petition. He maintains the court improperly dismissed his petition as untimely because he raised a claim of actual innocence, which was not subject to time restraints. Defendant also reiterates the arguments made in his petition and raises several new contentions of error for the first time on appeal.

¶ 13 "The *** Act provides a method to challenge a conviction or sentence based on a substantial violation of constitutional rights." *People v. Boykins*, 2017 IL 121365, ¶ 9, 93 N.E.3d 504 (citing 725 ILCS 5/122-1(a)(1) (West 2014)). However, it also contains language that limits

its application to persons " 'imprisoned in the penitentiary.' " *People v. Shanklin*, 304 Ill. App. 3d 1056, 1057-58, 711 N.E.2d 796, 797 (1999) (quoting 725 ILCS 5/122-1 (West 1996)). Due to such language, courts have interpreted the Act as applying only to individuals seeking relief from felony convictions. *Id.* at 1058 (citing *People v. Davis*, 54 Ill. 2d 494, 496, 298 N.E.2d 161, 163 (1973)). Additionally, an individual petitioning for relief "must be in prison for the offense he is purporting to challenge." *People v. West*, 145 Ill. 2d 517, 519, 584 N.E.2d 124, 125 (1991).

¶ 14 Nevertheless, a defendant convicted of a misdemeanor offense may seek postconviction relief pursuant to the supreme court's decision in *People v. Warr*, 54 Ill. 2d 487, 298 N.E.2d 164 (1973). In that case, the supreme court exercised its supervisory authority to direct that, until otherwise provided by court rule or statute, a defendant convicted of a misdemeanor offense "may institute a proceeding in the nature of a proceeding under the *** Act" when alleging a substantial denial of his constitutional rights in the proceedings that resulted in his conviction. *Id.* at 493. The court further held as follows:

> "Such a proceeding shall be governed by the *** Act except in the following respects:
>
> (1) the defendant need not be imprisoned;
>
> (2) the proceeding shall be commenced within [four] months after rendition of final judgment if judgment was entered upon a plea of guilty and within six months after the rendition of final judgment following a trial upon a plea of not guilty;
>
> (3) counsel need not be appointed to represent an indigent defendant if the trial judge, after examination of the petition, enters an order finding that

> the record in the case, read in conjunction with the defendant's petition and the responsive pleading of the prosecution, if any, conclusively shows that the defendant is entitled to no relief." *Id.*

¶ 15 Here, the trial court ordered defendant's postconviction petition "stricken" on the basis that he lacked standing under the Act because he was not "imprisoned in the penitentiary" and because his petition was untimely filed under the requirements set forth in *Warr*. We agree that, absent *Warr*, defendant cannot meet the explicit statutory requirements for invoking the Act, in that he seeks postconviction relief from his conviction for a misdemeanor offense—an offense for which he was not "imprisoned in the penitentiary." We also agree that defendant's postconviction petition was untimely under *Warr* as the record shows defendant did not initiate postconviction proceedings until well after six months from the entry of the final judgment in his case. However, we disagree that the trial court was correct in summarily dismissing defendant's postconviction petition on the basis of defendant's untimely filing.

¶ 16 As stated, *Warr* dictates that, aside from the explicit exceptions set forth in that decision, misdemeanor postconviction proceedings are to be "governed by the *** Act." Further, in *People v. Boclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002), the supreme court held that the plain language of the Act did "not authorize the dismissal of a post[]conviction petition during the initial stage [of postconviction proceedings] based on untimeliness." Instead, "time limitations in the Act should be considered as an affirmative defense," which could "be raised, waived, or forfeited, by the State" at the second-stage of postconviction proceedings. *Id.* at 101-02. The court reasoned that a "dutiful prosecutor" might elect to waive a procedural defect "[i]f an untimely petition demonstrate[d] that a defendant suffered a deprivation of constitutional

magnitude." *Id.* It also found that "to allow the circuit court to dismiss summarily post[]conviction petitions for failure to present evidence of actual innocence in a timely manner could lead to a miscarriage of justice." *Id.* at 102.

¶ 17 The holding in *Boclair* is equally applicable in cases like this one, where a defendant seeks postconviction relief from a misdemeanor conviction. Thus, the court in this case erred by rejecting defendant's petition at the first stage of postconviction proceedings on the basis that it was untimely.

¶ 18 However, this court may affirm the trial court's summary dismissal of a defendant's postconviction petition on any basis supported by the record. *People v. Wright*, 2013 IL App (4th) 110822, ¶ 32, 987 N.E.2d 1051. We note that "[a]t the first stage of [postconviction] proceedings, the circuit court must independently determine whether the petition is 'frivolous or is patently without merit.' " *Boykins*, 2017 IL 121365, ¶ 9 (quoting 725 ILCS 5/122-2.1(a)(2) (West 2014)). "To be summarily dismissed at the first stage as frivolous or patently without merit, the petition must have no arguable basis either in law or in fact, relying instead on an indisputably meritless legal theory or a fanciful factual allegation." (Internal quotation marks omitted.) *Id.* "Meritless legal theories include those theories that are completely contradicted by the record." *Id.* For the reasons that follow, we find the record amply demonstrates that defendant's claims were frivolous and patently without merit. Thus, we affirm the court's summary dismissal of defendant's postconviction petition.

¶ 19 Initially, we note that defendant raised the issue of a successive postconviction petition in his *pro se* filings with the trial court. Also, the State, at times, refers to defendant's petition as a successive petition in its appellee's brief. The trial court, however, did not treat de-

fendant's filing as a successive petition or comment on the defendant's request for leave to file a successive petition. Moreover, the record reflects that the postconviction petition at issue on appeal was the first such petition filed in connection with defendant's traffic case—the only case contained within the appellate record and at issue on appeal. Thus, given the record presented, we find defendant was not subject to the requirements for filing a successive petition.

¶ 20 In his postconviction petition, defendant asserted that he is innocent of the offense of driving with a suspended license because, at the time of the offense, he had a valid Texas driver's license. "The elements of a claim of actual innocence are that the evidence in support of the claim must be newly discovered; material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial." (Internal quotation marks omitted.) *People v. Edwards*, 2012 IL 111711, ¶ 32, 969 N.E.2d 829. Here, defendant has not presented any "newly discovered" evidence. Rather, he testified at trial that he had been issued a Texas driver's license and presented with his postconviction petition the same documentary evidence he attempted to present at his trial but was held inadmissible by the trial court—a document purportedly from the Texas Department of Public Safety, showing defendant was issued a Texas driver's license on May 11, 2005, and that his license expired on November 26, 2011.

¶ 21 Moreover, as argued by the State, evidence that defendant possessed a Texas driver's license at the time he was ticketed was not a defense to the charged offense. A person commits the offense of driving on a suspended license when he or she "drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license *** is *** suspended as provided by [the Illinois Vehicle] Code *or the law of another state*[.]" (Emphasis added.) 625 ILCS 5/6-303(a) (West 2010). Here, the State alleged,

and presented evidence showing, that defendant had a suspended Florida driver's license when he was observed driving in Illinois. Defendant acknowledged and does not dispute his Florida suspension. Accordingly, his possession of a Texas driver's license was irrelevant and immaterial to the charge against him.

¶ 22 As stated, defendant also raised a postconviction claim that his right to a speedy trial on his traffic offense was violated. A defendant possesses "both constitutional and statutory rights to a speedy trial." *People v. Woodrum*, 223 Ill. 2d 286, 298, 860 N.E.2d 259, 268-69 (2006) (citing U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; 725 ILCS 5/103-5(a) (West 1998)). While "[t]he constitutional and statutory provisions address similar concerns" they "are not necessarily coextensive." *People v. Kliner*, 185 Ill. 2d 81, 114, 705 N.E.2d 850, 868 (1998). A defendant's claim that he was denied his statutory right to a speedy trial is not cognizable under the Act, which pertains only to alleged violations of constitutional rights. *People v. French*, 46 Ill. 2d 104, 107, 262 N.E.2d 901, 903–04 (1970) (stating "an allegation of a violation of the 120-day rule in bringing a defendant to trial is not constitutional in scope"). Thus, to the extent defendant in this case alleges a violation of his statutory speedy trial rights, we find such a claim is not properly raised in the context of a postconviction proceeding.

¶ 23 "Under the constitutional provisions, whether a defendant's right to a speedy trial has been violated depends on such factors as the length of the delay in trial, the reasons for the delay, the defendant's assertion of the speedy-trial right, and prejudice to the defendant caused by such delay." (Internal quotation marks omitted.) *People v. Campa*, 217 Ill. 2d 243, 250, 840 N.E.2d 1157, 1163 (2005). To the extent defendant argues a constitutional violation of his speedy trial right, his claim is without merit.

¶ 24 Initially, we note defendant has neglected to identify, let alone meaningfully address, the relevant factors for consideration. Both before the trial court, and on appeal, he argued only that he was deprived of his "speedy trial right" because his traffic and felony cases were "[r]e-combine[d]" during an "unscheduled, secret, surreptitious hearing" that was held on February 1, 2012, without his participation. Defendant does not explain how the consolidation of his two cases resulted in an unconstitutional delay in bringing his traffic case to trial. Further, the record indicates delays in the case were attributable to defendant through the filing of various motions, including a motion to dismiss his traffic offense and motions for substitution of judge. Additionally, the record fails to show that defendant ever made a speedy-trial demand in his traffic case or that he suffered any prejudice in the manner that case proceeded.

¶ 25 Moreover, the record presented on appeal fails to support and, in fact, refutes, defendant's factual contentions. Specifically, the record contains only a docket entry from February 1, 2012, which states as follows:

> "Pre-trial Hearing Continued.
>
> Case set for: Pre-trial Hearing on 2/29/2012 at 09:00 AM with Judge RL Freitag, Room 4B."

The record does not reflect the occurrence of a hearing or the appearance of any party before the court. Additionally, as noted by the State, the record otherwise contradicts defendant's contention that his cases were "[r]e-combine[d]" on February 1, 2012. Rather, it shows that defendant's felony and traffic cases were consolidated immediately prior to his March 2013 jury trial. The record contains the following colloquy between the trial court and the State:

> "THE COURT: *** So, the first thing I'm going to ask, I guess, Mr.

Ghrist [(assistant State's Attorney)], there is a three-count indictment and a single-count traffic citation set for trial today. Are we proceeding on all four charges?

MR. GHRIST: It's the People's intention to proceed on the cannabis charges, Your Honor, in the [felony] case.

THE COURT: All right. With regard to the traffic charge then?

MR GHRIST: If that's set today, we're happy to join them. We're prepared to go to trial on that today. It was just—I didn't know that we had joined them.

THE COURT: Well, they haven't been formally consolidated yet, no. That's why I'm asking.

MR. GHRIST: We can go on all four, Your Honor. [The] [p]eople are prepared for that."

¶ 26 Finally, as noted, defendant has also raised several other claims on appeal that were not raised in his postconviction petition. However, "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." 725 ILCS 5/122-3 (West 2016). This court may not address issues raised for the first time on appeal from the dismissal of a postconviction petition. *People v. Jones*, 213 Ill. 2d 498, 507-08, 821 N.E.2d 1093, 1098-99 (2004). Accordingly, we do not address the merits of any of these remaining issues.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment. As part of our judg-

ment, 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.