2018 IL App (5th) 140384-U

NO. 5-14-0384

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 11-CF-241
	)	
JOSHUA M. DALLACOSTA,	)	Honorable
	)	Phillip G. Palmer,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Where the defendant's conviction and sentence were vacated and a new trial was ordered as relief in the original appeal, the defendant's appeal from the summary dismissal of his *pro se* postconviction petition is moot.

¶ 2 Following a stipulated bench trial in September 2013, the defendant, Joshua M. Dallacosta, was found guilty of first degree murder while personally discharging a firearm, and he was sentenced to a prison term of 45 years. His sentence included a 20-year sentence for first degree murder, and a 25-year enhancement for use of a firearm. The defendant filed a timely appeal from the judgment of conviction and sentence. While the defendant's appeal was pending, the defendant filed a *pro se* petition for

postconviction relief. The circuit court summarily dismissed the defendant's petition at the first stage, and denied the defendant's motion to reconsider. On appeal, the defendant claims that the circuit court erred in dismissing his *pro se* petition where the allegations in the petition were sufficient to state the gist of a meritorious claim. For reasons that follow, we that find that the appeal is moot, and therefore dismiss it.

¶ 3 On May 24, 2011, Charles James was shot to death outside a residence in Herrin, Illinois. James' companion, Ly Johnson, was also shot, but sustained a non-life-threatening injury. The defendant was found inside the residence, arrested, and taken into custody. The defendant, then 15 years old, was questioned by detectives during the early morning hours of May 25, 2011, without a parent, guardian, or juvenile officer present. On May 25, 2011, the defendant was charged in the circuit court of Williamson County with first degree murder while discharging a firearm. He was later charged with aggravated battery with a firearm resulting in the injury to Ly Johnson. The defendant's motion to suppress statements he made during the custodial interrogation was denied. The State dismissed the aggravated battery charge prior to trial. During a stipulated bench trial, the defendant preserved his objection to the introduction of the statements he made during the custodial interrogation. Following the trial, the defendant was found guilty of first degree murder. The defendant waived his rights to a presentence investigation and a sentencing hearing. The defendant was sentenced to 20 years in prison on the murder conviction, and an additional 25-year enhancement based on the use of a firearm that caused the death of Charles James. The defendant's motion for new trial was denied, and the defendant appealed.

¶ 4 In the original appeal, the defendant argued that his conviction and sentence should be vacated because the trial court erred in denying the defendant's motion to suppress statements he made during the custodial interrogation. The defendant further argued that his case should be remanded to the juvenile court for further proceedings because recent amendments to the automatic transfer provisions of the Juvenile Court Act, and the amendments to sentencing guidelines for defendants under the age of 18, applied retroactively to his case. In an order entered on July 28, 2017, we found that the incriminating statements made by the defendant during a custodial interrogation were not voluntary under the totality of the circumstances, and that the trial court had erred in denying the defendant's motion to suppress. *People v. Dallacosta*, 2017 IL App (5th) 130476-U (July 28, 2017). We also found that under *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶¶ 32-35, 72 N.E.3d 346, the amendments to section 5-130 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130 (amended by Pub. Act 99-258 (eff. Jan. 1, 2016))), raising the age of automatic transfer from 15 to 16, applied retroactively to cases pending on appeal when the amendment took effect. *Dallacosta*, 2017 IL App (5th) 130476-U. Accordingly, we vacated the defendant's conviction and sentence, and remanded the matter to the juvenile court for further proceedings. *Dallacosta*, 2017 IL App (5th) 130476-U.

¶ 5 Subsequently, the State filed a petition for leave to appeal the order. The Illinois Supreme Court denied the State's petition, but entered a supervisory order directing this court to vacate our judgment and to consider the effect of the supreme court's recent opinion in *People v. Hunter*, 2017 IL 121306, 104 N.E.3d 358, on the issue of whether

the amendments to section 5-130 of the Act apply to a case pending on appeal at the time the amendments became effective. *People v. Dallacosta*, No. 122637, 94 N.E.3d 667 (Ill. Jan. 18, 2018) (supervisory order). After considering the *Hunter* opinion, we concluded that the amendments to the automatic transfer provision did not apply retroactively in the defendant's case. *People v. Dallacosta*, 2018 IL App (5th) 130476-UB (Aug. 6, 2018). We found that the defendant, by then 22 years old, was no longer subject to the jurisdiction of the juvenile court, thereby making a remand to juvenile court for a discretionary transfer hearing impracticable. We noted that our determination that the trial court had erred in denying the defendant's motion to suppress was not impacted by *Hunter*, and remained unchanged. Accordingly, we vacated the defendant's conviction and sentence, and remanded the case to the circuit court for a new trial. *Dallacosta*, 2018 IL App (5th) 130476-UB.

¶ 6 While the defendant's original appeal from his conviction and sentence was pending, the defendant filed a *pro se* petition asserting ineffective assistance of counsel. The defendant alleged that his trial attorney failed to interview witnesses and to investigate and present the defense of compulsion. The defendant further alleged that he had not been adequately or properly admonished about the "encapsulated consequences" of waiving his right to a jury trial, or that a stipulated bench trial amounted to a waiver of the defendant's rights to confrontation, compulsory process, and ability to present a defense. The defendant sought an order vacating his conviction and sentence, and either a dismissal with prejudice or alternatively a new trial. The circuit court summarily dismissed the defendant's petition at the first stage, finding that the defendant did not

meet his burden of "presenting even the gist of a meritorious constitutional claim." This appeal followed.

¶ 7 The first question is whether the appeal is moot. An issue on appeal can become moot where the occurrence of events since the filing of the appeal makes it impossible for the reviewing court to render effectual relief. *People v. Moore*, 207 Ill. 2d 68, 70-71, 797 N.E.2d 631, 633 (2003); *People v. Jackson*, 199 Ill. 2d 286, 294, 769 N.E.2d 21, 26 (2002). A question is said to be moot when it presents or involves no actual controversy, interests or rights, or where the issues involved have ceased to exist. *People v. Blaylock*, 202 Ill. 2d 319, 325, 781 N.E.2d 287, 290 (2002).

¶ 8 In the defendant's original appeal, we vacated the defendant's judgment of conviction and sentence, and ordered a new trial. In light of our decision that the defendant is entitled to a new trial, the issues raised in his *pro se* postconviction petition related to the ineffective assistance of the defendant's attorney during the first trial have become moot. *Moore*, 207 Ill. 2d at 70-71. The defendant requested the same relief in his original appeal and his *pro se* postconviction petition. Since we could not grant the defendant any relief beyond that which he has already received, the appeal from the summary dismissal of the *pro se* postconviction petition is moot. The questions raised in the defendant's postconviction petition with respect to witnesses, potential defenses and the perils and benefits of jury trials *vis-à-vis* bench trials can be discussed with his new counsel.

¶ 9 For the foregoing reasons, this appeal is dismissed as moot.

¶ 10 Appeal dismissed.