

NOTICE
Decision filed 09/05/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 150445-U

NO. 5-15-0445

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Bond County.
)	
v.)	No. 13-CF-12
)	
DE'ANDRE L.W. TRUSS,)	Honorable
)	John Knight,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed the defendant's postconviction petition because the record positively rebuts the allegations in the petition.

¶ 2 The defendant, De'Andre L.W. Truss, appeals the circuit court's dismissal of his postconviction petition. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other document supporting his appeal. The defendant did not file a response. We considered

OSAD's motion to withdraw as counsel on appeal. We examined the entire record on appeal and have found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of Bond County.

¶ 3 BACKGROUND

¶ 4 On August 23, 2013, the defendant pleaded guilty to unlawful possession of cannabis with the intent to deliver.

¶ 5 During the plea hearing, the following colloquy occurred:

"THE COURT: Do you understand by a plea of guilty you are not only giving up the rights I told you about, but you're also telling me that the charge is true?

THE DEFENDANT: Yes, sir.

THE COURT: Is that accurate?

THE DEFENDANT: Yes, sir."

¶ 6 The State then presented the factual basis for the plea. The following was part of the factual background:

"MR. BAUER [(ASSISTANT STATE'S ATTORNEY)]: [Multiple officers] would testify that they knocked on the door and met with the Defendant. That after a discussion, the Defendant consented to a search of his residence. That search resulted in discovery of a large bag of cannabis that contained 47 smaller bags which appeared to be consistent with the distribution of cannabis."

¶ 7 Following the presentation of the factual basis for the guilty plea, the following colloquy occurred:

"THE COURT: Mr. Truss, did you hear and understand what Mr. Bauer said?

THE DEFENDANT: Yes, sir.

THE COURT: Do you agree that would have been his evidence?

THE DEFENDANT: Yes, sir.

THE COURT: Do you know anything to the contrary, Mr. Starnes [(defendant's attorney)]?

MR. STARNES: No, [Y]our Honor.

THE COURT: Now that you have heard what the State's evidence would have been, Mr. Truss, do you wish to proceed ahead with the agreement?

THE DEFENDANT: Yes, sir.

THE COURT: I will accept your plea of guilty ***."

¶ 8 The circuit court sentenced the defendant to probation. Subsequently, the circuit court revoked the defendant's probation and sentenced the defendant to a term of imprisonment.

¶ 9 The defendant appealed to this court. While that appeal was pending, he filed a postconviction petition in the circuit court. The circuit court struck the postconviction petition, believing that it had no jurisdiction due to the pending appeal. The defendant voluntarily dismissed his appeal and filed the postconviction petition that is at issue in the present appeal.

¶ 10 The defendant raised two issues in his postconviction petition, both related to the search of his residence. He claimed that the search violated the fourth amendment (U.S. Const., amend. IV) because the officers did not have a warrant. He also claimed that he received ineffective assistance of counsel because his plea counsel did not challenge the search.

¶ 11 The circuit court summarily dismissed the defendant's petition, stating: "The allegations are entirely conclusory and contain insufficient facts to entitle the Defendant to the relief sought, even if taken as entirely true."

¶ 12 The defendant filed a timely notice of appeal.

¶ 14 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)) allows a person convicted of a crime to "assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution." *People v. Coleman*, 183 Ill. 2d 366, 379 (1998). Evidence of the claim must be attached to the petition in the form of "affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2012). The Act provides a three-stage process for dealing with postconviction petitions. *People v. Tate*, 2012 IL 112214, ¶ 9. At the first stage, the court determines if "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2012); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The petition requires little detail. *Edwards*, 197 Ill. 2d 244. At the first stage, legal arguments and citation are not required. *Id.* The threshold required to advance to second-stage proceedings is low. Nevertheless, a petition that is patently without merit should be dismissed by the circuit court. A postconviction petition is properly dismissed where it is "completely contradicted by the record." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009).

¶ 15 Pleading guilty is " 'a grave and solemn act.' " *People v. Evans*, 174 Ill. 2d 320, 326 (1996) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). "It is *not* a 'temporary and meaningless formality ***.'" (Emphasis in original.) *Id.* (quoting *United States v. Barker*, 514 F.2d 208, 221 (D.C. Cir. 1975)). "A guilty plea waives all nonjurisdictional defenses or defects." *People v. Horton*, 143 Ill. 2d 11, 22 (1991). This includes waiver of constitutional defects. *People v. Brown*, 41 Ill. 2d 503, 505 (1969). A

claim of ineffective assistance of counsel can be an exception to this rule when it affects the voluntary nature of the plea. See *People v. Hall*, 217 Ill. 2d 324 (2005).

¶ 16 The record in this case positively rebuts the defendant's allegations. He claims the search of his residence was unconstitutional because the officers did not have a warrant and he did not consent to the search. But the defendant's statements at the plea hearing positively rebut that claim. After being told to pay attention to the factual basis because he would be admitting it was true, the defendant heard the assistant State's Attorney state that the defendant consented to the search. The circuit court then asked if the defendant agreed that would be the evidence, to which he responded affirmatively. The defendant's counsel indicated that he knew of no evidence to the contrary. Then, one last time, the court asked the defendant if he wished to plead guilty. The defendant said that he did want to plead guilty, and the court accepted the plea. The defendant cannot now claim that the search was unconstitutional because of a lack of warrant or consent. He admitted in open court that he consented to the search. The proceedings of a guilty-plea hearing are far too solemn to allow a defendant to pretend that what was said and accepted was so trivial that he can now disavow them on a whim because he is unhappy with his situation.

¶ 17 CONCLUSION

¶ 18 The circuit court properly dismissed the defendant's petition because the allegations in the petition are positively rebutted by the record. OSAD's motion for leave to withdraw is granted, and the circuit court of Bond County's order is affirmed.

¶ 19 Motion granted; judgment affirmed.