2019 IL App (1st) 162001-U

No. 1-16-2001

September 4, 2019

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 20075
	)	
LAMONT PRINCE,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Jusice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order summarily dismissing defendant's postconviction petition is reversed where he stated an arguable claim of ineffective assistance of counsel.

¶ 2 Defendant Lamont Prince appeals the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). On appeal, defendant contends that his petition stated an arguable claim of ineffective assistance of counsel in that his trial counsel failed to advise him that he was eligible for a mandatory Class X

sentence, thereby causing him to reject a favorable plea offer from the State. We reverse and remand.

¶ 3 Defendant was charged by indictment with one count of possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2014)) and one count of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)), arising from an incident in which he was alleged to have possessed between 1 and 15 grams of heroin and a handgun. At a pretrial hearing on February 11, 2014, trial counsel informed the court, in defendant's presence, that the State had made a plea offer of six years. Trial counsel explained that defendant "is requesting five. I have yet to have a chance to talk further on that." The State replied,

> "I made my offer. I believe I gave the lowest offer that was possibly available. I'm done.
>
> * * *
>
> I want to clarify, this is well below, well, well, well below the minimum on this case. Just so that it's [on the] record that there was an offer and [it was] rejected and revoked."

Following a bench trial, the court granted defendant's motion for a directed finding with respect to the unlawful use of a weapon charge, but found him guilty of possession of a controlled substance with intent to deliver.

¶ 4 At sentencing, the State informed the court that defendant, who was present, was subject to a mandatory Class X sentence based on his criminal history. As the court began to announce its sentencing decision, defendant asked, "Can I say one more thing, your Honor[?]" Trial

counsel responded, "What are you going to say? No, don't say that." The court then noted that defendant was Class X mandatory and sentenced him to 10 years' imprisonment. This court affirmed defendant's conviction on direct appeal over his argument that the State did not prove him guilty beyond a reasonable doubt. *People v. Prince*, 2017 IL App (1st) 142955-U.

¶ 5 On March 22, 2016, while his direct appeal was pending, defendant filed a *pro se* petition for postconviction relief. Defendant's petition alleged that he was denied the effective assistance of counsel because his attorney failed to advise him that he was subject to a Class X sentence of 6 to 30 years, rather than a Class 2 sentence of 3 to 7 years. Defendant attached an affidavit in which he claimed that trial counsel first told him that "he could get me 3 or 4 years," and later "changed the 3 or 4 year (expectation) to 4 or 5 years." Defendant further averred that he rejected the State's six-year offer based on trial counsel's misrepresentations, and that "if [trial counsel] would have made me aware that the 6 year offering (by state) was the minimum and that I can be sentenced up to 30 years (if convicted) I would have accepted the 6 years." Finally, defendant alleged that trial counsel "prevented" him from informing the court that he was unaware of his Class X eligibility, and "informed me not to address the court with my grievance of which I stated to him" at the sentencing hearing.

¶ 6 On May 27, 2016, the circuit court entered a written order that summarily dismissed defendant's petition, finding that, although "[i]t is arguable that trial counsel's performance was objectively unreasonable," defendant could not "establish prejudice, i.e., that there is a reasonable probability that he would have accepted a six-year plea offer had he been afforded effective assistance of counsel." In so finding, the court stated that "the record rebuts [defendant's] contention that he did not know that the minimum sentence he could have received

was six years," because "the state informed counsel and [defendant] that a six year sentence was the minimum that was possibly available" at the February 11, 2014 hearing. The court also noted that "[m]ore importantly, the only evidence [defendant] offered regarding why he chose not to plead guilty was his own self-serving testimony that he believed he could have received a five year sentence," and that "it is clearly evident that [defendant] rejected the state's offer based on his ambition to receive a lower sentence, not counsel's alleged erroneous advice."

¶ 7 On appeal, defendant maintains that he stated an arguable claim that his trial counsel was ineffective for failing to properly advise him that he was eligible for a mandatory Class X sentence. Defendant further contends that he rejected the State's six-year plea offer based on this omission. He therefore requests us to reverse the circuit court's summary dismissal and remand the cause for second-stage postconviction proceedings.

¶ 8 The Act provides a three-stage procedure through which a defendant may assert that his conviction was the result of a substantial denial of his constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2016). At the first stage, the circuit court must determine whether the defendant's petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). In so doing, the circuit court takes the allegations as true, and should dismiss "only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 10-12 (2009). This standard creates a "low threshold" at the first stage. *People v. Jones*, 211 Ill. 2d 140, 144 (2004). A petition lacks an arguable basis when it relies on "an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. A legal theory is indisputably meritless when, for example, it is "completely contradicted by the record." *Id.* Fanciful factual allegations are those which are "fantastic of delusional." *People v. Brown*, 236 Ill. 2d 175, 185 (2010). A

reviewing court considers the summary dismissal of a postconviction petition *de novo*. *People v. Tate*, 2012 IL 112214, ¶ 10.

¶ 9 A defendant's right to effective assistance of counsel is protected by both the United States and Illinois constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. In the context of plea bargaining, a defendant's claim of ineffective assistance of counsel must satisfy the two-prong test laid out in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). *People v. Hale*, 2013 IL 113140, ¶ 15. However, at the first stage of postconviction proceedings, a defendant's petition is "judged by a lower pleading standard than are such petitions at the second stage of the proceeding," when a substantial showing of a constitutional violation is required. *Tate*, 2012 IL 112214, ¶ 20. Instead, to survive the first stage, a petition alleging ineffective assistance of counsel must show that defense counsel's performance *arguably* fell below an objective standard of reasonableness and that defendant was *arguably* prejudiced by counsel's shortcoming. *People v. Trujillo*, 2012 IL App (1st) 103212, ¶ 8.

¶ 10 Turning to the present case, the State does not contest defendant's assertion that his counsel's performance was arguably deficient. Indeed, the circuit court found that "[i]t is arguable that trial counsel's performance was objectively unreasonable." An attorney's performance is deficient when he fails to keep the defendant "reasonably informed" about the direct consequences of rejecting a plea offer, including the minimum and maximum sentences that might be imposed upon a conviction at trial. *People v. Harvey*, 366 Ill. App. 3d 910, 918 (2006). We therefore agree with the circuit court to this extent, as defendant claimed that trial counsel never informed him that he was subject to a mandatory Class X sentence. There is nothing in the record to rebut this contention. Taking the allegation as true, as is required at first-

stage proceedings (*Hodges*, 234 Ill. 2d at 10), this constituted an arguable claim that counsel's performance was unreasonable.

¶ 11 Defendant further contends that he was arguably prejudiced by his counsel's unreasonable performance. In response, the State essentially restates the circuit court's findings by arguing that defendant offered only "his own self-serving affidavit," whereas the record belied his claim that he was unaware of the minimum sentence in this case.

¶ 12 To show prejudice under these circumstances, a defendant must demonstrate a reasonable probability that he would have accepted the plea offer but for counsel's deficient performance, that his guilty plea would have been completed without the State canceling it or the court rejecting it, and that he would have ultimately received a more favorable sentence than was actually imposed. *Hale*, 2013 IL 113140, ¶ 19 (citing *Missouri v. Frye*, 566 U.S. 134 (2012)). To establish prejudice, a defendant must do more than provide his own self-serving testimony. *Id.* ¶ 18; see also *People v. Walker*, 2018 IL App 160509 (1st), ¶ 36 (applying *Hale* in an appeal from the summary dismissal of a postconviction petition). Rather, a defendant is required to present objective evidence that he rejected the plea offer based on counsel's unreasonable performance, and not on other considerations. *Hale*, 2013 IL 113140, ¶ 18.

¶ 13 Here, defendant alleged that he was unaware that he faced a six-year minimum sentence, and that had he known, he would have accepted the State's plea offer. Nothing in the record suggests that, had defendant tried to accept the offer, it would have been cancelled by the State or rejected by the court. Moreover, the fact that defendant rejected a plea offer 24 years below the maximum sentence supports defendant's claim that his counsel did not inform him of the applicable sentencing range. *Id.* ("The disparity between the sentence a defendant faced and a

significantly shorter plea offer can be considered supportive of a defendant's claim of prejudice."). Defendant's claims were neither fanciful nor rebutted by the record, and thus we find that he stated an arguable claim of prejudice from his counsel's deficient performance. See *Trujillo*, 2012 IL App (1st) 103212, ¶ 14.

¶ 14 We do not agree with the circuit court's finding that the State's comments at the February 11, 2014 hearing rebutted defendant's allegations. As noted, trial counsel informed the court that the State had made a plea offer of six years, but defendant sought five years. The State responded "I made my offer. I believe I gave the lowest offer that was possibly available. I'm done." It is far from clear that the words "lowest offer that was possibly available" meant that the State was offering the statutory minimum. Rather, the phrase could be interpreted to mean that six years was simply the lowest sentence that the State was prepared to offer at that time. Especially under the lenient first-stage standards, the State's comments do not definitely rebut defendant's allegation that he was led to believe the applicable sentencing range was three to seven years. See *Brown*, 236 Ill. 2d at 189 ("All well-pleaded facts must be taken as true unless 'positively rebutted' by the trial record.") (quoting *People v. Coleman*, 183 Ill. 2d 366, 385 (1998)). Defendant's rejection of the offer supports an inference that he believed the minimum was something less than six years, and shows his willingness to plead guilty. The only other comment from the State with respect to its plea offer was "I want to clarify, this is well below, well, well, well below the minimum on this case." The State does not dispute that it made this remark, which does not show that defendant was informed of the maximum sentence he faced. In any event, we note that the comment was made after defendant had rejected the offer and it was revoked.

¶ 15 Thus, the allegations in defendant's postconviction petition were not rebutted by the record, and the circuit court was required to take them as true at this stage. Defendant's petition clearly states that he would have accepted the State's six-year offer had his counsel properly informed him that he was subject to a mandatory Class X sentence. He has therefore stated an arguable claim that he was prejudiced. See *People v. Barghouti*, 2013 IL App (1st) 112373, ¶ 18 (reversing the summary dismissal of the defendant's petition where he alleged that he would have accepted a favorable plea deal if he had known the applicable sentencing range); *Trujillo*, 2012 IL App (1st) 103212, ¶ 10 (finding the defendant was arguably prejudiced where he alleged that he would have accepted the State's plea offer had his counsel informed him of it).

¶ 16 We acknowledge that defendant's allegations rely on his own affidavit, and that he has not affirmatively shown that the plea agreement would have been completed as is required under *Hale*. However, we note that *Hale* was not decided on appeal from the summary dismissal of a postconviction petition, but rather from the defendant's motion for a new trial. *Hale*, 2013 IL 113140, ¶¶ 10-11. Consequently, the defendant in *Hale* was required to make a greater showing than defendant at this juncture in the present case. See *Hodges*, 234 Ill. 2d at 10 (summary dismissal unwarranted unless the petition "is either frivolous or patently without merit"); see also *Barghouti*, 2013 IL App (1st) 112373, ¶ 16 (at the first stage of post-conviction proceedings, "courts should excuse the absence of affidavits in which attorneys must confess their errors"). Here, defendant has stated enough here to survive summary dismissal.

¶ 17 For the foregoing reasons, we reverse the summary dismissal of defendant's petition, and remand the cause for second-stage postconviction proceedings.

¶ 18 Reversed and remanded.