

No. 1-17-2015

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Appeal from the
)	Circuit Court of
Respondent-Appellee,)	Cook County
)	
)	
v.)	No. 10 CR 18594
)	
ELLIS PARTEE,)	The Honorable
)	Nicholas Ford,
Petitioner-Appellant.)	Judge Presiding.
)	
)	

JUSTICE COGHLAN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The issues raised in Partee's appeal are moot; therefore, we do not have jurisdiction to consider his post-conviction appeal.

¶ 2 In October of 2010, a jury convicted Ellis Partee of aggravated vehicular hijacking and vehicular hijacking, and he was sentenced to concurrent 60 and 30 year terms. On direct appeal, this Court reversed his convictions and remanded for a new trial, because the trial court failed to instruct the jury on the lesser-included offense of possession of a stolen motor vehicle. On remand, Partee pled guilty to aggravated vehicular hijacking in exchange for a 15 year sentence.

Subsequently, Partee filed a motion to withdraw his guilty plea, which was denied by the trial court. On appeal, the parties entered an agreed summary order remanding the case to the trial court for a fitness hearing and new post-plea proceedings.

¶ 3 While Partee's appeal was pending, Partee sent a post-conviction petition to the trial court, arguing that he was entitled to a substitution of judge and that his trial counsel was ineffective. The trial court dismissed his petition, finding that the issues raised were frivolous and patently without merit, and Partee appealed. Because we find that the issues raised in Partee's post-conviction appeal are moot, Partee's appeal is dismissed.

¶ 4 BACKGROUND

¶ 5 In October of 2010, Ellis Partee was indicted on one count of aggravated vehicular hijacking (720 ILCS 5/18-4(a) (West 2010)) and one count of vehicular hijacking (720 ILCS 5/18-3(a)) (West 2010)) for taking the car of Carol and Charles Morris, as Charles was a person over sixty years old. A jury convicted Partee on both counts and he was sentenced to concurrent 60 and 30 year terms. On direct appeal, this Court reversed his convictions and remanded for a new trial, because the trial court had not instructed the jury on the lesser-included offense of possession of a stolen motor vehicle. *People v. Partee*, 2016 IL App (1st) 133207-U.

¶ 6 On remand, Partee insisted that he wanted to represent himself. After admonishing him regarding the consequences of self-representation, the judge allowed Partee to proceed *pro se*.

¶ 7 On August 1, 2016, the State informed the judge that Partee rejected a proposed plea offer of 22 years in exchange for Partee's guilty plea to one count of aggravated vehicular hijacking, a Class X offense. Pursuant to the offer, Partee would serve 50 percent of the 22 year sentence. The judge admonished Partee regarding the consequences of rejecting the State's offer and stated that if Partee was convicted at trial, his prior convictions would make him eligible for

a sentence between 6 and 60 years or natural life.

¶ 8 The State also informed the court that Partee had a lengthy motion pending regarding several issues, one of which was the trial court's failure to conduct a fitness hearing in 2011. The judge stated that he had a *bona fide* doubt regarding Partee's fitness to stand trial and ordered a behavioral clinical examination. The clinical examiner found Partee fit to stand trial and fit to represent himself, but could not address Partee's sanity at the time of the offense due to his refusal to participate in that portion of the evaluation.

¶ 9 On November 14, 2016, Partee appeared in court, represented by a public defender, and agreed to plead guilty to one count of aggravated vehicular hijacking in exchange for a 15 year sentence. The judge admonished Partee regarding the consequences of pleading guilty and Partee acknowledged that he understood. The parties stipulated to the facts presented at Partee's previous jury trial, in the arrest reports, and in the complaints, and the trial court accepted Partee's plea. The judge informed Partee that he even though he was pleading guilty, he had the right to appeal, but would have to file a motion to withdraw his guilty plea within 30 days.

¶ 10 The following week, Partee filed a *pro se* motion to withdraw his guilty plea, alleging that he was denied: (1) the benefit of the bargain, (2) discoverable documents, (3) a fitness hearing, and (4) effective assistance of counsel. On March 27, 2017, Partee was represented by a public defender at the hearing on his motion to withdraw his guilty plea, which was denied by the trial court. Partee filed a notice of direct appeal on March 28, 2017 under case number 1-17-0948.

¶ 11 Subsequently, the parties filed an agreed motion for summary disposition, in which they agreed that Partee was entitled to a fitness hearing and compliance with Supreme Court Rule 604(d). On May 7, 2019, the case was remanded back to the trial court "for the filing of counsel's

Rule 604(d) certificate, the defendant's opportunity to file a new postplea motion, and new proceedings on any postplea motion that is filed, and a fitness evaluation followed by a fitness hearing so the circuit court can make an independent determination of Partee's fitness to stand trial."

¶ 12 While the foregoing appeal was pending, Partee mailed a *pro se* post-conviction petition to the trial court, alleging that he was entitled to a substitution of judge and that his trial counsel was ineffective for failing to request a fitness hearing, failing to discuss the plea agreement with Partee, failing to attach certain exhibits to Partee's motion to withdraw his guilty plea, failing to subpoena records and videos, and stipulating to untrue facts. The trial court dismissed Partee's post-conviction petition on June 23, 2017, finding that the issues raised were frivolous and patently without merit. Partee appealed on August 11, 2017 under case number 1-17-2015 and this matter is currently pending before the Court.

¶ 13 ANALYSIS

¶ 14 On appeal, Partee asserts that we should reverse the trial court's dismissal of his post-conviction petition, because he stated an arguable basis for a constitutional claim that his trial counsel was ineffective for failing to request a fitness hearing and that the trial court erred when it did not conduct a fitness hearing after it found a *bona fide* doubt of Partee's fitness to stand trial. The State asserts that the issues raised in Partee's appeal are moot, because they were addressed by the agreed order for summary disposition in appeal number 1-17-0948. We agree.

¶ 15 A moot question is one that once existed but, because of the happening of an event, has ceased to exist and no longer presents an issue or controversy. *People v. Dawson*, 5 Ill. App. 3d 975, 976 (1972). The existence of a controversy between the parties is essential to appellate jurisdiction. *Id.* Reviewing courts will not decide moot or abstract questions, render advisory

opinions, or consider issues where they are not essential to the disposition of the cause or where the result will not be affected regardless of how the issues are decided. *People ex rel. Sklodowski v. State*, 162 Ill. 2d 177, 120 (1994).

¶ 16 In appeal 1-17-0948, the parties agreed that defense counsel failed to comply with Supreme Court Rule 604(d) and the trial court erred when it failed to hold a fitness hearing after it found a *bona fide* doubt of Partee's fitness to stand trial. See *People v. Griffin*, 178 Ill. 2d 65, 79 (1997) (if a *bona fide* doubt of the defendant's fitness is raised, the trial court has a duty to hold a fitness hearing before proceeding further). On remand, Partee has the opportunity, if he has not done so already, to file a new motion to withdraw his guilty plea and have a hearing on his motion in full compliance with Rule 604(d). See *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011) (when defense counsel neglects to file a Rule 604(d) certificate, the appropriate remedy is a remand for (1) the filing of a Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing).

¶ 17 Thus, this matter has not been fully adjudicated at the trial court level and our opinion would merely be advisory at this point.

¶ 18 III. CONCLUSION

¶ 19 Partee's appeal of the trial court's dismissal of his post-conviction petition is dismissed, because we find that the issues presented are moot and we do not have jurisdiction.

¶ 20 Appeal dismissed.