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2019 IL App (3d) 170191-U

Order filed May 13, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-17-0191
STEVEN DANTE WILLS,	)	Circuit No. 13-CF-542
Defendant-Appellant.	)	Honorable Paul P. Gilfillan, Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The Peoria County circuit court erred when it dismissed defendant's postconviction petition. Defendant was also entitled to \$5-*per-diem* credit for time he spent in presentence custody.

¶ 2 Defendant, Steven Dante Wills, appeals the second-stage dismissal of his postconviction petition. Defendant also contends that he is entitled to \$5-*per-diem* credit against his eligible fines for the time he spent in presentence custody. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant pled guilty to the offense of unlawful possession with intent to deliver between 100 and 400 grams of cocaine (720 ILCS 570/401(a)(2)(B) (West 2012)). The court accepted defendant's plea and sentenced defendant to 10 years' imprisonment. The court also provided defendant with presentence custody credit, but it did not provide defendant with the \$5-*per-diem* credit toward his fines. Defendant did not file a motion to withdraw his guilty plea, and he did not appeal.

¶ 5 Two years after the sentencing hearing, defendant filed a postconviction petition, which advanced to the second stage. The petition was twice amended by postconviction counsel and supported by defendant's affidavit. In the petition, defendant acknowledged that he failed to file a motion to withdraw his guilty plea in order to pursue a direct appeal. However, he alleged a violation of his due process right because prison officials intercepted his attempts to mail a *pro se* motion to withdraw his guilty plea. He also alleged that his counselor in prison refused to assist in mailing defendant's *pro se* motion to the court. According to defendant, prison officials' conduct denied him meaningful access to the courts by preventing him from filing a motion to withdraw his guilty plea. He also claimed that this violation denied him the right to counsel at a critical stage of the proceedings because if he filed a timely motion to withdraw his plea, then he would have been entitled to counsel. Defendant raised five additional postconviction claims, which are not relevant to this appeal.

¶ 6 The State filed a motion to dismiss the petition, which the circuit court granted.

¶ 7 II. ANALYSIS

¶ 8 On appeal, defendant argues the court erred in granting the State's motion to dismiss because his postconviction petition made a substantial showing of a violation of a constitutional right. Specifically, defendant contends that he made a substantial showing that prison officials

violated his due process rights by denying him meaningful access to the courts. We find defendant's postconviction petition made a substantial showing of a due process violation based on defendant's un rebutted claim that prison officials prevented him from timely filing a motion to withdraw his guilty plea.

¶ 9 At the second stage, all well-pled allegations of a constitutional violation that are not positively rebutted by the record are taken as true. *People v. Coleman*, 183 Ill. 2d 366, 385 (1998). The second stage involves no fact-finding or credibility determinations. *Id.*

¶ 10 To satisfy the right to meaningful access to the courts, a prisoner only needs to receive access to a law library that will enable him to research the law and determine which facts are necessary to state a cause of action. *Bounds v. Smith*, 430 U.S. 817, 821-22 (1977). To show a violation of the right to meaningful access to the courts, a prisoner must prove (1) that prison officials failed to assist the prisoner in preparing and filing legal papers, and (2) some detriment caused by the officials' failure. *Jenkins v. Lane*, 977 F.2d 266, 268 (7th Cir. 1992). Evidence of such detriment must establish specific harm, such as missed court dates, inability to file in a timely manner, denial of legal assistance, or loss of a case that could have been won. *Martin v. Davies*, 917 F.2d 336, 340 (7th Cir. 1990).

¶ 11 According to the petition and defendant's affidavit, prison officials prevented him from filing a timely motion to withdraw his guilty plea. Defendant first alleged that he attempted to mail a *pro se* motion to withdraw his guilty plea to the circuit court but prison officials intercepted the motion. Defendant alleged that he made another attempt to mail the motion, but his counselor refused to assist him. Neither allegation is rebutted by the record.

¶ 12 Based on defendant's un rebutted allegations, he suffered actual injury from the prison officials' actions in two ways. First, defendant was prevented from filing his motion to withdraw

his guilty plea in a timely manner. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017). Consequently, defendant was prevented from challenging his plea and appealing. *Id.* Second, prison officials' conduct denied defendant legal assistance at a critical stage. Had defendant filed a timely *pro se* motion to withdraw his guilty plea, the court would have been required to determine if defendant was indigent and desired counsel. *Id.* If defendant did desire counsel, the court was required to appoint counsel to assist defendant in presenting a motion to withdraw the guilty plea. *Id.* Accordingly, taking defendant's un rebutted allegations as true, we find that he made a substantial showing of the denial of meaningful access to the courts.

¶ 13 In reaching this conclusion, we reject the State's argument that we should apply harmless error analysis to defendant's claim. According to the State, even if defendant made a substantial showing of the denial of meaningful access to the courts, defendant's petition failed to allege a meritorious ground for withdrawing his plea. The State's argument misses the mark. The limited question presented on appeal is whether defendant was denied the ability to file a motion to withdraw his guilty plea. If that is the case, then the proper remedy would be to allow defendant to file a motion to withdraw his plea. Whether defendant will succeed on a motion to withdraw his guilty plea is irrelevant to our inquiry at this stage in the proceedings.

¶ 14 Finally, defendant contends that he is entitled to \$5-*per-diem* credit for the three days he spent in presentence custody. The State confesses error. After reviewing the record, we accept the State's confession and award defendant the \$15 credit toward his eligible fines. 725 ILCS 5/110-14(a) (West 2012). On remand, we direct the circuit court to apply the \$15 credit toward defendant's eligible fines.

¶ 15 III. CONCLUSION

¶ 16 The judgment of the circuit court of Peoria County is reversed and remanded.

¶ 17 Reversed and remanded.