

**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).

2019 IL App (4th) 160736-U  
NO. 4-16-0736  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
May 10, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DAHINTE T. THOMPSON,	)	No. 12CF1929
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices DeArmond and Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err by dismissing defendant’s postconviction petition at the first stage.
- ¶ 2 In September 2016, defendant, Dahinte T. Thompson, filed a postconviction petition alleging, in part, (1) his arrest was unconstitutional because officers had neither an arrest warrant nor probable cause to arrest him and (2) defense counsel “acted in collusion with prosecutors,” thereby denying him access to the courts, a fair trial, a direct appeal, and federal *habeas corpus* relief. That same month, the trial court dismissed the petition as frivolous and patently without merit.
- ¶ 3 Defendant appeals, arguing the trial court erred by dismissing his postconviction petition at the first stage because he stated the gist of a constitutional claim, namely that officers

violated his fourth amendment rights when he was arrested at his place of employment without a warrant or probable cause. For the following reasons, we affirm the trial court's judgment.

¶ 4

## I. BACKGROUND

¶ 5 In June 2013, a jury convicted defendant of one count of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2010)) and one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2010)) based on incidents of sexual abuse involving defendant and his minor daughter, D.T. (born November 4, 1999). The trial court sentenced defendant to consecutive terms of 60 years' imprisonment for his predatory-criminal-sexual-assault conviction and 15 years' imprisonment for his criminal-sexual-assault conviction. In January 2016, this court affirmed defendant's conviction and sentence on direct appeal. *People v. Thompson*, 2016 IL App (4th) 130804-U.

¶ 6

In September 2016, defendant filed a petition for postconviction relief. The petition alleged, in part, his arrest without a warrant and without probable cause violated his fourth amendment rights. Specifically, the petition alleged the arresting officer had no probable cause where (1) nothing "indicated a criminal offense had just immediately occurred;" (2) the officers did not believe they had probable cause; (3) "no offense had been committed in the presence of the police;" (4) no exigent circumstances justified the arrest; (5) defendant's activities and employment were routine and posed no flight risk; (6) officers discovered cannabis after defendant was arrested; and (7) no one in the course of the investigation—including the police, a child services investigator, a pediatrician, prosecutors, and court-appointed lawyers—believed D.T.'s "false reportings" of sexual abuse. The petition also contained numerous allegations regarding an elaborate conspiracy between the prosecutors and defense counsel to deny defendant justice and access to the courts.

¶ 7 Defendant attached numerous police reports detailing the investigation of D.T.'s allegations of sexual abuse leading to defendant's arrest. In part, Officer Timothy Rivest's report documented a forensic interview with D.T. in which she described incidents where defendant forced D.T. to suck his penis and placed his penis in her vagina and anus. On November 21, 2012, Officer Rivest observed a vehicle defendant reportedly was in possession of and driving. The vehicle was in the parking lot of a restaurant where Officer Rivest knew defendant worked. Officer Rivest contacted Sergeant Morgan and advised him of the allegations of predatory criminal sexual assault. Officer Rivest told Sergeant Morgan he had probable cause to arrest defendant and requested a patrol unit. Officer Rivest and the patrol officer entered the restaurant and spoke to the manager, asking to speak with defendant. According to Officer Rivest, the manager went toward the back of the store and brought defendant out.

¶ 8 In September 2016, the trial court dismissed defendant's postconviction petition at the first stage of proceedings. The court entered a written order that read, "The defendant has filed a post-conviction petition on September 8, 2016. The defendant's petition is frivolous, patently without merit, is filled with gibberish[,] and is ordered dismissed."

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred by dismissing his postconviction petition at the first stage. The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 to 122-8 (West 2016)) provides a collateral means for a defendant to challenge a conviction or sentence for a violation of a federal or state constitutional right. *People v. Jones*, 211 Ill. 2d 140, 143, 809 N.E.2d 1233, 1236 (2004). At the first stage of postconviction proceedings, the trial court must determine, without input from the State, whether the

defendant's petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2016)). A postconviction petition may be summarily dismissed as frivolous or patently without merit "only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 12, 912 N.E.2d 1204, 1209 (2009). "To survive dismissal at this initial stage, the postconviction petition 'need only present the gist of a constitutional claim,' which is 'a low threshold' that requires the petition to contain only a limited amount of detail." *People v. Harris*, 366 Ill. App. 3d 1161, 1166-67, 853 N.E.2d 912, 917 (2006) (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996)). We review *de novo* the summary dismissal of a postconviction petition. *Id.* at 1167.

¶ 12 Defendant contends his postconviction petition stated the gist of a constitutional claim, namely that officers violated his fourth amendment rights when he was arrested at his place of employment without a warrant or probable cause. The State asserts defendant waived this argument by failing to raise the issue on direct appeal. Alternatively, the State asserts defendant's claims are frivolous and patently without merit because Officer Rivest had probable cause to make a warrantless arrest in a public place.

¶ 13 "A basic tenet of the Act is that the scope of post-conviction relief is limited by considerations of waiver and *res judicata* 'to constitutional matters which have not been, and could not have been, previously adjudicated.' " *People v. Simpson*, 204 Ill. 2d 536, 546, 792 N.E.2d 265, 274 (2001) (quoting *People v. Winsett*, 153 Ill. 2d 335, 346, 606 N.E.2d 1186, 1193 (1992)). "Any issues which could have been raised on direct appeal, but were not, are procedurally defaulted." *People v. West*, 187 Ill. 2d 418, 425, 719 N.E.2d 664, 669-70 (1999).

¶ 14 On appeal, defendant raises constitutional claims regarding his arrest that could have been raised on direct appeal, and he makes no argument that these claims could not have

been raised on direct appeal for some reason. Accordingly, we find the claims are procedurally defaulted. However, our review of defendant's postconviction petition shows defendant made an extensive argument regarding an elaborate conspiracy by the prosecutors and defense counsel to prevent defendant access to courts, including allegations characterizing his appeal as a "sham." Defendant has abandoned these arguments on appeal. However, to the extent the allegations of conspiracy in his postconviction petition allege a reason these claims could not have been raised on direct appeal, we will consider his claims.

¶ 15 Defendant first argues he was arrested without a warrant and there was no evidence he committed a crime at the time of his arrest or had committed a crime immediately prior to his arrest. The State contends this claim is meritless because nothing prevents an officer from arresting a person because a crime was not committed at that moment and Officer Rivest had probable cause to arrest defendant. We agree.

¶ 16 "A warrantless arrest may be conducted by police if they have probable cause to believe that the person to be arrested has committed or is committing an offense." *People v. Redman*, 386 Ill. App. 3d 409, 420, 900 N.E.2d 1146, 1157 (2008). "[W]hen the totality of the facts and circumstances known to the officers is such that a reasonably prudent person would believe that the suspect is committing or has committed a crime," an officer has probable cause to make an arrest. *People v. Montgomery*, 112 Ill. 2d 517, 525, 494 N.E.2d 475, 477 (1986).

¶ 17 In this case, Officer Rivest had been investigating D.T.'s allegations of sexual assault and had interacted with defendant during the course of that investigation. Additionally, Officer Rivest saw a car matching the description of defendant's car sitting in the parking lot at defendant's place of employment. Indeed, as noted, Officer Rivest was investigating allegations

of predatory criminal sexual assault and believed defendant had committed that crime. These facts and circumstances establish that Officer Rivest had probable cause to arrest defendant.

¶ 18 Defendant also argues the protections of the fourth amendment extend to places of business and police could not have arrested him at his place of employment without a warrant. This argument is without merit, as officers may, upon probable cause, make a warrantless arrest in a public place. *Redman*, 386 Ill. App. 3d at 423. Defendant does not argue he had a reasonable expectation of privacy while working during normal business hours at Arby's restaurant—an establishment open to the public. We therefore conclude the warrantless arrest of defendant supported by probable cause was valid and did not violate defendant's rights.

¶ 19 For the foregoing reasons, we find Officer Rivest had probable cause to arrest defendant without an arrest warrant in a public place. Based on this finding, we conclude defendant's claims are patently without merit. Accordingly, the trial court did not err by dismissing defendant's postconviction petition at the first stage.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 22 Affirmed.