2019 IL App (4th) 170302-U

NO. 4-17-0302

FILED
June 4, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KANISHA M. LEWIS, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Macon County No. 14CF1014 The Honorable Thomas E. Griffith Jr., Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's summary dismissal of defendant's postconviction petition.

¶ 2 Defendant, Kanisha M. Lewis, appeals the trial court's summary dismissal of her postconviction petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2014, the State charged defendant with two counts of burglary and two counts of retail theft with a prior burglary conviction. 720 ILCS 5/16-25, 19-1(a) (West 2014). In January 2015, defendant entered into an open plea agreement whereby she pleaded guilty to one count of burglary and the State dismissed the other charges. Due to defendant's prior burglary convictions, her permissible sentence ranged from a 6-year minimum to a 30-year maximum.

¶ 5 In February 2015, the trial court sentenced defendant to seven years in prison. The

court advised defendant that if she wished to appeal, she must file a motion to withdraw her plea or a motion to reconsider her sentence within 30 days. The court further stated that "[o]nce the final motion was decided, you would have to file your notice of appeal within 30 days." The court told defendant that she had "the right to appeal" and that "appellate counsel would be appointed to assist [her] in the appeal process." However, the court did not explicitly state that counsel would be appointed to assist her in the preparations of her posttrial motions. Defendant affirmatively stated that she understood her right to appeal. She did not file a motion to withdraw her guilty plea or a motion to reduce her sentence within 30 days of the imposition of her sentence.

¶ 6 In January 2017, defendant *pro se* filed a postconviction petition in which she argued that (1) she received ineffective assistance of counsel and (2) her due process rights were violated. She argued that her attorney was ineffective because he supposedly failed to explain that (1) she could withdraw her plea of guilty or file a motion to reduce her sentence and (2) counsel would be appointed to assist her with the preparation of these motions. Defendant argued that her due process rights were violated because the trial court rejected "[a]n agreed upon sentence *** of boot camp" and instead sentenced her to seven years in prison. In April 2017, the trial court dismissed defendant's petition at the first stage.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant appeals, arguing that the trial court erred by dismissing her postconviction petition at the first stage because she presented the "gist" of a constitutional claim. We affirm.

¶ 10 A. The Applicable Law

¶ 11 The Post-Conviction Hearing Act (Act) provides a criminal defendant the means to redress substantial violations of her constitutional rights that occurred in her original trial or sentencing. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 23, 38 N.E.3d 1256; 725 ILCS 5/122-1 (West 2016). The Act contains a three-stage procedure for relief. *People v. Allen*, 2015 IL 113135, ¶ 21, 32 N.E.3d 615; 725 ILCS 5/122-2.1 (West 2016). At the first stage, the trial court must independently determine whether the petition is "frivolous or patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). "To be summarily dismissed at the first stage as frivolous or patently without merit, the petition must have no arguable basis either in law or in fact, relying instead on 'an indisputably meritless legal theory or a fanciful factual allegation.' " *People v. Boykins*, 2017 IL 121365, ¶ 9, 93 N.E.3d 504 (quoting *People v. Hodges*, 234 Ill. 2d 1, 16, 912 N.E.2d 1204, 1212 (2009)). "Meritless legal theories include those theories that are completely contradicted by the record." *Boykins*, 2017 IL 121365, ¶ 9.

¶ 12 Similarly, "[a]t the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed if ([1]) it is arguable that counsel's performance fell below an objective standard of reasonableness and ([2]) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17. A defendant is prejudiced if there is "a reasonable probability that, but for defense counsel's deficient performance, the result of the proceeding would have been different." *People v. Williams*, 2016 IL App (4th) 140502, ¶ 15, 54 N.E.3d 934.

¶ 13 Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001), in pertinent part, requires the trial court to inform a defendant who is pleading guilty that (1) they have a right to an appeal; (2) prior to taking an appeal, the defendant must file within 30 days of the date on which sentence is imposed a written motion asking to have the trial court reconsider the sentence or to

have the judgment vacated and for leave to withdraw the plea of guilty; and (3) counsel will be appointed to assist an indigent defendant with the preparation of these motions.

¶ 14 This rule "need not be 'strictly' administered, *i.e.*, it need not be read nearly verbatim." *People v. Dominguez*, 2012 IL 111336, ¶ 22, 976 N.E.2d 983. Instead, "[s]o long as the court's admonitions were sufficient to impart to a defendant the essence or substance of the rule, the court has substantially complied with the rule." *Id.* A trial court substantially complies with this rule when the "defendant is properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea or sentence." *Id.*

¶ 15 The trial court's dismissal of a postconviction petition at the first stage is reviewed *de novo*. *Boykins*, 2017 IL 121365, ¶ 9. A defendant who fails to include an issue in his original or amended postconviction petition is precluded from raising the issue on appeal from the petition's dismissal. *People v. Jones*, 211 Ill. 2d 140, 148, 809 N.E.2d 1233, 1239 (2004).

¶ 16 B. This Case

¶ 17 In her motion, defendant first argued that trial counsel was ineffective because he allegedly failed to explain that (1) she could withdraw her plea of guilty or file a motion to reduce her sentence and (2) counsel would be appointed to assist her with the preparation of these motions. However, the court explained that if defendant wished to appeal, she must file a motion to withdraw her plea or a motion to reconsider her sentence within 30 days. The court further stated that "[o]nce the final motion was decided, you would have to file your notice of appeal within 30 days." These admonitions put defendant on notice for what she needed to do to preserve her right to appeal. *Dominguez*, 2012 IL 111336, ¶ 22. Further, although the trial court did not inform defendant that counsel would be appointed to assist her with the preparation of these motions, the court did state that she had "the right to appeal" and that "appellate counsel would

be appointed to assist [her] in the appeal process." We also note that defendant had been represented at the trial level by court-appointed counsel. Accordingly, we conclude that the trial court substantially complied with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2000). (We add that one way trial courts could avoid having defendants raise this issue on appeal is for trial courts to *strictly* comply with Rule 605(b), which we strongly recommend.) Thus, even if we assume that counsel was deficient, it is not arguable that defendant was prejudiced by her counsel's performance. *Hodges*, 234 Ill. 2d at 17.

¶ 18 Defendant also argued that the trial court rejected "[a]n agreed upon sentence *** of boot camp[.]" However, defendant entered into an open plea agreement without any assurances as to the punishment. Thus, the record refutes this argument.

¶ 19 Accordingly, we affirm the trial court's order because the issues raised in defendant's postconviction petition are frivolous and without merit. We also note that defendant has raised several arguments on appeal. However, we decline to address them because defendant is precluded from raising issues on appeal which were not raised in the original or amended postconviction petition. *Jones*, 211 Ill. 2d at 148.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm defendant's conviction. We also grant the State its $50 statutory assessment against defendant as the costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 22 Affirmed.