2019 IL App (4th) 170716-U

NO. 4-17-0716

Rule 23 filed September 5, 2019

Modified upon denial of Rehearing October 1, 2019

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ZECHARIAH M. HUDSPATH, Defendant-Appellant.	) Appeal from the) Circuit Court of) Champaign County) No. 11CF1934)) Honorable) Heidi N. Ladd,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The waivers inherent in a knowing and voluntary guilty plea make defendant's claims for postconviction relief frivolous and patently without merit.

¶ 2 Defendant, Zechariah M. Hudspath, representing himself, moved for permission to file an untimely initial petition for postconviction relief. The circuit court of Champaign County denied permission, noting it had been over four years since defendant was convicted. Defendant appeals. We construe the *pro se* document as a postconviction petition and the court's ruling as a summary dismissal of the petition. We affirm the summary dismissal, though not on the ground of untimeliness.

¶ 3 I. BACKGROUND

¶ 4 A. The Charge

¶ 5 On November 23, 2011, the State charged defendant with a single count of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2010)). According to the information, defendant committed the offense in Champaign County in late August 2011, when he was 17 or older, by placing his penis in the anus of a child who was younger than 13.

¶ 6 B. The Motion to Suppress Statements

¶ 7 On February 24, 2012, appointed defense counsel moved to suppress some statements defendant allegedly made on November 17, 2011, to two Rantoul police officers, Christine Reifsteck and Marcus Beach, while they were interrogating him in his home. The motion argued that although the interrogation took place in defendant's home, he was in custody at the time of the interrogation and, hence, the police officers should have given him *Miranda* warnings before interrogating him. See *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶ 8 On May 21, 2012, after hearing evidence and arguments, the circuit court found that when interrogating defendant in his home, the police had not yet placed him under arrest. Finding the interrogation to be non-custodial, the court held *Miranda* warnings to have been unnecessary and, thus, denied the motion to suppress defendant's statements to the police.

¶ 9 C. The Guilty Plea

¶ 10 On October 5, 2012, defendant offered to enter a negotiated plea of guilty to the charge of predatory criminal sexual assault of a child.

¶ 11 In response, the circuit court admonished defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). The court described to him the nature of the charge (see Ill. S. Ct. R. 402(a)(1) (eff. July 1, 2012)):

> "Sir, you've been charged in Count I with the offense of predatory criminal sexual assault of a child. That is a Class X felony. Sir, it's alleged that you committed this

offense in late August of 2011, in Champaign County, Illinois. Specifically, that you, who was [*sic*] a person 17 years of age or older, committed an act of sexual penetration with [the victim], who was under thirteen years of age when the act was committed, in that you placed your penis in [the victim's] anus. Sir, do you understand that [*sic*] the charge is claiming?

THE DEFENDANT: Yeah."

¶ 12 Next, the circuit court admonished defendant on "the minimum and maximum sentence prescribed by law" (Ill. S. Ct. R. 402(a)(2) (eff. July 1, 2012)):

"THE COURT: Sir, that is a Class X felony. That means that if you were convicted, it is a mandatory period of incarceration in the Illinois Department of Corrections. That would be for a specific term that could fall anywhere between six to sixty years. Any sentence of incarceration to the Illinois Department of Corrections would be followed by a period of mandatory, supervised release, or what used to be known as parole. That would be determined by the Department of Corrections, and it would be a minimum of three years, anywhere up to natural life; that means that after you've served any time in prison, you would be required to serve that period of mandatory, supervised release, from a minimum of three years, up to natural life after you were released. Any fine imposed could not exceed $25,000.00.

Sir, did you understand the full range of possible penalties?

THE DEFENDANT: Yes."

¶ 13 Then, after confirming with defendant that he understood the explanation the circuit court gave earlier of all the rights he would be relinquishing by pleading guilty (see Ill. S. Ct. R.

402(a)(4) (eff. July 1, 2012)), the court asked defendant if he was pleading guilty voluntarily and of his own free will. He answered in the affirmative. The court asked him if anyone had forced, pressured, or coerced him in any way to plead guilty. He answered in the negative.

¶ 14 Next, the circuit court asked the State if there had been any plea negotiations. The prosecutor answered:

> "[PROSECUTOR]: There have been, your Honor. Under the proposed plea agreement, the Defendant would plead guilty to the offense of predatory criminal sexual assault of a child, Class X felony, in the manner and form set forth in Count I of the information filed on November 23rd, 2011.
>
> Any term of imprisonment would be followed by a mandatory, supervised release ranging from three years to natural life. The Defendant would serve a period of incarceration of eight years in the Illinois Department of Corrections, to be followed by a term of mandatory, supervised release ranging from three years to natural life."

In addition, the prosecutor said, there would be statutorily mandated fines and costs, and defendant would have to provide a deoxyribonucleic acid (DNA) sample to the state police, pay a genetic marker grouping analysis fee, and register as a sex offender. Defendant had been in presentence custody for 315 days, by the prosecutor's count, which entitled him to a credit of $1575 against his fines.

¶ 15 After confirming with defendant and defense counsel that the prosecutor had accurately stated the terms of the plea agreement, the circuit court asked defendant, "Now sir, other than what was stated here in court, has anyone promised you that anything else would happen if you were to plead guilty?" Defendant answered, "No."

¶ 16 The circuit court then requested a factual basis. The prosecutor summarized the evidence as follows:

> "[PROSECUTOR]: The named victim in this case is—in this case is six years old. On November 14th, 2011, his father caught him and his younger brother with their pants down. The victim told his dad that he was doing what was called 'the naked dance' and he was taught that by the Defendant, who is the victim's seventeen year old uncle, or was at the time.
>
> As the victim was explaining the dance to his father, he started crying and said that the Defendant had also taught him sex. When asked what he meant, the victim advised that the Defendant had placed his penis in the victim's anus.
>
> He was taken to the emergency room for a medical examination where doctors did diagnose him with a possible tear in his rectum.
>
> The Defendant was then interviewed and admitted that he had, in fact, placed his penis in the victim's anus."

¶ 17 Defense counsel stipulated that if the case went to trial, "the State would have evidence and witnesses who would testify substantially as indicated."

¶ 18 Finally, the circuit court asked defendant, "At this time, Mr. Hudspath, do you plead guilty, sir, to the offense of predatory criminal sexual assault of a child, a Class X felony?" "Yeah," defendant answered. Finding the guilty plea to be knowingly, voluntarily, and understandingly made, the court accepted it and entered judgment on it.

¶ 19 Then, after defense counsel waived a presentence investigation and the prosecutor informed the circuit court that defendant had no prior criminal history, the court sentenced defendant to the agreed-on term of eight years' imprisonment.

¶ 20 Defendant did not take a direct appeal. (The circuit court had admonished him of his appeal rights and of the necessity of filing a motion to withdraw the guilty plea and to vacate the judgment should he wish to appeal. See Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).)

¶ 21 D. The Postconviction Proceeding

¶ 22 1. "*Leave to File a Late Post-Conviction Petition*"

¶ 23 On August 21, 2017, defendant filed, *pro se*, a document titled "Leave to File Late Post-Conviction Petition," in which he alleged that his appointed defense counsel had rendered ineffective assistance in various ways. Claiming that the alleged missteps had deprived him of an acquittal, defendant "move[d] [that the circuit court] hear his post conviction petition, notwithstanding the apparent delinquent filing." Defendant further "pray[ed] that [the court] set[] this petition to stage 2 proceedings for an evidentiary hearing on defendant's allegations of ineffective assistance of counsel and unconstitutional conviction."

¶ 24 The postconviction petition complained not only of the insufficiency of the evidence but also of the following 15 omissions by defense counsel.

¶ 25 First, defense counsel failed to raise an alibi, namely, that when the alleged crime happened in Rantoul, Illinois, on November 13, 2011, defendant was in Pontiac, Illinois, as witnesses would attest. (According to the charge, though, to which defendant pleaded guilty after having it read to him, the crime happened in late August 2011.)

¶ 26 Second, defense counsel failed to raise the lack of *Miranda* warnings. (On the contrary, that was what the motion for suppression was all about.)

¶ 27 Third, defense counsel failed to argue the unfairness of using Beach, a family friend, to inveigle a confession out of defendant.

¶ 28 Fourth, the police interrogated defendant—then 17 years old, a minor—without parents or counsel present.

¶ 29 Fifth, defense counsel failed to argue that Beach had tricked defendant by falsely promising him that if he confessed, Beach would get him into the Army and thereby save him from being prosecuted or even arrested.

¶ 30 Sixth, defense counsel erroneously moved to suppress evidence instead of defendant's statements. (On the contrary, defense counsel filed a "Motion to Suppress Statements.")

¶ 31 Seventh, defense counsel failed to object that the interrogation was never taped and that defendant's confession lacked his signature.

¶ 32 Eighth, defense counsel failed to challenge the rape kit.

¶ 33 Ninth, defense counsel failed to raise the lack of DNA evidence.

¶ 34 Tenth, defense counsel failed to point out the lack of any physical evidence linking defendant to the charged offense.

¶ 35 Eleventh, defense counsel failed to show defendant the police report.

¶ 36 Twelfth, defense counsel failed to challenge the victim's statements as being vague and inconsistent.

¶ 37 Thirteenth, defense counsel neglected to argue that the State had failed to carry its burden of proving defendant guilty beyond a reasonable doubt.

¶ 38 Fourteenth, defense counsel failed to argue the lack of evidence to corroborate defendant's confession.

¶ 39 Fifteenth, defense counsel failed to advise defendant that after being released from prison, he would have to serve mandatory supervised release for a minimum of three years and possibly as long as his natural life.

¶ 40 2. *The Circuit Court's Ruling*

¶ 41 In a docket entry of August 28, 2017, the circuit court ruled as follows:

> "The Court has reviewed the defendant's Motion for Leave to File a late Post-Conviction Petition, filed August 21, 2017. The motion was filed 4 years 8 months and 15 days after judgment was entered on October 5, 2012 by guilty plea.
>
> The motion is denied. Notice provided by letter to counsel and the defendant."

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 A. What We Really Are Reviewing

¶ 45 A defendant need not get the circuit court's permission to file a late postconviction petition. A circuit court's permission is required to file a *successive* postconviction petition (725 ILCS 5/122-1(f) (West 2016)) but not to file an *initial* postconviction petition, even if the petition is late. (The lateness of a postconviction petition is, after all, an affirmative defense, which the State can waive or forfeit. *People v. Boclair*, 202 Ill. 2d 89, 101 (2002).) Considering that the *pro se* document, judging by its title, sought a legally pointless ruling, do we have an appealable order?

¶ 46 The ruling is an appealable order if we look beyond the title of the *pro se* document, as we are supposed to do. It is not the title but the substance of the document that determines what the document is. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002); *People*

v. Smith, 371 Ill. App. 3d 817, 821 (2007). The "Leave to File a Late Post-Conviction Petition" is essentially a request for postconviction relief, "pray[ing] that [the court] set[] this petition to stage 2 proceedings for an evidentiary hearing on defendant's allegations of ineffective assistance of counsel and unconstitutional conviction." Every postconviction petition has that ambition, the goal of advancing to an evidentiary hearing. By denying "leave," the circuit court denied defendant's request to move forward in the postconviction proceeding. The denial amounted to the summary dismissal of a postconviction petition. Therefore, we have before us a final, appealable order. See *People v. Whitford*, 314 Ill. App. 3d 335, 342 (2000).

¶ 47 B. Untimeliness as an Impermissible Ground for Summary Dismissal

¶ 48 The circuit court denied the "Leave to File Late Post-Conviction Petition" because, as the court wrote, "[t]he motion was filed 4 years 8 months and 15 days after judgment was entered on October 5, 2012 by guilty plea."

¶ 49 The State agrees with defendant that "the [Post-Conviction Hearing] Act [(Act) (725 ILCS 5/122-1 *et seq.* (West 2016))] does not authorize the dismissal of a post-conviction petition during the initial stage based on untimeliness." *Boclair*, 202 Ill. 2d at 99. *Boclair* is quite clear about that.

¶ 50 C. Whether the Summary Dismissal Nevertheless Was Correct

¶ 51 Although the lateness of the postconviction petition was an invalid reason for summarily dismissing it (see *id.*), "we review the judgment, and not the reasons given for the judgment" (*People v. Dobbey*, 2011 IL App (1st) 091518, ¶ 35). We may affirm the judgment, *i.e.*, the summary dismissal, for any valid reason the record supports, even if the circuit court never relied on that reason. See *People v. Ryburn*, 378 Ill. App. 3d 972, 978 (2008). Thus, if, for a reason

other than its lateness, defendant's petition for postconviction relief deserved to be summarily dismissed, our duty is to affirm the summary dismissal. See *id.*

¶ 52 A postconviction petition is summarily dismissable only if it is "frivolous or *** patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). The supreme court has interpreted that statutory phrase as meaning "the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 12 (2009). The supreme court has further explained:

> "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation. An example of an indisputably meritless legal theory is one which is completely contradicted by the record. [Citations.] Fanciful factual allegations include those which are fantastic or delusional." *Id.* at 16-17.

¶ 53 Applying that standard in *Hodges*, we, in our *de novo* review (see *id.* at 9), have scrutinized each and every claim in defendant's petition, looking for an arguable claim (see *id.* at 12); for, if any one of the claims in the petition is arguable, the summary dismissal must be reversed (see *People v. Niffen*, 2018 IL App (4th) 150881, ¶ 25 (the Act does not permit the partial summary dismissal of a postconviction petition)).

¶ 54 We have come up empty. The waivers inherent in defendant's knowing and voluntary guilty plea make all the claims in his postconviction petition "indisputably meritless." *Hodges*, 234 Ill. 2d at 16.

¶ 55 The waiver was twofold. For one thing, pleading guilty to the charge of predatory criminal sexual assault of a child waived the requirement that the State prove the charge, making incongruous and irrelevant defendant's collateral challenge to the sufficiency of the evidence—evidence which, because of his guilty plea, was never adduced. By pleading guilty, defendant

"*waive[d]* his rights to a jury trial and to proof beyond a reasonable doubt." (Emphasis in original.) *Hill v. Cowan*, 202 Ill. 2d 151, 154 (2002). The guilty plea "release[d] the State from proving *anything* beyond a reasonable doubt." (Emphasis in original.) *Id.*

¶ 56 For another thing, a knowing and voluntary guilty plea waives all nonjurisdictional errors, including constitutional errors. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). Ineffective assistance by defense counsel, a constitutional error (see *People v. Domagala*, 2013 IL 113688, ¶ 36), has nothing to do with the jurisdiction of the circuit court. Hence, a guilty plea waives all claims that defense counsel rendered ineffective assistance before the guilty plea (see *Townsell*, 209 Ill. 2d at 545; *People v. Ivy*, 313 Ill. App. 3d 1011, 1017 (2000))—unless the ineffective assistance somehow made the guilty plea unknowing or involuntary (*People v. Miller*, 346 Ill. App. 3d 972, 980-81 (2004); *People v. Brumas*, 142 Ill. App. 3d 178, 180 (1986)).

¶ 57 The Rule 402(a) admonitions in this case and defendant's responses thereto compel the conclusion that his guilty plea was both knowing and voluntary. The validity of the guilty plea is affirmatively shown by the record. The valid guilty plea waived all nonjurisdictional errors, and the postconviction petition lacks an allegation of jurisdictional error. See *Townsell*, 209 Ill. 2d at 545. In short, despite the misguided rationale of untimeliness—which, arguably, defendant invited (see *People v. Harvey*, 211 Ill. 2d 368, 385 (2004))—we hold that the summary dismissal was correct.

¶ 58 This holding, defendant argues in his petition for rehearing, goes against *Boclair*, *People v. Hommerson*, 2014 IL115638, and *People v. Johnson*, 312 Ill. App. 3d 532 (2000). We see no contradiction between our holding and those three cases. Let us take those cases one at a time.

¶ 59 In *Boclair*, after holding that the circuit court had erred by summarily dismissing Stanley Boclair's postconviction petition on the ground that it was untimely (*Boclair*, 202 Ill. 2d at 102), the supreme court remanded the case to the appellate court, directing the appellate court "to review the circuit court's stated reasons for dismissing Boclair's petition"—and the supreme court pointedly added that it "ma[d]e no comment on the sufficiency of the allegations raised by any of the defendants in their respective petitions" (*id.* At 114). The clear implication was that, on remand, the appellate court could again affirm the summary dismissal of Boclair's petition if—apart from the untimeliness of the petition—the appellate court found the allegations of the petition to be substantively insufficient, that is, frivolous or patently without merit (see *id.* At 102).

¶ 60 In the second case, *Hommerson*, the supreme court held that a postconviction petition was not summarily dismissable "*solely* on the basis that it lacked a verification affidavit." (Emphasis added.) *Hommerson*, 2014 IL 115638, ¶ 11. Presumably because there was no other basis for summarily dismissing the postconviction petition, the supreme court found the "dismissal to be in error" and remanded the case for second-stage proceedings (*id.* ¶ 14). In the present case, by contrast, the *dismissal* itself was not in error; only the circuit court's stated rationale for the dismissal was in error.

¶ 61 In the third case, *Johnson*, the appellate court held that the circuit court had erred by summarily dismissing the postconviction petition solely on the ground that the petition was untimely, and the appellate court reversed and remanded for further proceedings. *Johnson*, 312 Ill. App. 3d at 535. We presume that in so ruling, the appellate court in *Johnson* was aware of a fundamental principle of appellate law: "[T]he question before [the] reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon which that result was reached." *People v. Novak*, 163 Ill. 2d 93, 101 (1994). Presumably, then, in

a substantive sense—that is, without regard to the procedural defect of the omitted verification—the postconviction petition in *Johnson* was not frivolous or patently without merit. If it were, the appellate court surely would have affirmed the summary dismissal, as *Novak* and such cases would have required.

¶ 62 We follow *Novak* by affirming the summary dismissal in this case not for the reason the circuit court gave, *i.e.*, the untimeliness of the petition, but, rather, because the petition is, substantively, frivolous or patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2016); *Novak*, 163 Ill. 2d at 101. We deny defendant's petition for rehearing.

¶ 63 III. CONCLUSION

¶ 64 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 65 Affirmed.