

2019 IL App (4th) 170764-U

NO. 4-17-0764

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 15, 2019

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

**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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
SRIVENKATESH NAGARAJAN,	)	No. 12CM1741
Defendant-Appellant.	)	
	)	Honorable
	)	Lee Ann S. Hill,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Holder White and Justice Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed where defendant lacked standing to seek postconviction relief.

¶ 2 In November 2012, defendant, Srivenkatesh Nagarajan, pleaded guilty to unlawful possession of cannabis (less than 2.5 grams) (720 ILCS 550/4(a) (West 2012)) and the trial court sentenced him to 18 months of court supervision. In May 2014, the trial court discharged defendant from court supervision and ordered the case dismissed.

¶ 3 On September 1, 2017, defendant filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2016)). Defendant alleged he was denied his constitutional right to due process because “multiple errors and procedural deficiencies” occurred during his guilty plea hearing. On September 11, 2017, the

trial court found defendant's allegations were rebutted by the record and struck defendant's petition as untimely.

¶ 4 Defendant appeals, arguing the trial court erred in striking his postconviction petition as untimely filed. Because defendant lacks standing to seek postconviction relief, we affirm.

¶ 5 I. BACKGROUND

¶ 6 On October 12, 2012, the State charged defendant by information with one count of unlawful possession of cannabis (less than 2.5 grams), a Class C misdemeanor (720 ILCS 550/4(a) (West 2012)). On November 28, 2012, pursuant to a plea agreement, defendant pleaded guilty to the charge. The record on appeal contains no transcript of the plea proceeding. A docket entry, dated November 28, 2012, indicates the trial court admonished defendant of (1) the nature of the charge and possible penalties, (2) his right to an attorney, (3) his right to plead not guilty, (4) his right to a trial by jury, and (5) his appeal rights. The court found defendant understood his rights and there was a factual basis for the plea of guilty. The court sentenced defendant to 18 months of court supervision. On May 28, 2014, the trial court discharged defendant from court supervision and ordered the case dismissed.

¶ 7 On September 1, 2017, defendant filed a petition for postconviction relief pursuant to the Act (725 ILCS 5/122-1(a) (West 2016)), stating:

“This matter began when defendant was at College in McLean County and was 19 years of age at the time of his arrest and his only court date. Defendant was intoxicated and taken to the Normal police station on October 12, 2012 for processing on unlawful possession of alcohol by a minor. While in custody police searched defendant and discovered a minimal amount of cannabis on his person.

The defendant was also charged with unlawful possession of cannabis of less than 2.5 grams, a class C misdemeanor. Defendant received a court date to appear in court on November 28, 201[2].”

Defendant claimed he was denied his constitutional right to due process because (1) the trial court “failed to explain to him” his right to counsel, (2) he did not knowingly and voluntarily waive his right to a jury trial, (3) he was not admonished of the immigration consequences of his guilty plea, and (4) he was not informed of his right to withdraw his guilty plea within 30 days of his plea.

¶ 8 Defendant attached his affidavit in support of his postconviction petition.

Defendant averred that prior to his initial court appearance on November 28, 2012, “a lawyer from the state’s attorney’s office” approached him and asked how he intended to plea. Defendant was not represented by counsel. The “lawyer from the state’s attorney’s office” informed defendant that if he pleaded guilty, “they would offer [him] supervision on the case.” Defendant stated, “I was told by the judge that if I plead guilty that I would not get a conviction on my record.” Defendant further averred that (1) he did not know he had a right to plead not guilty, (2) he was not asked if he wanted time to hire an attorney of his own choosing, (3) he was “never informed by anyone” that his guilty plea could affect his resident status in the United States, (4) if he knew about the consequences to his immigration status he would not have pleaded guilty, (5) he was not asked if he waived his right to an attorney, (6) he signed the plea agreement but it was not explained to him, (7) he signed a jury waiver form but it was not explained to him, and (8) he was not admonished of the procedure required to withdraw his guilty plea. Finally, defendant stated that in August 2017, he was denied reentry into the United States upon returning from visiting his ailing grandmother in India. Defendant received “deferred inspection,” meaning

he was “not legally admitted into the United States of America.” Defendant claimed that he received “deferred inspection” as a result of his guilty plea in the present case.

¶ 9 On September 11, 2017, the trial court entered a written order finding defendant’s allegations were rebutted by the record and striking defendant’s petition as untimely.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant asserts the trial court erred in dismissing his postconviction petition as untimely at the first stage of proceedings because the Act does not authorize dismissal of a postconviction petition based on untimeliness at the first stage of proceedings. We agree but nevertheless affirm because defendant lacks standing to seek postconviction relief.

¶ 13 “The \*\*\* Act provides a method to challenge a conviction or sentence based on a substantial violation of constitutional rights.” *People v. Boykins*, 2017 IL 121365, ¶ 9, 93 N.E.3d 504 (citing 725 ILCS 5/122-1(a)(1) (West 2014)). However, it also contains language that limits its application to persons “ ‘imprisoned in the penitentiary.’ ” *People v. Shanklin*, 304 Ill. App. 3d 1056, 1057-58, 711 N.E.2d 796, 797 (1999) (quoting 725 ILCS 5/122-1 (West 1996)). Thus, courts have interpreted the Act as applying only to individuals seeking relief from felony convictions. *Id.* at 1058 (citing *People v. Davis*, 54 Ill. 2d 494, 496, 298 N.E.2d 161, 163 (1973)). Additionally, an individual petitioning for relief “must be in prison for the offense he is purporting to challenge.” *People v. West*, 145 Ill. 2d 517, 519, 584 N.E.2d 124, 125 (1991).

¶ 14 Nevertheless, a defendant convicted of a misdemeanor offense may seek postconviction relief pursuant to the supreme court’s decision in *People v. Warr*, 54 Ill. 2d 487, 298 N.E.2d 164 (1973). In that case, the supreme court exercised its supervisory authority to direct that until otherwise provided by court rule or statute, a defendant convicted of a

misdemeanor offense “may institute a proceeding in the nature of a proceeding under the \*\*\* Act” when alleging a substantial denial of his constitutional rights in the proceedings that resulted in his conviction. *Id.* at 493. The court further held as follows:

“Such a proceeding shall be governed by the \*\*\* Act except in the following respects:

- (1) the defendant need not be imprisoned;
- (2) the proceeding shall be commenced within [four] months after rendition of final judgment if judgment was entered upon a plea of guilty and within six months after the rendition of final judgment following a trial upon a plea of not guilty;
- (3) counsel need not be appointed to represent an indigent defendant if the trial judge, after examination of the petition, enters an order finding that the record in the case, read in conjunction with the defendant’s petition and the responsive pleading of the prosecution, if any, conclusively shows that the defendant is entitled to no relief.” *Id.*

¶ 15 Here, the trial court ordered defendant’s postconviction petition stricken because his petition was not timely filed under the requirements set forth in *Warr*. We agree that defendant’s postconviction petition was untimely under *Warr* because the record shows defendant did not initiate postconviction proceedings until more than three years after the court discharged defendant from court supervision and dismissed the charges against him. Notwithstanding our observation, we disagree that the trial court was correct in summarily dismissing defendant’s postconviction petition at the first stage of proceedings based on his untimely filing.

¶ 16 As noted, *Warr* mandates that misdemeanor postconviction proceedings are governed by the same principles provided by the Act. Our supreme court held in *People v. Boclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002), that untimeliness is not a basis for dismissal under the Act at the first stage of proceedings. Instead, “time limitations in the Act should be considered as an affirmative defense” that “can be raised, waived, or forfeited by the State” at the second stage of postconviction proceedings. *Id.* at 101. The holding in *Boclair* is equally applicable in the instant case where defendant seeks postconviction relief from his plea of guilty to misdemeanor unlawful possession of cannabis.

¶ 17 However, this court may affirm the trial court’s judgment on any basis supported by the record. *People v. Wright*, 2013 IL App (4th) 110822, ¶ 32, 987 N.E.2d 1051. For the reasons that follow, we find defendant lacks standing to seek postconviction relief.

¶ 18 Section 5-1-21 of the Unified Code of Corrections (Code) defines “supervision” as “a disposition of conditional and revocable release without probationary supervision, but under such conditions and reporting requirements as are imposed by the court, at the successful conclusion of which disposition the defendant is discharged and a judgment dismissing the charges is entered.” 730 ILCS 5/5-1-21 (West 2012). The Act and *Warr* require that an individual seeking postconviction relief must have been *convicted* of a criminal offense. 725 ILCS 5/122-1(a)(1) (West 2016) (providing relief for persons who assert constitutional violations that occurred “in the proceedings which resulted in his or her *conviction*” (emphasis added)); *Warr*, 54 Ill. 2d at 493 (providing relief for a “person *convicted* of a misdemeanor who asserts that his constitutional rights were violated” (emphasis added)). As used in the Act, “the word ‘conviction’ is a term of art which means a final judgment that includes both a conviction *and* a sentence.” (Emphasis in original.) *People v. Hager*, 202 Ill. 2d 143, 149, 780 N.E.2d 1094, 1097

(2002). A final judgment is a prerequisite for postconviction relief under *Warr*. *People v. Larimer*, 409 Ill. App. 3d 827, 829, 949 N.E.2d 303, 305 (2011).

¶ 19 Here, defendant lacks standing to seek postconviction relief because the trial court discharged him from court supervision and entered a judgment of dismissal. In other words, defendant lacks standing because he was never “convicted,” as that term is used in the Act, of a criminal offense. “[A] defendant who is not ‘convicted’ cannot file a post-conviction petition.” *Hager*, 202 Ill. 2d at 149. In the instant case, defendant successfully completed his supervision resulting in a judgment of dismissal in May 2014. Because there was no judgment of conviction, defendant lacks standing to challenge the alleged constitutional violations in his petition and to seek relief under *Warr*. Accordingly, the trial court properly dismissed defendant’s petition at the first stage of proceedings.

¶ 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(a) (West 2016).

¶ 22 Affirmed.