2019 IL App (5th) 180532-U

NO. 5-18-0532

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 14-CF-609
	)	
MIKLOS MAJOROS,	)	Honorable
	)	Brian D. Lewis,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justice Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's summary dismissal of the defendant's postconviction petition for lack of standing is affirmed where the defendant was not incarcerated and had completed second chance probation resulting in a dismissal of the criminal proceedings.

¶ 2 The defendant, Miklos Majoros, appeals from the summary dismissal of his postconviction petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). Although not imprisoned and criminal proceedings had been dismissed upon his fulfillment of second chance probation, the defendant contends that the circuit court erred in dismissing his petition for lack of standing. For the following reasons, we affirm.

¶ 3 I. Background

¶ 4 On June 28, 2016, the defendant, a non-United States citizen, entered a plea of guilty to the offense of possession with intent to deliver cannabis (720 ILCS 550/5(d) (West 2014)) in exchange for the dismissal of all other offenses. An agreed sentence of 24 months of second chance probation was entered. Although the circuit court was aware that the defendant was not a United States citizen prior to accepting his guilty plea, the court failed to advise him that a conviction may have consequences of deportation, as mandated section 113-8 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-8 (West 2014) (providing advisement concerning status as an alien)).

¶ 5 On March 26, 2018, the parties agreed to an early termination of probation, and the circuit court discharged the defendant and dismissed the proceedings.

¶ 6 After immigration proceedings were brought against him, the defendant learned that his guilty plea and sentence subjected him to deportation. On September 10, 2018, the defendant filed a postconviction petition, alleging that his plea and sentence were not knowing and voluntary because he was (1) misinformed of the immigration consequences by plea counsel and (2) improperly advised by the circuit court during the plea proceeding.

¶ 7 On October 16, 2018, the circuit court summarily dismissed the postconviction petition, finding that the defendant lacked standing because the court had terminated the order of probation and dismissed the proceedings. Shortly thereafter, the defendant filed a motion to reconsider, which the court subsequently denied. The defendant filed a timely notice of appeal.

¶ 8 II. Analysis

¶ 9 On appeal, the defendant contends that he was denied effective assistance of counsel and due process when his plea counsel erroneously informed him that his guilty plea would not trigger immigration consequences, and the circuit court failed to follow the statutory mandate set forth in section 113-8 of the Code. 725 ILCS 5/113-8 (West 2014). In view of these errors, the defendant argues that he has standing. The State contends, and the defendant acknowledges, that the Act does not afford a remedy for a defendant no longer incarcerated or serving any portion of his sentence. See *People v. Carrera*, 239 Ill. 2d 241, 253 (2010) ("Given the fact that defendant had fully served his underlying sentence prior to filing his postconviction petition, defendant's liberty was not curtailed by the state in any way, and he was not a person 'imprisoned in the penitentiary,' as required in order to file a claim for postconviction relief."). The defendant, however, urges this court to "revisit the propriety" of this legal precedent. We decline to do so.

¶ 10 The Act states that "[a]ny person imprisoned in the penitentiary may institute a proceeding under this Article." 725 ILCS 5/122-1(a) (West 2014). However, a defendant who has fully served his underlying sentence before filing a postconviction petition no longer has standing to file a petition. *Carrera*, 239 Ill. 2d at 253. A defendant's detention in an immigration facility does not constitute imprisonment under the Act. *Id.* at 241. The first stage dismissal of a postconviction petition is reviewed *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010).

¶ 11 In *Carrera*, 239 Ill. 2d at 243, defendant pleaded guilty to an offense of unlawful possession of a controlled substance. Defendant was sentenced to probation that he completed in 2006. *Id.* After deportation proceedings were brought against him, defendant filed a petition for postconviction relief under the Act, alleging that his plea was not voluntary because he relied on plea counsel's assurance that no immigration consequences would result from his guilty plea. *Id.* at 244. The State moved to dismiss the petition because the defendant lacked standing because he was not a "person imprisoned in the penitentiary." *Id.*

¶ 12 In rendering its decision, the Illinois Supreme Court determined that "the Act does not require actual incarceration as a strict prerequisite to instituting a proceeding ***." *Id.* at 246 (citing *People v. West*, 145 Ill. 2d 517, 519 (1991)). However, " 'imprisoned in the penitentiary' " has been held to include defendants released from incarceration after the timely filing of a petition. *Id.* (quoting *People v. Davis*, 39 Ill. 2d 325, 329 (1968)). As such, " 'imprisoned' " for section 122-1(a) of the Act has been held to include petitioners whose liberty has been curtailed to some degree by the state. *Id.* (citing *People v. Pack*, 224 Ill. 2d 144, 152 (2007)). Thus, since defendant had fully served his sentence prior to filing a claim for relief under the Act, his "liberty was not curtailed by the state in any way." *Id.* at 253.

¶ 13 In the present case, the defendant filed his petition to vacate his plea and sentence more than five months after he had completed his sentence. Regardless, the defendant seeks to challenge his underlying guilty plea and sentence to undercut his deportation proceedings, arguing that the *Carrera* decision is "no longer reasonable nor sound" in

light of the United States Supreme Court's decisions in *Padilla v. Kentucky*, 559 U.S. 356 (2010), and *Lee v. United States*, 582 U.S.__, 137 S. Ct. 1958 (2017). We disagree.

¶ 14 First, we note that the Illinois Supreme Court considered the *Padilla* decision (a plea-stage counsel's failure to give correct advice when deportation consequences stemming from a plea are clear constitutes a constitutional deficiency sufficient to satisfy the first prong of *Strickland v. Washington*, 466 U.S. 668, 687 (1984)) in *Carrera*, observing that it did not confer standing to proceed with a postconviction petition after a defendant has already served the sentence on the conviction. *Carrera*, 239 Ill. 2d at 255-56. Thus, the defendant's reliance on *Padilla* is without merit.

¶ 15 Next, we find the defendant's argument baseless that *Lee* presents a basis for reconsidering *Carrera*. In *Lee*, defendant, a noncitizen, pleaded guilty after his counsel misinformed him that he would not be deported as a result of the plea. 582 U.S. at ___, 137 S. Ct. at 1963. In the plea colloquy, the circuit court advised defendant that he could be deported, and asked if that would affect his decision, and if so, how. *Id.* at ___, 137 S. Ct. at 1968. Defendant responded that the possibility of deportation would affect his decision, but stated he did not understand the court's question about how his decision would be affected. *Id.* at ___, 137 S. Ct. at 1968. Defendant pleaded guilty after he consulted with his attorney, who dismissed the court's advisement as a " 'standard warning.' " *Id.* at ___, 137 S. Ct. at 1968. After learning that his deportation was mandatory, defendant filed a motion to withdraw his guilty plea. *Id.* at ___, 137 S. Ct. at 1968.

¶ 16 The U.S. District Court and U.S. Court of Appeals for the Sixth Circuit denied relief because defendant had " 'no *bona fide* defense, not even a weak one.' " *Id.* at ___, 137 S. Ct. at 1968. In reversing, the Supreme Court observed that the proper inquiry is whether there was an adequate showing that a defendant, if properly advised, would have opted to go to trial. *Id.* at ___, 137 S. Ct. at 1968. With this standard in mind, the Supreme Court determined that defendant "ha[d] demonstrated a reasonable probability that, but for [his] counsel's errors, he would not have pleaded guilty ***." (Internal quotation marks omitted.) *Id.* at ___, 137 S. Ct. at 1969.

¶ 17 Dissimilar to *Lee*, where defendant sought remedy under the Act prior to completion of his sentence, the defendant, here, completed his entire sentence before he sought relief. Even assuming the defendant's counsel failed to correctly advise potential immigration consequences attached to his guilty plea, *Lee* does not suggest excusing the prerequisite requirement of imprisonment.

¶ 18 Lastly, the defendant argues that he was deprived of due process where the circuit court failed to admonish him pursuant to section 113-8 of the Code. As such, he contends he should not be denied relief under the Act. We disagree.

¶ 19 Contrary to the defendant's claim, the Illinois Supreme Court has held, post-*Padilla*, that a circuit court is not constitutionally required to provide admonishments about immigration consequences before accepting a defendant's guilty plea. See *People v. Guzman*, 2015 IL 118749, ¶ 27 ("[T]he post-*Padilla* decisions of the federal courts of appeal and all but one high state court that have considered the issue are in agreement that trial courts are not constitutionally required to provide admonishments about

immigration consequences before accepting defendants' guilty pleas." (citing *United States v. Carrillo-Estrada*, 564 F. App'x 385, 387 (10th Cir. 2014); *United States v. Rodriguez-Penton*, 547 F. App'x 738, 739-40 (6th Cir. 2013))). Where the Illinois Supreme Court has declared law on any point, this court is bound to follow it. *In re A.C.*, 2016 IL App (1st) 153047, ¶ 43. Accordingly, in light of the foregoing, we find the defendant's argument unpersuasive.

¶ 20 III. Conclusion

¶ 21 The judgment of the circuit court of Williamson County is hereby affirmed where the defendant lacked standing to bring a postconviction petition under the Act.

¶ 22 Affirmed.