2020 IL App (1st) 180614-U

No. 1-18-0614

Order filed May 28, 2020

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 12918
	)	
ALONZO MCKEITHEN,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The summary dismissal of defendant's postconviction petition is affirmed where the claims were frivolous and patently without merit.

¶ 2 Defendant Alonzo McKeithen appeals from the circuit court's summary dismissal of his *pro se* petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West

2016)), arguing that the court entered an improper partial summary dismissal. We affirm.[1]

¶ 3 Defendant was charged by information with armed habitual criminal (AHC) (720 ILCS 5/24-1.7 (West 2014)) (count I) and 10 counts of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1 (West 2014)) (counts II-XI).

¶ 4 At defendant's bench trial, Chicago police officer Ruhnke testified that he and his partner Officer Ramirez were in plainclothes in an unmarked vehicle near the 7000 block of South Dante Avenue at approximately 7 p.m. on July 14, 2014.[2] Ruhnke saw defendant walking away from a basketball court where people were gambling. Defendant was approximately 30 feet away and wearing a red jacket and red hat. Ruhnke called to defendant, who continued walking, so Ruhnke exited the vehicle and called again. Defendant fled, and Ruhnke pursued him on foot. Ruhnke saw defendant's face before he fled.

¶ 5 During the pursuit, defendant removed his jacket and a firearm fell from his waist. When defendant jumped over a wooden fence, Ruhnke stopped, recovered the firearm, and radioed for assistance. Other units arrived and searched for defendant. Eventually, Ruhnke saw Ramirez arrest defendant. He was not wearing a red jacket at the time of arrest, so Ruhnke traced defendant's route and located a red jacket, which he inventoried. Ruhnke explained that defendant was alone when he dropped the firearm, and Ramirez arrested defendant approximately two minutes later.

¶ 6 On cross-examination, Ruhnke confirmed there were "numerous people in the park," he told dispatch he was pursuing two individuals, and he neither mentioned defendant's red hat in the

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

[2] Officers Ruhnke's and Ramirez's first names do not appear in the report of proceedings.

police report nor did he recover a hat. On redirect, Ruhnke said he only chased one person during the incident.

¶ 7 Ramirez testified that he followed in the police vehicle while Ruhnke pursued defendant on foot. After hearing over the radio that Ruhnke recovered a loaded firearm, Ramirez joined the foot pursuit, jumped the wooden fence and found defendant behind a house near an alley.

¶ 8 On cross-examination Ramirez said he lost sight of defendant during the pursuit but was in contact with Ruhnke throughout. Ramirez did not recall if defendant wore a hat and did not see him discard a firearm. Defendant wore a jacket when Ramirez first saw him but did not have the jacket when Ramirez arrested him.

¶ 9 The State entered certifications from the Illinois State Police that, as of October 6, 2014, defendant was never issued a Firearm Owners Identification (FOID) card or concealed carry license (CCL). Additionally, the State entered certified copies of defendant's convictions for UUWF in case No. 11 CR 1611301 and residential burglary in case No. 10 CR 1359201.

¶ 10 The defense entered a stipulation that a police dispatcher would testify that she fielded a call from officers on July 14, 2014, regarding "two subjects possibly with guns at or around 70th and Dante."[3] A recording of the call was entered into evidence and published to the court.[4] The defense entered another stipulation that Cook County corrections officer Alejandro Gonzalez inventoried defendant's clothing and generated a property receipt, which the defense entered into evidence.[5]

[3] The dispatcher's name does not appear in the report of proceedings.

[4] The recording was not included in the record on appeal, and the content of the recording was not included in the transcript of proceedings.

[5] The property receipt was not included in the record on appeal.

¶ 11 During closing argument defense counsel posited that the officers' identification of defendant was unreliable because their statements over the radio did not match their testimony about the incident. The court stated that "the tape corroborates the testimony of the officers," and found defendant guilty of UUWF and AHC, with all counts merging into the AHC count.

¶ 12 At a subsequent hearing the court denied defendant's motion for a new trial, sentenced him to nine years' imprisonment for AHC, and denied his motion to reconsider sentence.

¶ 13 On direct appeal defendant argued that his conviction should be reversed because the AHC statute was unconstitutional. We affirmed. See *People v. McKeithen*, 2017 IL App (1st) 152010-U.

¶ 14 On December 20, 2017, defendant filed a postconviction petition alleging that (1) the AHC conviction violated his constitutional rights because one of the predicate convictions, aggravated unlawful use of a weapon (AUUW), was unconstitutional; (2) the evidence was insufficient to convict him; (3) the verdict was against the weight of evidence; (4) he received an unfair trial in violation of the Illinois and United States Constitutions; (5) the trial court did not consider every reasonable hypothesis of innocence; (6) trial counsel was ineffective; and (7) appellate counsel was ineffective. Regarding the claim for ineffective assistance of trial counsel, defendant alleged in relevant part that trial counsel did not present a "promising witness," a "2nd subject in Gray" who was "apprehended with defendant" and would have testified that the officers falsely identified defendant.

¶ 15 On January 26, 2018, the circuit court stated that it dismissed defendant's petition as "frivolous and patently without merit." That day, the court entered a written order specifically referencing two of defendant's arguments: (1) his AHC conviction was "void because one of the

two underlying predicate felonies *** is void *ab initio*," and (2) "insufficient evidence existed at trial to convict him of AHC." The court rejected the first claim because the predicate conviction at issue was for UUWF, not AUUW. Because other claims in the petition, including ineffective assistance of counsel, were based on this "erroneous" premise, those claims were also "frivolous and patently without merit." The court also rejected the second claim, reasoning that a sufficiency of the evidence challenge was inappropriate absent extraordinary circumstances, which defendant failed to demonstrate. The court concluded, "the issue raised by petitioner is frivolous and patently without merit. Accordingly, the petition for post-conviction relief is hereby DISMISSED."

¶ 16 That day the court entered an additional order assessing defendant court costs and fees, which stated in relevant part that the court denied the postconviction petition because "all filings are entirely frivolous," "lacked an arguable basis in law or in fact," and "did not have evidentiary support."

¶ 17 Defendant's sole argument on appeal is that the circuit court erred by not addressing his claim that trial counsel was ineffective for failing to investigate the person whom defendant alleged was arrested with him. Defendant does not argue his ineffective assistance claim would prevail on the merits.

¶ 18 The Act provides criminal defendants with the means to challenge a conviction due to a violation of federal or state constitutional rights, or both. *People v Holman*, 2017 IL 120655, ¶ 25. Claims brought pursuant to the Act are reviewed in three stages. *People v. Bailey*, 2017 IL 121450, ¶ 18. At the first stage, the circuit court liberally construes the claims in the defendant's petition and takes them as true to determine if it sets forth the "gist" of a constitutional claim. *People v.*

Brown, 236 Ill. 2d 175, 184 (2010). The petition should only be summarily dismissed if all claims are "frivolous" or "patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016).

¶ 19 If one claim in a postconviction petition survives first stage review, the entire petition advances to the second stage. *People v. Romero*, 2015 IL App (1st) 140205, ¶ 27 (citing *People v. Rivera*, 198 Ill. 2d, 364, 371 (2001)). Accordingly, a partial summary dismissal of claims in a postconviction petition is improper at the first stage of review. *Rivera*, 198 Ill 2d. at 374. The circuit court is not required, however, to specifically address each claim in a written summary dismissal order. *People v. Maclin*, 2014 IL App (1st) 110342, ¶ 27; see also *People v. Harris*, 224 Ill. 2d 115, 139 (2007) (finding the circuit court's order summarily dismissing a postconviction petition as frivolous and patently without merit "impliedly denied" all requests in the prayer for relief).

¶ 20 When interpreting a lower court's order, a reviewing court must determine the lower court's intent and "construe the order to uphold its validity, if the wording of the order can support such a construction." *People v. Lee*, 344 Ill. App. 3d 851, 855 (2003). The reviewing court considers the circuit court's summary dismissal of a postconviction petition *de novo* and can affirm on any basis supported by the record. *Id*. at 853.

¶ 21 This case presents a similar issue to *Lee*. There, the defendant appealed from the first stage dismissal of his postconviction petition, arguing in relevant part that the circuit court entered an improper partial summary dismissal because it did not expressly address each of his claims in its written order. *Id.* at 855. We rejected this argument, finding that "[t]he court here plainly intended to dismiss the entire petition" by stating in the dismissal order, " '[T]he issues *** lack sufficient merit to withstand summary dismissal. Accordingly, the *** petition *** is hereby dismissed.' "

Id. at 852. Moreover, the circuit court's written order stated that the petition was dismissed and "the parties understood the order as a complete dismissal subject to immediate appellate review." *Id.* at 855. Consequently, we gave effect to the circuit court's intent even though all of the defendant's claims were not mentioned in the written order. *Id.* at 854-55.

¶ 22 As in *Lee*, defendant here argues that the circuit court entered an improper partial summary dismissal because it did not address his failure to investigate claim in its written orders or at the hearing. The court's written summary dismissal order states that defendant's petition is dismissed as frivolous and patently without merit, though it does not expressly discuss the failure to investigate claim. The order regarding defendant's costs, however, reiterates the circuit court's finding that "all" of the claims in the petition were frivolous and patently without merit. Finally, at the hearing, the court said, "the petition for post-conviction relief is dismissed" because the "[p]etition is frivolous and patently without merit." Thus, the record demonstrates the circuit court intended to dismiss defendant's entire petition, and the court was not obligated to discuss each claim for the order to achieve this result.

¶ 23 Defendant's reliance on *People v. Sparks*, 393 Ill. App. 3d 878 (2009), is unavailing because there the transcript suggested the lower court did not consider a claim that appeared in a supplement to the petition; here, there is no indication in the record that the circuit court failed to consider defendant's entire petition. *Sparks*, 393 Ill. App. at 886. *People v. Edwards*, 291 Ill. App. 3d 476 (1997), also cited by defendant, is similarly inapplicable. There, the circuit court granted the defendant a new trial based on one of several claims in his postconviction petition. *Edwards*, 291 Ill. App. 3d at 483. On appeal by the State, we found the grant of postconviction relief was against the manifest weight of the evidence, but remanded for further proceedings because "the

trial court made no formal determination on the remaining constitutional issues raised in the *pro se* post-conviction petition." *Id.* at 486. *Edwards* is inapposite to the present case, where the circuit court's intent to dismiss the entirety of defendant's petition is apparent based on the record. See *Lee*, 344 Ill. App. 3d at 855. Accordingly, the order was a valid dismissal of the petition as a whole. *Id.*

¶ 24 For the above reasons, the circuit court's summary dismissal of defendant's postconviction petition is affirmed.

¶ 25 Affirmed.