

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).

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macoupin County
TRAVIS L. ROBBINS,)	No. 09CF77
Defendant-Appellant.)	
)	Honorable
)	Kenneth R. Deihl,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred
in the judgment.

ORDER

Held: Although the trial court erred by dismissing defendant's *pro se* postconviction petition as untimely at the first stage of the postconviction proceedings, the dismissal was affirmed because the *pro se* petition was frivolous and patently without merit.

Defendant, Travis L. Robbins, appeals the trial court's dismissal of his *pro se* postconviction petition as untimely. He contends the court erred by dismissing his *pro se* postconviction petition as untimely during the first stage of the postconviction proceedings. The State agreed the court erred by dismissing the *pro se* petition as untimely but argued the dismissal should be affirmed on the basis that the *pro se* petition was frivolous and patently without merit. We agree with the State and affirm.

On July 6, 2009, defendant, as part of a fully negotiated guilty plea, pleaded guilty to aggravated battery (720 ILCS

5/12-4(b)(1) (West 2008)) and two counts of forgery (720 ILCS 5/17-3(a)(1) (West 2008)). In addition, defendant admitted the allegations contained in the State's petition to revoke probation. The State filed the petition to revoke defendant's probation because he was on probation for a domestic-battery conviction when he committed the aggravated battery and forgery offenses.

The trial court sentenced defendant consistent with the terms of the plea agreement. In particular, the court sentenced defendant to 5 years' imprisonment with credit for 63 days previously served for the aggravated-battery conviction and ordered him to pay \$51,427 in restitution. Additionally, the court sentenced him to two concurrent four-year sentences for the forgery convictions to run concurrent with the aggravated-battery sentence and ordered him to pay \$340 in restitution. Last, the court resentenced him to three years' imprisonment for the domestic-battery conviction to run consecutive to the aggravated-battery sentence. Defendant took no direct appeal.

On December 14, 2009, defendant filed a *pro se* postconviction petition, arguing he was not informed that a \$25 fine for the victim-relief fund would be assessed under section 10(c)(1) of the Violent Crime Victims Assistance Act (725 ILCS 240/10(c)(1) (West 2008)) as part of the plea agreement. Defendant argued his due-process rights were violated because the

State "withheld this part of the agreement." Also on December 14, 2009, the trial court, pursuant to docket entry, denied defendant's *pro se* postconviction petition as untimely under section 122-1(c) of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(c) (West 2008)).

This appeal followed.

On appeal, defendant argues the trial court erred by denying his *pro se* postconviction petition as untimely during the first stage of the postconviction proceedings. The State agreed the court erred by dismissing the *pro se* petition as untimely but argued the dismissal should be affirmed on the basis that the *pro se* petition was frivolous and patently without merit. We agree with the State and affirm.

This case involves the dismissal of defendant's *pro se* postconviction petition at the first stage of the postconviction proceedings. During the first stage of the postconviction proceedings, the trial court must review the postconviction petition within 90 days of its filing to determine whether the petition is "frivolous or *** patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2008). "A post-conviction petition is considered frivolous or patently without merit only if the allegations in the petition, taken as true and liberally construed, fail to present the 'gist of a constitutional claim.'" *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445

(2001) (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996)).

When reviewing a petition to determine whether it is frivolous or patently without merit, the trial court may consider the court file of the proceeding in which the defendant was convicted, any action taken by the appellate court in the proceeding, and the transcripts of the proceeding. 725 ILCS 5/122-2.1(c) (West 2008). "The court should examine those records to determine whether the allegations are positively rebutted by the record." *People v. Little*, 335 Ill. App. 3d 1046, 1051, 782 N.E.2d 957, 962 (2003).

If the court determines the petition is frivolous or patently without merit, the petition should be dismissed. 725 ILCS 5/122-2.1(a)(2) (West 2008). The first-stage dismissal of a postconviction petition is subject to *de novo* review. *Little*, 335 Ill. App. 3d at 1051, 782 N.E.2d at 962.

Initially, we note defendant's *pro se* postconviction petition was timely filed. Section 122-1(c) of the Act (725 ILCS 5/122-1(c) (West 2008)) provides, in pertinent part, as follows:

"If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to

his or her culpable negligence."

Defendant filed his December 2009 *pro se* postconviction petition approximately five months after the July 6, 2009, conviction date. Therefore, the trial court erred in dismissing defendant's *pro se* petition as untimely.

It is noted that in *People v. Bocclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002), the supreme court held a postconviction petition may not be dismissed as untimely during the first stage of the postconviction proceedings. Thus, even if defendant's postconviction petition had been filed after the three-year period, the trial court could not dismiss the petition as untimely at the first stage of the postconviction proceedings.

Although the trial court erred in dismissing defendant's *pro se* postconviction petition as untimely, a reviewing court may affirm the trial court's decision "on any basis supported by the record." *Little*, 335 Ill. App. 3d at 1051, 782 N.E.2d at 962.

In the *pro se* postconviction petition, defendant argues the State withheld the fact that a \$25 fine for the victim-relief fund would be assessed as part of his plea agreement. The State argues the failure to inform defendant of the victim-relief-fund provisions did not affect the voluntary nature of defendant's plea, nor did it deprive defendant of due process.

Defendant's convictions for aggravated battery and

forgery were both Class 3 felonies. At the plea hearing, defendant was admonished that a person convicted of a Class 3 felony could be sentenced to two to five years' imprisonment with one year of mandatory supervised release and ordered to pay up to \$25,000 in fines. Additionally, defendant was admonished that a person convicted of domestic battery, a Class 4 felony, could be sentenced to one to three years' imprisonment with one year of mandatory supervised release and ordered to pay up to \$25,000 in fines. Although the victim-relief-fund provisions were not specifically mentioned, the trial court did admonish defendant about the possibility of fines being assessed. Because defendant was aware his sentence could include an assessment of fines up to \$25,000 for each conviction, the failure to specifically mention the victim-relief-fund provisions did not render defendant's plea involuntary or create a due-process violation. Defendant's *pro se* postconviction petition is frivolous and patently without merit, and the trial court did not err in dismissing the *pro se* petition.

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.

Affirmed.

