2017 IL App (4th) 150236-U

NO. 4-15-0236

FILED
May 18, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
STEVEN E. TAYLOR,	)	No. 11CF379
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to show he was denied reasonable assistance of postconviction counsel. Moreover, since fines imposed by the circuit clerk are void, defendant could challenge such fines in this appeal, and vacatur of defendant's fines imposed by the circuit clerk is warranted.

¶ 2 In February 2014, defendant, Steven E. Taylor, filed a *pro se* postconviction petition, alleging, *inter alia*, ineffective assistance of trial and appellate counsel. Postconviction counsel filed an amended petition. After a January 2015 evidentiary hearing, the Champaign County circuit court denied defendant's amended postconviction petition.

¶ 3 Defendant appeals the denial of his postconviction petition, asserting (1) he was denied reasonable assistance by postconviction counsel, and (2) the circuit clerk erred in assessing fines and fees as well as collection and late fees. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 On March 11, 2011, the State charged defendant by information with two counts of home invasion (720 ILCS 5/12-11(a)(1), (a)(2) (West 2010) (text of section effective until July 1, 2011)) and one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)). The State later charged defendant with a fourth count, aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(3) (West 2010) (text of section effective until July 1, 2011)). Prior to trial, the State dismissed one of the home invasion counts.

¶ 6 In May 2011, defendant filed a motion for the appointment of a psychiatrist to examine him as to his (1) fitness to stand trial and (2) sanity at the time of the offenses. The circuit court denied defendant's request. In June 2011, defendant filed a motion for a fitness evaluation, which the court granted. The court appointed Dr. Lawrence Jeckel, a psychiatrist, to examine defendant's fitness to stand trial. In an August 2011 report, Jeckel found defendant was fit to stand trial. In October 2011, the State requested the appointment of a psychiatrist to examine defendant because defense counsel had made reference to an insanity defense. Defendant then filed a disclosure he was raising the defense of insanity and a motion for the appointment of a psychiatrist. The court appointed both Dr. Albert Lo and Dr. Jeckel to examine defendant's sanity at the time of the offenses. At a November 2011 status hearing, trial counsel withdrew defendant's defense of insanity.

¶ 7 At defendant's December 2011 jury trial, the State's evidence showed that, on the evening of Friday, January 21, 2011, the 79-year-old victim, N.K., answered a knock at her door. Defendant introduced himself as "Steve" and then asked for "Jack Brown." N.K. told him she did not know anyone by that name but directed defendant to a house down the street. N.K. turned back inside and realized defendant had followed her inside her home. Inside the home, defendant requested money, and N.K. gave him $5. N.K. testified defendant held a knife or

blade in his hand. After taking N.K.'s money, defendant demanded N.K.'s jewelry. Defendant nudged N.K. toward her bedroom, at which time he ransacked the bedroom and searched her jewelry box. N.K. later discovered a jar of change, $60 or $70 in cash, her watch, and her wedding band missing from the residence. After searching the jewelry box, defendant ordered N.K. to remove her clothing. N.K. complied, removing her shirt and pushing her bra down to expose her breasts. Defendant then rubbed his penis between her breasts four or five times. After defendant turned away, N.K. started to dress herself, at which time defendant stated he planned to tie N.K.'s hands together and place her in the closet. N.K. testified she attempted to conceal a cellular telephone (cell phone) on her person, but defendant noticed it and grabbed the cell phone from her. He then struck her on the left side of the face.

¶ 8 At that point, defendant grabbed N.K., tied her hands together with a telephone cord, and pushed her into the closet. Defendant then pushed a heavy cabinet in front of the door to prevent N.K.'s escape. Although N.K. eventually freed her hands, she was unable to escape from the closet. Police discovered N.K. in the closet the following Monday afternoon after receiving a call from her mailman. Emergency personnel transported N.K. to the hospital. N.K. suffered fractures of the orbital socket, maxilla bone, and zygomatic arch, which required extensive surgery.

¶ 9 Defendant did not present any evidence in his defense. At the conclusion of the trial, the jury found defendant guilty of all of the remaining counts and signed special verdict forms finding the victim was over the age of 60.

¶ 10 At a January 2012 sentencing hearing, defendant presented the testimony of his mother, Josae Ann Craig; his sister, Antoinette Marie Williams; William Mermelstein, defendant's former court-appointed special advocate; and Erica Johnson, the mother of

defendant's child. Craig explained defendant had mental health diagnoses, such as bipolar disorder, that required treatment with medications. While in foster care, defendant was transferred from homes and facilities due to behavioral issues. Defendant committed the offenses at issue about a year after his release from the last treatment facility.

¶ 11 Williams testified defendant resided with her prior to his arrest. Previously, they had been separated into different foster homes since they were 12 or 13 years old. Williams described defendant growing up as always being hyper and having trouble sitting down. When he would take medication for the hyperactivity, defendant would become sad. Williams would rather have seen defendant hyper. She too noted defendant had been in several treatment facilities, the last of which was located in Mundelein, Illinois.

¶ 12 Mermelstein testified he followed defendant through the foster care system and after his release. In Mermelstein's opinion, the foster care system was not kind to defendant. Defendant never stayed in one place long enough to get settled. Mermelstein, who was not a doctor, testified defendant seemed to have multiple personalities. Those personalities included Steven, who was the only one Mermelstein would talk to; the King, which was written on defendant's arm; and Stefan, defendant's "smooth, chick magnet personality."

¶ 13 In arguing for a shorter sentence, trial counsel contended defendant had mental health issues and had gone through a lot in his life. After hearing the parties' arguments, the circuit court sentenced defendant to consecutive prison terms of 45 years for home invasion, 40 years for armed robbery, and 7 years for aggravated criminal sexual abuse. Defendant appealed. On appeal, defendant argued his aggregate sentence of 92 years in prison was excessive. This court affirmed defendant's sentence. *People v. Taylor*, No. 4-12-0255 (Aug. 22, 2013) (unpublished order under Supreme Court Rule 23).

¶ 14 In February 2014, defendant filed his *pro se* postconviction petition, asserting, *inter alia*, ineffective assistance of trial and appellate counsel. In April 2014, the circuit court appointed counsel to represent defendant on his postconviction petition. In July 2014, postconviction counsel filed an amended postconviction petition. Postconviction counsel first argued ineffective assistance of trial counsel under *United States v. Cronic*, 466 U.S. 648 (1984), contending, *inter alia*, the record shows numerous instances where trial counsel wanted defendant's mental health records to raise an insanity defense but had no understanding of the process. However, postconviction counsel did acknowledge trial counsel may have been using the process as a delay tactic. As to the ineffective assistance of counsel claims under *Strickland v. Washington*, 466 U.S. 668 (1984), postconviction counsel argued trial counsel should have known the process of obtaining mental health records "in a timely fashion." Postconviction counsel further argued the following:

> "The prejudice to Defendant is that obtaining the mental health record[s] earlier in the matter (and Defendant is uncertain whether [trial counsel] actually received and reviewed them) would a) have assisted counsel in filing a motion to suppress in that perhaps Defendant was unable to understand the officers when they were seeking consent for a [deoxyribonucleic acid (DNA)] sample and b) could have been used to cross-examine the victim about whether the perpetrator's conduct was consistent with that of a person suffering from a mental illness."

Along with the amended postconviction petition, postconviction counsel filed a certificate under Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013).

¶ 15 The State filed a motion to dismiss defendant's amended postconviction petition, attaching Dr. Jeckel's report. Defendant filed a response, again arguing prejudice based on trial

counsel's failure to obtain defendant's mental health records earlier. The circuit court denied the motion to dismiss.

¶ 16 In January 2015, the circuit court held an evidentiary hearing on defendant's amended postconviction petition. Defendant testified on his own behalf and presented the testimony of Craig. The State presented the testimony of defendant's trial counsel, Alfred Ivy; and Urbana police detectives David Smysor and Matthew Quinley.

¶ 17 Craig testified defendant had been diagnosed with bipolar disorder and schizophrenia and was on medication. However, she did not know the name of the medication. She further testified trial counsel never asked her to obtain defendant's mental health records. She always offered to assist trial counsel, but he never asked her to do anything.

¶ 18 Defendant testified he was first diagnosed with attention deficit disorder and later with bipolar disorder, schizophrenia, and depression. Due to his mental health problems, defendant was placed in the Guardian Angel home and the Alternative Behavior Treatment Center. Defendant told his trial counsel about his mental health history and asked him to obtain his mental health records. Defendant did sign papers to assist trial counsel in getting those documents. Defendant further testified he talked about an insanity defense with trial counsel and discussed Dr. Jeckel's finding he was sane at the time of the offenses. Defendant was aware of the report of Dr. Lo, who also found him sane at the time of the offenses. Defendant was aware counsel withdrew his insanity defense.

¶ 19 Trial counsel testified he discussed defendant's mental health history with him. Defendant was in a treatment facility until he was 18 years old. Trial counsel evaluated the possibility of an insanity defense but, after the two evaluations found defendant sane, trial counsel no longer pursued that theory for trial. Defendant's mental health history then became a

sentencing matter. Trial counsel also testified one of his tactics was to delay the case as much as possible because the victim was elderly.

¶ 20 On March 27, 2015, the circuit court entered a written order denying defendant's amended postconviction petition. The circuit court first found trial counsel knew how to obtain mental health records and his delay in doing so was trial strategy. The court also found the following:

> "While [defendant] claims that [trial counsel] should have obtained his mental health records, [defendant] has not presented any such records to support his claim. To the present time, [defendant] has not provided any reports or offered any evidence to establish that there are records outstanding that [trial counsel] did not obtain, or even what is contained in those records. The defendant has also not demonstrated any reason why those records are not provided now to support his claim. The existence of any such records as well as the contents, are speculative. The [defendant] has the burden of showing that the records actually exist, and if so, that they contain matters that would have affected the outcome of the trial or sentencing."

Additionally, the court further noted the record does establish defendant's mental health history was considered and documented in Dr. Jeckel's report, which was attached to the postconviction petition. Evidence of defendant's mental health was also presented at defendant's sentencing hearing, and trial counsel argued defendant's mental health history was mitigating evidence.

¶ 21 On April 1, 2015, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Dec. 11, 2014). Accordingly, this court has jurisdiction of defendant's appeal under Illinois Supreme Court Rule 651(a) (eff. Feb. 6,

2013).

¶ 22 II. ANALYSIS

¶ 23 A. Reasonable Assistance

¶ 24 Defendant first asserts he was denied reasonable assistance of postconviction counsel because counsel failed to make the amendments necessary to present defendant's claim of ineffective assistance of trial counsel based on his mental health records. The State disagrees, contending counsel adequately presented defendant's claim.

¶ 25 The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 *et seq.* (West 2014)) provides a remedy for defendants who have suffered a substantial violation of constitutional rights at trial. *People v. Pendleton*, 223 Ill. 2d 458, 471, 861 N.E.2d 999, 1007 (2006). In cases not involving the death penalty, the Postconviction Act sets forth three stages of proceedings. *Pendleton*, 223 Ill. 2d at 471-72, 861 N.E.2d at 1007. At the first stage, the circuit court independently reviews the defendant's postconviction petition and determines whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2014). If it finds the petition is frivolous or patently without merit, the court must dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2014). If the court does not dismiss the petition, it proceeds to the second stage, where, the court may appoint counsel for an indigent defendant. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Defense counsel may amend the defendant's petition to ensure his or her contentions are adequately presented. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Also, at the second stage, the State may file a motion to dismiss the defendant's petition or an answer to it. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1008. If the State does not file a motion to dismiss or the court denies such a motion, the petition advances to the third stage, wherein the court holds a hearing at which the defendant may present evidence in support of his

or her petition. *Pendleton*, 223 Ill. 2d at 472-73, 861 N.E.2d at 1008. At both the second and third stages of the postconviction proceedings, "the defendant bears the burden of making a substantial showing of a constitutional violation." *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008.

¶ 26 In postconviction proceedings, the right to counsel is wholly statutory, and the Postconviction Act only requires counsel to provide a defendant with a " 'reasonable level of assistance.' " *People v. Lander*, 215 Ill. 2d 577, 583, 831 N.E.2d 596, 600 (2005) (quoting *People v. Owens*, 139 Ill. 2d 351, 364, 564 N.E.2d 1184, 1189 (1990)). Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) "imposes specific obligations on postconviction counsel to assure the reasonable level of assistance required by the [Postconviction] Act." *Lander*, 215 Ill. 2d at 584, 831 N.E.2d at 600. Under that rule, postconviction counsel must (1) consult with the defendant either by mail or in person to ascertain the contentions of deprivation of constitutional rights, (2) examine the record of the trial court proceedings, and (3) make any amendments to the *pro se* petition necessary for an adequate presentation of the defendant's contentions. *People v. Perkins*, 229 Ill. 2d 34, 42, 890 N.E.2d 398, 403 (2007). Our supreme court has consistently held remand is required when postconviction counsel fails to complete any one of the above duties, regardless of whether the claims raised in the petition have merit. *People v. Suarez*, 224 Ill. 2d 37, 47, 862 N.E.2d 977, 982 (2007). Additionally, "[f]ulfillment of the third obligation does not require counsel to advance frivolous or spurious claims on defendant's behalf." *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Postconviction counsel's filing of a Rule 651(c) certificate raises a presumption that counsel provided reasonable assistance under the Postconviction Act, namely, that counsel adequately investigated, amended, and properly presented the defendant's claims. *People v. Jones*, 2011 IL App (1st) 092529, ¶ 23, 955 N.E.2d

1200. The defendant bears the burden of demonstrating that his attorney failed to comply with the duties mandated in Rule 651(c). *Jones*, 2011 IL App (1st) 092529, ¶ 23, 955 N.E.2d 1200. This court reviews *de novo* whether an attorney complied with Rule 651(c). *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 15, 43 N.E.3d 1077.

¶ 27 On appeal, defendant asserts his postconviction counsel failed to investigate and present defendant's additional mental health records that postconviction counsel alleged trial counsel could have obtained before trial. He contends postconviction counsel argued trial counsel did not thoroughly investigate his mental health history or obtain additional mental health records, which would have assisted him in developing an insanity defense and advancing the argument defendant was unable to knowingly and intelligently consent to the officers' request for a DNA sample. We disagree with defendant that argument was the one raised by postconviction counsel.

¶ 28 Our review of the record indicates postconviction counsel's argument was trial counsel was ineffective because he should have obtained defendant's mental health records *earlier*, not that trial counsel should have obtained additional mental health records. Moreover, postconviction counsel never specifically asserted an insanity defense should have been raised. In defendant's amended postconviction petition, postconviction counsel first argued defendant's trial counsel was ineffective because trial counsel had no understanding of how to address mental health issues. Postconviction counsel also argued trial counsel should have known the process of obtaining mental health records "in a timely fashion" and defendant suffered prejudice because "obtaining mental health record[s] earlier in the matter" would have assisted trial counsel in filing a pretrial motion to suppress the DNA evidence and cross-examining the victim about whether the perpetrator's conduct was consistent with a mental illness. In his reply to the State's

motion to dismiss, postconviction counsel again argued prejudice based on counsel's failure to obtain the "mental health records earlier," which would have helped with a pretrial motion and cross-examination. In addition to the two aforementioned prejudice contentions, in closing arguments at the evidentiary hearing, postconviction counsel argued that, if counsel had obtained the mental health records earlier, he could have tried to negotiate a plea bargain, and defendant's sentence may have been different. Moreover, in closing arguments, postconviction counsel noted the mental health records were ultimately presented to the author of the presentence investigation report and the records are described in that report. Thus, postconviction counsel contended the circuit court now had knowledge of defendant's mental health history. Accordingly, we find postconviction counsel's argument was trial counsel should have obtained defendant's mental health records earlier.

¶ 29 We recognize that, in denying defendant's amended postconviction petition, the circuit court did state defendant argued trial counsel should have obtained his mental health records. The court then noted defendant failed to provide the reports or say what was in the records or show counsel had not, in fact, obtained them. The court's notation of that argument may have resulted from defendant's mother's testimony or a generalization of all of defendant's mental health record arguments. Regardless, the arguments contained in the amended postconviction petition, defendant's reply to the State's motion to dismiss, and postconviction counsel's closing argument focused on trial counsel's failure to timely obtain the mental health records. Defendant fails to establish why mental health records needed to be attached to the amended petition to support that argument. We note postconviction counsel stated defendant's mental health information was memorialized in the presentence investigation report, and the circuit court, in its order, referred to Dr. Jeckel's report and the evidence at defendant's

sentencing hearing as evidence of defendant's mental health history. Moreover, given the large amount of evidence in the record both before and after trial regarding defendant's mental health history, an argument trial counsel was ineffective for failing to obtain additional mental health records would be meritless, and thus postconviction counsel was not required to raise it. Accordingly, we find defendant has failed to show he was denied reasonable assistance of counsel.

¶ 30 B. Circuit Clerk

¶ 31 Defendant asserts the circuit clerk lacked the authority to impose the $10 arrestee's medical fine, the $5 drug court fine, the $10 traffic/criminal surcharge, the $30 juvenile expungement fine, and the $10 State Police operations fine. Defendant further argues the circuit clerk erred in imposing four duplicate document storage fees, automation fees, circuit clerk fees, and court security fees. Last, defendant contends the circuit clerk's imposition of $1,595.18 in late and collection fees was improper. The State asserts defendant has forfeited these arguments by failing to include them in his postconviction petition and this court lacks jurisdiction to address the issues because this appeal is from the denial of his postconviction petition.

¶ 32 1. *Fines*

¶ 33 "Although circuit clerks can have statutory authority to impose a fee, they lack authority to impose a fine, because the imposition of a fine is exclusively a judicial act." (Emphases omitted.) *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Thus, "any fines imposed by the circuit clerk are void from their inception." *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959. Our supreme court's recent decision in *People v. Castleberry*, 2015 IL 116916, ¶ 1, 43 N.E.3d 932, which abolished the void sentencing rule, does

not change the aforementioned holding. Fines imposed by the circuit clerk are still void, and we have jurisdiction to rule on any amount improperly imposed. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437 (stating "the appellate court had jurisdiction to act on void orders of the circuit clerk"). Moreover, a void judgment can be challenged " 'at any time or in any court, either directly or collaterally.' " *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 862 (1945)). Thus, if the circuit clerk imposed the assessments and the assessments are fines, we can address the assessments in this appeal.

¶ 34 In this case, the circuit court ordered defendant to "pay all fines, fees and costs as authorized by statute"; a $200 genetic marker grouping analysis fee; and a fine under the Violent Crime Victims Assistance Act (725 ILCS 240/1 *et seq.* (West 2010)). The State asserts this court should reconsider its holdings in *People v. Isaacson*, 409 Ill. App. 3d 1079, 1085, 950 N.E.2d 1183, 1189-90 (2011), and *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 89, 55 N.E.3d 117, where we found the circuit clerk had improperly imposed fines on the defendants when the court had not specifically and expressly imposed the amount of each applicable fine. The State contends the circuit clerk did not impose the fines, but rather, the circuit clerk was following an order that was defective for a lack of specificity. We are not persuaded by the State's argument. In *People v. Chester*, 2014 IL App (4th) 120564, ¶ 33, 5 N.E.3d 227, this court listed a number of cases from other appellate court districts, some of which were more than 25 years old, that had reached holdings similar to this court's in *Isaacson* and *Warren*. Thus, we find the contested assessments were imposed by the circuit clerk.

¶ 35 The State notes that, if this court deems the assessments were imposed by the circuit clerk, then the State agrees they should be vacated. We agree with the parties the

following are fines: (1) the $10 arrestee's medical assessment (*Larue*, 2014 IL App (4th) 120595, ¶ 57, 10 N.E.3d 959); (2) the $10 traffic/criminal surcharge (*Warren*, 2016 IL App (4th) 120721-B, ¶ 129, 55 N.E.3d 117); (3) the $30 juvenile expungement fund, which is listed on the circuit clerk's printout as a $10 assessment for the Clerk Operations and Administrative Fund, a $10 assessment for the State's Attorney Office Fund (the $10 assessment for the State's Attorney is included in the $40 charge listed for the State's Attorney on the circuit clerk's printout), and a $10 assessment for the State Police Services Fund (*Warren*, 2016 IL App (4th) 120721-B, ¶ 134, 55 N.E.3d 117); (4) the $5 drug court assessment (*Warren*, 2016 IL App (4th) 120721-B, ¶ 138, 55 N.E.3d 117); and (5) the $10 State Police operations assessment (*People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030). Since the circuit clerk imposed the aforementioned fines, we vacate them.

¶ 36 2. *Duplicate, Late, and Collection Fees*

¶ 37 In his reply brief, defendant recognizes he cannot raise his arguments regarding duplicate, late, and collection fees in this appeal.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we vacate the aforementioned fines imposed by the circuit clerk and affirm the Champaign County circuit court's judgment in all other respects. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 40 Affirmed in part and vacated in part.