2025 IL App (4th) 241198-U

NO. 4-24-1198

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 25, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
RENE MARTINEZ,	)	No. 15CF350
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer Hartmann Bauknecht,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Doherty and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's dismissal of defendant's *pro se* postconviction petition at the first stage of proceedings.

¶ 2 In November 2015, the State charged defendant, Rene Martinez, with unlawful possession of weapons by a felon or person in the custody of the Illinois Department of Corrections facilities, a Class 1 felony (UPWF) (720 ILCS 5/24-1.1(b) (West 2014)). The State alleged that defendant (1) "while confined in the Pontiac Correctional Center, *** possessed a piece of metal sharpened to a point" and (2) was subject to mandatory Class X sentencing because of previous convictions for aggravated discharge of a firearm and murder.

¶ 3 In October 2016, pursuant to a fully negotiated plea agreement, defendant pleaded guilty to one count of UPWF. Per the terms of the plea agreement, defendant was later sentenced to a Class X felony term of 10 years in prison, which would run consecutively to the prison

sentence he was already serving. Defendant did not file a postplea motion or direct appeal.

¶ 4 In April 2024, defendant, proceeding *pro se*, filed a postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1, *et seq.* (West 2024)), alleging, among other things, that his plea counsel rendered ineffective assistance by allowing defendant to receive a Class X sentence, for which he was ineligible in light of the supreme court's decision in *People v. Stewart*, 2022 IL 126116, ¶ 22. In June 2024, the trial court dismissed the petition as frivolous and patently without merit.

¶ 5 Defendant appeals, arguing the trial court erred by summarily dismissing his petition because he sufficiently alleged a claim of ineffective assistance of counsel premised on plea counsel's failure to (1) advise him that he was not, in fact, eligible for mandatory Class X sentencing at the time he pleaded guilty and (2) file a posttrial motion raising that issue. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 A. The Charges, Guilty Plea, and Sentence

¶ 8 In November 2015, the State charged defendant with UPWF, a Class 1 felony (720 ILCS 5/24-1.1(b) (West 2014)). The State alleged that defendant (1) "while confined in the Pontiac Correctional Center, *** possessed a piece of metal sharpened to a point" and (2) was subject to mandatory Class X sentencing because of previous convictions for aggravated discharge of a firearm and murder. (The aggravated discharge of a firearm charge was filed in 1996, and the murder charge was filed in 1993. Defendant was born in June 1976, meaning that both charges were filed when defendant was under 21 years old.)

¶ 9 In October 2016, defendant entered into a fully negotiated plea agreement with the State. Defendant agreed to plead guilty to the sole charge of UPWF in exchange for a 10-year

prison sentence. At the guilty plea hearing, the trial court admonished defendant that he (1) was subject to mandatory Class X sentencing due to his prior convictions and (2) would receive a sentence of 10 years in prison, to be served consecutively to the prison sentences he was already serving.

¶ 10 The State proffered the following factual basis for defendant's guilty plea: "On November 7th, 2013, [defendant], while an inmate at the Pontiac Correctional Center had possession of approximately a five-inch piece of metal which was sharpened to a point on the end." Per the terms of the plea agreement, the trial court sentenced defendant to 10 years in prison. Defendant did not file a timely postplea motion or a direct appeal.

¶ 11 In February 2024, defendant, proceeding *pro se*, filed a motion to reconsider his sentence in which he argued that plea counsel failed to (1) comply with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) because counsel did not consult with defendant after entering his guilty plea or (2) file a motion to reconsider his sentence based on the holding in *People v. Stewart*, 2022 IL 126116, ¶ 22, which defendant claimed rendered his sentence unlawful because he was not subject to mandatory Class X sentencing. The trial court denied the motion as untimely.

¶ 12 B. The Postconviction Petition

¶ 13 In April 2024, defendant filed a postconviction petition, alleging, in relevant part, the following:

> "2. After said plea agreement being accepted by the Court, trial counsel failed to comply with Rule 604(d). Trial counsel did not, *at all*, consult with [defendant] as to any of the Rule's requirements (or at all); The guilty plea was entered and [defendant] did not hear from trial counsel thereafter.

3. [Defendant] never knew that said Rule existed until a few months ago when he discovered it by reading the [*People v. Easton*, 2018 IL 122187] decision *infra*. He then forwarded trial counsel a correspondence directing him to file a motion to reconsider sentence based on said decision and the decision in *Stewart infra*. Trial counsel did not respond, however. He then filed the motion himself which this court subsequently denied as untimely.

***

5. [Defendant] was sentenced to *mandatory* Class X sentencing in this case due to his conviction in [Will County] case number 96-CF-4107 [the aggravated discharge conviction] *** and his conviction for murder. This was pursuant to 730 ILCS 5/5-4.5-95(b).

6. However, said statute requires two (2) convictions of a Class 2 or greater forcible felony of charges that are separately brought and tried and arise out of different series of acts. As will be argued below, [defendant's] Class 1 conviction for his conviction in 96-CF-4107 no longer qualified under the statute.

* * *

9. The decision in *Stewart applies directly to [defendant's] sentence as the same statute was utilized in order to sentence him and he was under the age of 21 when he committed that offense. ***.*

***

11. *Stewart*, has effectively vacated [defendant's] conviction in 96-CF-4107 thereby providing this court with a *separate* reason for imposing a lesser sentence in this case." (Emphases in original.)

¶ 14 In June 2024, the trial court entered a written order summarily dismissing defendant's petition because it was frivolous and patently without merit. The court explained its reasoning, in part, as follows:

> "[I]t is well established that a voluntary guilty plea waives all non jurisdictional errors or irregularities, including constitutional errors. *** When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to his entry of the guilty plea. ***
>
> Here, defendant entered into a fully negotiated plea of guilty well within the range as prescribed by statute for a Class X felony offense, and also within the range for a Class 1 felony offense. Pursuant to that agreement, defendant was sentenced to 10 years. It is noted that defendant faced a maximum of 30 years if found guilty at trial. Defendant now contends that he did not receive effective assistance of counsel due to a 604(d) violation. Defendant appears to misunderstand Supreme Court Rule 604(d) and under what circumstances it would apply. Further, he fails to explain how or why this makes his plea unknowing or involuntary.
>
> In addition defendant has not satisfied the two-prong test set forth in *Strickland* [*v. Washington*, 466 U.S. 668 (1984)] for an ineffective assistance of counsel claim. Defendant provides nothing to support his conclusions that counsel was ineffective for not complying with 604(d) or even how that would be applicable in his case. Notably, defendant does not make a claim of actual

innocence.

To the extent that defendant's claims relate to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea, those claims were waived when the defendant plead guilty."

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant appeals, arguing the trial court erred by summarily dismissing his postconviction petition because he sufficiently alleged a claim of ineffective assistance of counsel premised on plea counsel's failure to (1) advise him that he was not, in fact, eligible for mandatory Class X sentencing at the time he pleaded guilty and (2) file a posttrial motion raising that issue. We affirm.

¶ 18 As an initial matter, we note that the State devotes a significant portion of its brief to arguing that defendant (1) waived any constitutional issues with his sentence when he pleaded guilty and (2) forfeited any challenge to his guilty plea by failing to (a) file a timely motion to withdraw it or (b) raise the matter on direct appeal. Indeed, the general rule is that claims not raised on direct appeal are forfeited in postconviction proceedings. *People v. James*, 2023 IL App (1st) 192232, ¶ 45 ("[W]hen a postconviction claim of ineffective assistance of trial counsel is 'based on the record' and 'not raised on direct appeal' and the petition 'does not allege ineffective assistance of appellate counsel,' the defendant forfeits review of the issue. *People v. Youngblood*, 389 Ill. App. 3d 209, 215 (2009)."). However, when the ineffectiveness alleged relies on facts outside the of the record—as defendant contends here—that rule of forfeiture is relaxed. *People v. Johnson*, 2011 IL App (1st) 092817, ¶ 70. Specifically, defendant claims that counsel's ineffectiveness stemmed, in part, from authority that did not exist when he pleaded

guilty. See *Stewart*, 2022 IL 126116, ¶¶ 16-17 (interpreting section 5-4.5-95(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-95(b) (West 2016))).

¶ 19 Interestingly, defendant's arguments against forfeiture and for ineffective assistance appear to be in tension. On the one hand, he faults his attorney for failing to advise him that he was not subject to mandatory Class X sentencing under section 5-4.5-95(b), which is a proposition grounded in the holding of *Stewart* issued six years after defendant's guilty plea. On the other hand, he alleges that his own failure to raise the issue should be disregarded because the supreme court had not yet made its clarification. Put simply, defendant contends that counsel was deficient for not anticipating *Stewart*, but defendant is excused for not knowing what *Stewart* would only later reveal. The inconsistency speaks for itself.

¶ 20 Regardless of the merit of the State's arguments based on forfeiture (or waiver), resolution of this case comes down to the following dispositive question: Whether, as a matter of law, an attorney's advice to plead guilty based on sentencing eligibility under an arguably ambiguous statute—advice that later proves incorrect in light of subsequent judicial interpretation—falls below an objective standard of reasonableness. We hold that it does not.

¶ 21 A. The Applicable Law and Standard of Review

¶ 22 1. *The Act*

¶ 23 The Act provides a procedure for a criminal defendant to assert that "in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2024). The Act sets forth a three-stage process for adjudicating postconviction petitions. *People v. Buffer*, 2019 IL 122327, ¶ 45. This appeal concerns a dismissal at the first stage.

¶ 24 At the first stage, the trial court independently reviews the petition and may summarily dismiss it if the petition is frivolous or patently without merit. *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006).

¶ 25 A petition may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis in either fact or law. *People v. Tate*, 2012 IL 112214, ¶ 9 ("[T]he threshold for survival [is] low."). A petition lacks an arguable basis in fact or law when it "is based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Fanciful factual allegations are those which are "fantastic or delusional" and an indisputably meritless legal theory is one that is "completely contradicted by the record." *Id.* at 16-17. Our review of a first-stage summary dismissal is *de novo*. *Tate*, 2012 IL 112214, ¶ 10.

¶ 26 2. *Ineffective Assistance of Counsel*

¶ 27 A defendant is entitled to the effective assistance of counsel when entering a guilty plea. *People v. Brown*, 2017 IL 121681, ¶ 25. We review a challenge to a guilty plea based on alleged ineffective assistance of counsel under the standard of *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Lee*, 2023 IL App (1st) 211080, ¶ 24. "Under *Strickland*, a defendant must establish that counsel's performance fell below an objective standard of reasonableness and the defendant was prejudiced by counsel's substandard performance." *People v. Hall*, 217 Ill. 2d 324, 335 (2005). At the first stage of postconviction proceedings, a petition alleging ineffective assistance may not be dismissed if (1) it is *arguable* that counsel's performance fell below an objective standard of reasonableness and (2) it is *arguable* that the defendant was prejudiced. *Tate*, 2012 IL 112214, ¶ 19.

¶ 28 An attorney renders an objectively unreasonable performance when he or she

commits errors so serious that the attorney essentially stops functioning as the counsel that the United States and Illinois Constitutions guarantee. *People v. Taylor*, 2018 IL App (4th) 140060-B, ¶ 25. Counsel advising a defendant on a guilty plea must give correct advice on clear, straightforward, and readily verifiable legal issues. *Brown*, 2017 IL 121681, ¶ 27.

¶ 29 A defendant alleging the ineffective assistance of counsel must satisfy both prongs of the *Strickland* test and his failure to do so precludes a finding of ineffectiveness. *People v. Torres*, 2024 IL 129289, ¶ 27. "Whether a defendant received ineffective assistance of counsel is a question of law that we review *de novo*." *People v. Haynes*, 2024 IL 129795, ¶ 23.

¶ 30 B. This Case

¶ 31 Here, defendant's *pro se* postconviction petition alleged that he "was denied his Sixth Amendment [(U.S. Const., amend. VI)] right to the effective assistance of counsel" because his attorney allowed him to be sentenced as a Class X offender even though his prior convictions did not qualify him for Class X sentencing.

¶ 32 The statute at issue—specifically, section 5-4.5-95(b) of the Code (730 ILCS 5/5-4.5-95(b) (West 2016))—governs Class X sentencing eligibility and, for the purposes of defendant's sentence at the time of his guilty plea, provided as follows:

> "When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender. This subsection does not apply unless:

(1) the first felony was committed after February 1, 1978 (the effective date of Public Act 80-1099);

(2) the second felony was committed after conviction on the first; and

(3) the third felony was committed after conviction on the second."

¶ 33 Absent from this provision was any reference to the age at which the qualifying offenses must have been committed. That silence gave way to a conflict among the districts of the appellate court. In 2020, the First District held that a prior conviction was not a qualifying offense for Class X sentencing if it would have been resolved through delinquency proceedings if committed on the date of the present offense. *People v. Miles*, 2020 IL App (1st) 180736, ¶ 11. The Fourth District disagreed, holding that a prior conviction of a juvenile in adult court was a qualifying conviction for purposes of section 5-4.5-95(b) because nothing in the statute suggested that such a conviction should be considered a juvenile adjudication. *People v. Reed*, 2020 IL App (4th) 180533, ¶ 25.

¶ 34 In 2021, the General Assembly amended section 5-4.5-95(b), expressly requiring "the first offense was committed when the person was 21 years of age or older." Pub. Act 101-652, § 10-281 (eff. July 1, 2021) (adding 730 ILCS 5/5-4.5-95(b)(4)). The supreme court in *Stewart* construed this amendment as a clarification, not a change, in the law and concluded that the statute had always been intended to require that both prior offenses be committed by someone at least 21 years of age. *Stewart*, 2022 IL 126116, ¶¶ 17, 22 (reversing *Reed*, 2020 IL App (4th) 180533, ¶ 25). In so holding, the supreme court explained "that a statute's silence on a particular question is akin to an ambiguity in that it allows this court to look to extrinsic aids of construction to resolve the question," which in this case was unnecessary because the

amendment directly indicated the legislature's intent. *Id.* ¶ 18.

¶ 35 In light of *Stewart*, defendant contends that because he was under 18 when he committed his first offense (1993), and under 21 when he committed his second (1996), he was categorically ineligible for Class X sentencing under section 5-4.5-95(b), and plea counsel was ineffective for failing to so advise him before his 2016 guilty plea. This argument fails.

¶ 36 Even assuming that defendant's prior convictions did not qualify for mandatory Class X sentencing (a proposition the State does not concede), defendant's guilty plea counsel's performance in 2016 cannot be deemed constitutionally deficient, as section 5-4.5-95(b) was ambiguous. Ambiguity, by definition, permits more than one reasonable view. When defendant pleaded guilty, section 5-4.5-95(b) was open to multiple plausible interpretations—indeed, two conflicting interpretations were later adopted by the First and Fourth Districts. Counsel's interpretation followed one such view. The supreme court itself later acknowledged that the statute was ambiguous. *Id.* ¶ 13. In addition, neither on appeal nor in his postconviction petition does defendant identify any authority *in existence at the time of his guilty plea* that would have rendered counsel's interpretation unreasonable.

¶ 37 It is not ineffective assistance to fail to anticipate developments in the law—let alone a clarification of an age requirement that the plain language of the law was silent towards. The constitution does not require clairvoyance—only competence. See *People v. Spiller*, 2024 IL App (4th) 231181-U, ¶ 88 ("[W]e reject the implication of defendant's argument that counsel is required to preserve an issue merely for the possibility that it might later become meritorious by a subsequent change in the law."). When appellate court panels disagree as to a statute's meaning, the supreme court has not addressed the issue, and the statute is arguably ambiguous, it is nonsensical to impose upon plea counsel the burden of anticipating the judiciary's—or

legislature's—eventual resolution of the question.

¶ 38 Ultimately, defendant's guilty plea counsel's interpretation was legally plausible. Thus, his advice to defendant about his potential sentencing range and failure to file a motion to withdraw the guilty plea based on his understanding of section 5-4.5-95(b) was not constitutionally deficient. Because the allegations in defendant's postconviction petition lack even an arguable basis that counsel's performance was deficient, the trial court correctly dismissed his petition as frivolous and patently with merit. *People v. Torres*, 2024 IL 129289, ¶ 27 (ineffective assistance of counsel claim may be resolved on the sole basis that counsel's performance was not deficient).

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.