No. 125738

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-16-3169
Respondent-Appellee,	)
v.	) There on Appeal from the Circuit Court of Cook County, Illinois, No. 07 CR 17223
RECARDO JOHNSON,	) The Honorable Alfredo Maldonado,
Petitioner-Appellant.	) Judge Presiding

BRIEF AND ARGUMENT FOR RESPONDENT-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

MITCHELL J. NESS
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-3692
eserve.criminalappeals@atg.state.il.us

Attorneys for Respondent-Appellee People of the State of Illinois

ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

The Circuit Court of Cook County summarily dismissed petitioner's postconviction petition, finding that petitioner lacked standing to bring it because he had discharged his sentence on the challenged conviction. C41-44.[1] The Illinois Appellate Court, First District, affirmed. *People v. Johnson*, 2019 IL App (1st) 163169. Petitioner appeals from that judgment.

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court may dismiss a postconviction petition as "frivolous or patently without merit" where the petitioner lacks standing because he has discharged his sentence on the challenged conviction.

2. If summary dismissal is appropriate as a general rule, whether the fact that petitioner is obligated to register under the Violent Offender Against Youth Registration Act as a result of his discharged conviction makes summary dismissal inappropriate in this case.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On March 25, 2020, this Court allowed petitioner's petition for leave to appeal. *People v. Johnson*, 144 N.E.3d 1189 (March 25, 2020) (Table).

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[1] Citations to the common law record, report of proceedings, and petitioner's brief appear as "C__," "A__, B__," etc., and "Pet. Br. __," respectively.

STATEMENT OF FACTS

In August 2007, petitioner was charged with one count of attempt aggravated robbery and one count of unlawful restraint. C13-17. In October 2007, petitioner pleaded guilty to unlawful restraint. A2-5. At the plea hearing, the circuit court discussed the nature of the charge, the sentencing range, the applicable mandatory supervised release (MSR) period, and the possibility of a fine. A2-3. The People provided a factual basis for the plea, stating that, on July 25, 2007, petitioner and a co-offender approached the victim, detained him by gunpoint, and went through the victim's pockets. A6. The People's factual basis did not include the age of the victim, and the circuit court did not inform petitioner that — as a result of his conviction for a crime committed against an underage victim — he would be required to register under the Violent Offender Against Youth Registration Act (VOYRA), 730 ILCS 154/1, *et seq*.

Petitioner acknowledged his waiver of certain rights, including the right to a trial, a jury, and to be proved guilty beyond a reasonable doubt. A3-5. The circuit court found that petitioner freely and voluntarily pleaded guilty and accepted the plea. A6. The court sentenced petitioner to two years in prison and one year of MSR. A8; C30. Petitioner filed neither a motion to withdraw his plea nor a direct appeal.

Nearly nine years later, on July 18, 2016, petitioner filed a motion for leave to file a late postconviction petition under the Post-Conviction Hearing

Act (PCHA), 725 ILCS 5/122, *et seq*. C35-38. Among other claims, petitioner complained that, at his October 2007 plea hearing, the circuit court failed to specify the age of the victim and failed to explain that petitioner would have to register under VOYRA, and that his counsel was ineffective for failing to inform him that he would have to register under VOYRA. C37.

The circuit court summarily dismissed the petition on September 30, 2016. C41-44. First, the court noted that petitioner had "already served the term of imprisonment and the term of mandatory supervised release to which he was sentenced in this matter," and that petitioner was in custody at the time on a separate judgment of conviction for failing to register under VOYRA, in violation of 730 ILCS 154/10.[2] C41. Next, the court explained that "the issues raised on post-conviction review are limited to constitutional issues" and, because petitioner's ineffective assistance claim was the only claim that was constitutional in nature, only it was cognizable in a postconviction proceeding. C42-43. Finally, the court concluded that — regardless of which claims were cognizable — petitioner lacked standing to bring his petition because postconviction relief is not "available to petitioners who have completed their sentences," and petitioner was challenging a conviction for which he had discharged his sentence. C43. Accordingly, the

[2] It appears that the court learned of this conviction after searching the Illinois Department of Corrections' (IDOC) website.

court dismissed the petition as "frivolous and patently without merit" because petitioner lacked standing. C43-44; D2.

On appeal, petitioner argued that the court erred in summarily dismissing his petition because a circuit court may not dismiss a petition at the first stage for lack of standing. *Johnson*, 2019 IL App (1st) 163169, ¶ 11. The appellate court held that standing is an appropriate ground on which a circuit court may dismiss a postconviction petition at the first stage. *Id.* ¶ 23. Petitioner also argued that even if a circuit court may consider standing at the first stage, the court nevertheless erred in dismissing his petition because he arguably had standing. *Id.* ¶ 23. The appellate court disagreed, stating that "there is no arguable basis in fact or in law that would give [petitioner] standing to challenge his 2007 conviction." *Id.* ¶ 29.

ARGUMENT

I. When a Petitioner Lacks Standing to File a Postconviction Petition, the Circuit Court May Dismiss the Petition Pursuant to 725 ILCS 5/122-2.1.

A. Standard of Review

This Court reviews the summary dismissal of a postconviction petition de novo. *People v. Hommerson*, 2014 IL 115638, ¶ 6 (citing *People v. Coleman*, 183 Ill.2d 366, 389 (1998)).

B. Dismissal of a Postconviction Petition as "Frivolous or Patently Without Merit" when a Petitioner Lacks Standing Conforms with the Plain Language, and Furthers the Purposes, of the PCHA.

A postconviction petition under the PCHA is "a mechanism by which

those under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both." *People v. Rivera*, 198 Ill. 2d 364, 368 (2001). That only those who are under criminal sentence may file a postconviction petition is mandated by the first line of the PCHA, which states that "any person imprisoned in the penitentiary may institute proceedings under this Article." 725 ILCS 5/122–1(a). This Court has interpreted this provision to extend not only to physically imprisoned individuals but also to anyone "whose liberty, in some way or another, was curtailed to a degree by the state" when the petition was filed. *People v. Carrera*, 239 Ill. 2d 241, 246 (2010). Thus, examples of individuals not imprisoned but still eligible for relief are those "who have been released from incarceration after timely filing their petition," "who were on mandatory supervised release at the time their postconviction petitions were filed," or who were "sentenced to probation or released on parole." *Id.* (surveying relevant cases).

Persons who have discharged their sentences do not have standing to seek relief under the PCHA. In *People v. Dale*, 406 Ill. 238 (1950), for example, the Court stated that the PCHA is "available only to persons actually being deprived of their liberty and not to persons who had served their sentences and who might wish to purge their records of past convictions." *Id.* at 246. Likewise, in *People v. West*, 145 Ill. 2d 517 (1991), a

man who had discharged his Illinois sentence sought to challenge his Illinois conviction because it was being used as an aggravating factor in his subsequent Arizona capital case. Despite the capital sentence, this Court found that the petitioner lacked standing because he had discharged his sentence on "the offense he is purporting to challenge." *Id*. at 519; *see also Carrera*, 239 Ill. 2d at 253 (finding no standing where a petitioner "has fully served his Illinois sentence, but seeks to attack his Illinois conviction in order to challenge his deportation proceedings").

Not only do persons who have discharged their sentences lack standing to seek relief under the PCHA, the circuit court can and should dismiss such petitions at the first stage. After a petition is filed, the PCHA provides a "three-stage process" for adjudicating a petition. *Hommerson*, 2014 IL 115638, ¶ 7. First, proceedings are commenced by "filing with the clerk of the court in which the conviction took place a petition (together with a copy thereof) verified by affidavit." 725 ILCS 5/122-1. After a petition is filed, the circuit court is required to determine — without input from the petitioner or the People — whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1. If the circuit court so finds, the court must summarily dismiss the petition. *Id*. If the petition is not "frivolous or patently without merit," the petition moves to the second stage, at which point "the court may appoint counsel to represent an indigent defendant, and counsel may amend the petition if necessary." *Hommerson*, 2014 IL 115638, ¶ 8 (citing *People v.*

Boclair, 202 Ill. 2d 89, 100 (2002)). Also at the second stage, the People may file a motion to dismiss. *Id.* If the petition survives a motion to dismiss or the State does not file one, a third stage evidentiary hearing takes place. *Id.*

Here, petitioner challenges the appellate court's decision affirming the dismissal of his petition at the first stage as "frivolous or patently without merit" because he lacked standing under the PCHA. This presents a question of statutory interpretation; accordingly, this Court's goal is to ascertain the legislature's intent. *People v. Blair*, 215 Ill. 2d 427, 443 (2005). In doing so, the Court looks to the plain language of the statute, as well as "the purpose and the necessity for the law, evils sought to be remedied, and goals to be achieved." *Id.*

Dismissing for lack of standing at the first stage is consistent with the plain language of the PCHA. As discussed, it is a prerequisite of the PCHA that a petitioner have standing to bring a petition, *i.e.* that the petitioner be "imprisoned in the penitentiary." 725 ILCS 5/122-1. Only petitioners "whose liberty, in some way or another, [is] curtailed to a degree by the state" may seek relief. *Carrera*, 239 Ill. 2d at 246. Thus, petitioners without standing have no right to relief and cannot succeed on a petition. *See People v. Johnson*, 2019 IL App (1st) 163169, ¶ 19 (defining standing as "'[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'") (citing *Black's Law Dictionary* (11th ed. 2019). Therefore, such petitions fall within the definition of "frivolous or patently without merit," which, as this

Court has explained, means "having no basis in law or fact and obviously without legal significance." *Blair*, 215 Ill. 2d at 445. In *Blair*, a petitioner asserting claims barred by *res judicata*, waiver, and forfeiture was "preclude[d] . . . from obtaining relief," and the petition, therefore, was "necessarily 'frivolous' or 'patently without merit.'" *Id.* It follows that a petition brought by a petitioner precluded from obtaining relief because he lacks standing is also necessarily frivolous and without merit under the PCHA's plain language.

Such first-stage dismissals are also consistent with the purposes underlying the PCHA. This Court explained that "[t]he purpose of the [PCHA] is to provide incarcerated individuals with a means of asserting that their convictions were the result of a substantial denial of their constitutional rights." *Hommerson*, 2014 IL 115638, ¶ 12. The PCHA was not intended as a means by which individuals who "served their sentences . . . might wish to purge their records of past convictions." *People v. Carrera*, 239 Ill. 2d 241, 257 (2010) (citations omitted). In 1983, the General Assembly amended the PCHA to include § 122-2.1(a)(2), which directs circuit courts to summarily dismiss petitions that are "frivolous or patently without merit." *Blair*, 215 Ill. 2d at 447. In so doing, the legislature intended to "provide[] for a simplified procedure in order to ensure that the criminal justice system's limited resources are expended where most needed." *Rivera*, 198 Ill. 2d at 372. The addition of section 122-2.1(a)(2) was an acknowledgment that

"delaying the dismissal of a petition which the judge knows could never bear fruit for the petitioner" would unnecessarily "forc[e] courts to waste judicial resources." *Blair*, 215 Ill. 2d at 446-47. Likewise, the 1983 amendment reflected the General Assembly's belief that not all petitioners should be provided postconviction counsel, because if a petition has no merit "then those further steps . . . in terms of appointment of counsel and so forth, *aren't necessary*." *Rivera*, 198 Ill. 2d at 373 (emphasis in original).

Considering these purposes, the circuit court's summary dismissal of this petition for lack of standing conforms with the PCHA. Allowing the first-stage dismissal of petitions that could "never bear fruit for the petitioner" because the petitioner lacks standing is consistent with the legislature's intent to focus judicial resources and the appointment of counsel on those petitioners whose liberty is actually constrained and who therefore may gain relief through the PCHA.

Petitioner asserts that allowing summary dismissals where the petitioner lacks standing "short-circuits two important components" of the PCHA. Pet. Br. 7. First is "the pro se petitioner's chance for counsel's help in shaping the underlying constitutional claim." *Id.* But this Court rejected an identical contention in *Blair*, concluding that the "argument that [a] claim should proceed to the second stage for the benefit of an attorney to refine the claim" was "without justification." 215 Ill. 2d at 449. The Court reasoned that a determination otherwise would conflict with the legislature's

considered decision to give circuit courts "the power without the necessity of appointing counsel, to dismiss, outright, petitions at first stage when they are deemed frivolous or patently without merit." *Id*.

Second, petitioner argues that allowing summary dismissals for lack of standing would remove the People's "chance to waive lack of standing in the interests of doing justice on the claim." Pet. Br. 7. But this is true of every petition dismissed at the first stage. For example, in *People v. Collins*, this Court was tasked with determining whether a petition that did not comply with § 122-2's mandate that a petition "shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached" was frivolous or patently without merit. *See generally* 202 Ill. 2d 59. The Court found that it was. Although Collins advocated for second-stage review, at which point the People could decide whether to move to dismiss or to waive the procedural deficiency in the interest of doing justice, this Court held that the PCHA clearly mandated summary dismissal of petitions that did not comply with section 122-2.2. Likewise, in *Blair*, this Court determined that a petition asserting claims barred by *res judicata*, waiver, and forfeiture was subject to summary dismissal. 215 Ill. 2d at 446. There, too, the People could have elected to waive these deficiencies at second-stage review. Nevertheless, this Court stated that "[a]lthough the Act allows the State to raise these issues as defenses later in the second stage, the Act also allows the judge to consider these issues at the first stage." *Id.*

at 450. In other words, the mere fact that the People can elect to waive a defense does not mandate that the court must overlook that defense.

Likewise, petitioner's allusion to general civil litigation, Pet. Br. 10, 17, where standing may be asserted only as an affirmative defense, is inapposite. It is true that postconviction proceedings are civil in nature. But that does not mean that they operate in precisely the same manner as other civil proceedings. For instance, unlike in general civil litigation, the PCHA expressly instructs circuit courts to proactively dismiss frivolous petitions, and gives them the power to examine more than the face of the petition to aid that determination. 725 ILCS § 5/122-2.1(c). In general civil litigation, by contrast, the circuit court generally may dismiss a complaint only upon the filing of a motion to dismiss, and, even then, the court's review is usually limited to the four corners of the complaint. Thus, that in general civil litigation a court cannot summarily dismiss for lack of standing is immaterial to whether a circuit court may do so under the PCHA; indeed, this Court has already held that circuit courts may summarily dismiss petitions barred by *res judicata*, waiver, or forfeiture, *Blair*, 215 Ill. 2d at 446, despite the fact that in general civil proceedings courts cannot do the same.

Petitioner's reliance on *Boclair* is also unpersuasive. There, this Court determined that untimeliness is not a proper basis for first-stage summary dismissal. *Boclair*, 202 Ill. 2d at 99. The Court did so in part because "time is not an inherent element of the right to *bring* a post-conviction petition."

Id. at 100-01 (emphasis in original). *Boclair* relied on *People v. Wright*, 189 Ill. 2d 1 (1999), for this proposition, and *Wright*, in turn, held that timing was not an inherent element because "[t]he plain language of section 122-1 demonstrates that time is not an integral part of the remedy." *Id*. at 8. Specifically, because the PCHA provides "[a] safety valve that allows an unlimited time in which to file a post-conviction petition" so long as the petitioner is not culpably negligent in filing the petition late, timeliness "has more in common with statutes of limitations than it does with statutes conferring jurisdiction." *Id.* But the PCHA includes no similar "safety valve" that could excuse the requirement that a petitioner be "imprisoned in the penitentiary" in order to establish standing to file a postconviction petition. As the legislature intended it, then, "standing," unlike timeliness, is an inherent element of the PCHA.

Further, the Court in *Boclair* considered that assessing culpable negligence for purposes of determining timeliness requires the circuit court to make "an assessment of the defendant's credibility," which requires factfinding beyond the scope of first-stage review. 202 Ill. 2d at 102. But the same cannot be said about a determination that a petitioner lacks standing because he has discharged his sentence. Thus, *Boclair* is inapposite.

Relatedly, petitioner's assertion that a circuit court cannot determine standing without second-stage review is simply incorrect. Pet. Br. 12-14. First, petitioner suggests, without citation, that the circuit court is limited at

the first stage to considering only those items listed in section 122-2.1(c). *See* Pet. Br. 14 ("Section 122-2.1 does not permit factual finding that extends to the Department of Corrections website or other case files."). That section states that the court, in considering a petition at the first stage, "*may* examine" the court file, appellate record, and transcripts. *Id.* (emphasis added). But that section does not indicate, nor is there any reason to hold, that the standard rules of judicial notice are inapplicable to postconviction proceedings. *See People v. Davis*, 65 Ill. 2d 157, 165 (1976) (taking judicial notice of facts that "are readily verifiable from sources of indisputable accuracy is an important aid in the efficient disposition of litigation, and its use, where appropriate, is to be commended"). In fact, nearly every appellate district has noted that a court may take judicial notice of IDOC's website when considering a postconviction petition. *See People v. Steward*, 406 Ill. App. 3d 82, 93 (1st Dist. 2010) ("This court may take judicial notice of [IDOC] records because they are public documents."); *People v. Young*, 355 Ill. App. 3d 317, 321 n.1 (2d. Dist. 2005) ("[W]e may take judicial notice of information that . . . [IDOC] has provided on its website.") (citations omitted); *People v. Smith*, 2014 IL App (4th) 121118, ¶ 34 (noting that IDOC's website is an official public record and therefore and may be judicially noticed); *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 49 (same).

Regardless, even if a circuit court were limited to considering the items listed in § 122-2.1(c), that would be sufficient in some cases to determine

standing. For example, in *People v. Huerta-Perez*, 2017 IL App (2d) 161104, the court recited a petitioner's case and sentencing history collected from the petition and record, and noted that the petitioner even made a standing argument in the petition. *Id.* ¶ 1.[3] But because the petitioner "filed his petition . . . over eight years after his term of conditional discharge ended," the court affirmed the circuit court's judgment summarily dismissing the petition for lack of standing. *Id.* In *People v. Vinokur*, 2011 IL App (1st) 090798, the court noted from the record that "[o]n April 15, 2005, the trial court terminated defendant's probation as having been successfully completed." *Id.* ¶ 3. Because the petition was not filed until three years later, the appellate court affirmed the summary dismissal for lack of standing. *Id.* ¶¶ 4, 14. Similarly, in *People v. Begay*, 2018 IL App (1st) 150446, the court noted "[a] 'Termination Order,' dated July 3, 2013, states that petitioner complied with the conditions of his probation and that 'the period of probation is terminated.'" *Id.* ¶ 7. Similarly, the circuit court here was able to determine from the face of the petition that, given his two-year sentence and one-year MSR term, the petition was so late that, regardless of "how the sentence was served," Pet. Br. 13, petitioner had fully served his sentence. C43.

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[3] Petitioner's statement that "[t]he First District of the Illinois Appellate Court is the only district of the appellate court to hold that lack of standing is an appropriate grounds for summary dismissal," Pet. Br. 14, is incorrect, as evidenced by *Huerta-Perez*. And, importantly, no appellate district has held that standing is an inappropriate ground for first-stage dismissal.

To be sure, a circuit court will not always be able to determine standing on first-stage review and, as the appellate court noted below, in these cases "it would be inappropriate for the circuit court to dismiss a petition at the first stage." *Johnson*, 2019 IL App (1st) 163169, ¶ 29. But the PCHA provides for summary dismissals when a petition is "frivolous or patently without merit," and where a circuit court can make such a determination, the legislature intended it to do so.

Allowing summary dismissals for lack of standing not only conforms with the legislative intent (as demonstrated by the statutory language and purpose) underlying the PCHA, it would be consistent with cases interpreting analogous provisions in the federal habeas corpus statute. Under federal law, a person must be "in custody" to seek habeas relief. *See* 28 U.S.C. § 2254 ("a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State"); 28 U.S.C. § 2255 ("A prisoner in [federal] custody . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence."). Like Illinois courts, federal courts define this requirement liberally. *See Wunderlich v. City of Flushing*, No. 14-CV-14626, 2014 WL 7433411, at *2 (E.D. Mich. Dec. 31, 2014) (noting that "in custody" requirement satisfied where petitioners are "on parole, probation, or out on bail."). However, also as in Illinois, "[a] petitioner who files a habeas petition after he has fully served his sentence and who is not subject to court supervision is not 'in

custody.'" *Fordjour v. Stewart*, No. C 03-1773 MMC (PR), 2003 WL 22384780, at *1 (N.D. Cal. Oct. 16, 2003); *see also Maleng v. Cook*, 490 U.S. 488, 492 (1989) ("we have never extended [the 'in custody' requirement] to the situation where a habeas petitioner suffers no present restraint from a conviction").

When a federal district court receives a habeas petition, it is required to determine on its own whether "it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief." *City of Flushing*, 2014 WL 7433411, at *1 (quotation omitted). In so doing, the district court "may properly [review] any exhibits attached to the petition, including, but not limited to, transcripts, sentencing records, and copies of state court opinions." *Brown v. Wenerowicz*, No. CIV.A. 13-430, 2013 WL 2404152, at *3 (W.D. Pa. May 31, 2013). If the petition raises "legally frivolous claims" or contains "factual allegations that are palpably incredible or false," "the petition must be summarily dismissed." *City of Flushing*, 2014 WL 7433411, at *1. Applying these requirements, federal courts routinely dismiss habeas petitions when it is plain that an individual is no longer "in custody." *See City of Flushing*, 2014 WL 7433411, at *3; *Fordjour*, 2003 WL 22384780, at *1; *Chavez v. Superior Court of California*, 194 F. Supp. 2d 1037, 1039 (C.D. Cal. 2002); *Wenerowicz*, 2013 WL 2404152, at *2; *Yuen v. Lee*, No. CIV.A. 3:09CV-P919-S, 2010 WL 299277, at *1 (W.D. Ky. Jan. 19, 2010). This is because "[i]t serves no purpose whatever to

require the Government to respond to claims and allegations upon which a petitioner has absolutely no hope of prevailing." *Yocum v. Dixon*, 729 F. Supp. 616, 620 (C.D. Ill. 1990).

The same is true under the PCHA. Standing is a non-remediable defect that can often be determined on first-stage review. In those cases where it is clear that a petitioner is no longer "imprisoned in the penitentiary," no amount of input from appointed counsel could cure that lack of standing. Consistent with analogous federal procedure, the circuit court should be able to dismiss these petitions at the first stage. *See generally People v. Hodges*, 234 Ill. 2d 1, 12 (2009) (stating that "this court has in the past relied on habeas case law in interpreting and applying the Act.") (citations omitted).

II. Because Petitioner Lacked Standing, the Circuit Court Correctly Dismissed His Petition.

Petitioner alternatively argues that even if a circuit court may dismiss some petitions at the first stage, the circuit court erred in summarily dismissing *his* petition at the first stage because it was not sufficiently clear that he lacked standing, and therefore the court should have advanced the petition for second-stage review. Pet. Br. 18-22.

As discussed, this Court has held that persons who have completed their sentences do not have standing under the PCHA. *See Dale*, 406 Ill. at 246 (the PCHA is "available only to persons actually being deprived of their liberty and not to persons who had served their sentences and who might

wish to purge their records of past convictions"); *West*, 145 Ill. 2d at 519 (a "person must be in prison for the offense he is purporting to challenge" in order to have standing). Petitioner does not contend that he was serving any portion of his sentence for the challenged conviction at the time he filed his petition. Instead, petitioner argues that he might have standing because he was imprisoned for a different offense when he filed his petition (failure to register under VOAYA), and that offense, in turn, was "related" to the challenged unlawful restraint conviction in that the unlawful restraint conviction triggered his registration obligation. Pet. Br. 19. In other words, petitioner claims he might have standing because "he was 'imprisoned' for failure to register and he alleged a constitutional defect in the proceedings that *led to* his duty to register." *Id.* (emphasis added).

But petitioner's argument overlooks this Court's precedent holding that the collateral consequences of a conviction, including any registration requirements, do not confer standing. In *Carrera*, this Court considered whether a petitioner who previously pleaded guilty and fully discharged his sentence nevertheless had standing to seek relief under the PCHA because he faced deportation due to the conviction. 239 Ill. 2d at 245. In rejecting Carrera's argument, this Court reasoned that "[t]he instant case is analogous to this court's decision in *West*": the petitioner "has fully served his Illinois sentence, but seeks to attack his Illinois conviction in order to challenge his deportation proceedings." *Id.* at 253. And, as in *West*, because the

petitioner's "liberty was not curtailed by the [S]tate in any way," he "had no standing under the Act to file his petition for postconviction relief." *Id.* Fundamental to the Court's decision was the fact that only the direct consequences of a conviction suffice to confer standing. *Id.* at 256. Direct consequences, unlike collateral consequences, "relate[] to the length or nature of the sentence imposed." *Id.* (citing *People v. Williams*, 188 Ill. 2d 365, 372 (1999)). And because deportation was not "a consequence that relates to the sentences imposed," the petitioner's deportation proceeding was not a direct consequence of his conviction and therefore did not confer standing. *Id.*

Like the risk of deportation, this Court has defined registration requirements as collateral consequences. In *People v. Bingham*, 2018 IL 122008, the defendant argued on direct appeal from a theft conviction that the requirement of the Sex Offender Registration Act (SORA), 730 ILCS 150/1, *et seq*., that he register as a sex offender was unconstitutional. *Id.* ¶ 1. This Court explained that although the theft conviction "did trigger the *collateral* consequence of his having to register as a sex offender under the Act," *id*. ¶ 10 (emphasis added), "[t]he requirement that defendant register as a sex offender is not encompassed within the judgment or any order of the trial court," *id.* ¶ 17; *see also id*. ¶19 (because registration requirements are imposed by "state agencies and officials" such as the Illinois State Police, rather than by trial courts, they are not direct consequences of conviction). Thus, a court on direct appeal had no authority to relieve a defendant of that

obligation. *Id.* ¶ 18. And though *Bingham* concerned a direct appeal, the appellate court has been equally clear that registration obligations arising under SORA are collateral rather than direct consequences and do not confer standing under the PCHA. *See People v. Downin*, 394 Ill. App. 3d 141, 146 (3d Dist. 2009) (registration obligation imposed no actual restraint on liberty and was merely a collateral consequence of conviction); *People v. Dunn*, 2020 IL App (1st) 150198, ¶ 20 ("defendant does not have standing under the Act based upon the fact that he has to register as a sex offender."); *People v. Stavenger*, 2015 IL App (2d) 140885, ¶ 12 ("[W]e reject defendant's contention that he has standing under the Act by virtue of his having to register as a sex offender.").[4]

Applying these cases, and noting that SORA is "a statutory scheme that is similar to the Violent Offender Act [VOA]," the appellate court here held that petitioner's registration obligation under the VOA is collateral to his conviction. *Johnson*, 2019 IL App (1st) 163169, ¶ 28. Thus, the registration requirement did not confer standing to seek relief under the PCHA. *Id.* The court acknowledged that "in some cases the issue of standing

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[4] As to petitioner's contention that he was "trying to find the right way to attack the unexpected registration requirements which attached to his guilty plea," Pet. Br. 20, as this Court explained in *Bingham*, the two proper ways that the issue typically reaches a reviewing court are "(1) through a direct appeal from a case finding a defendant guilty of violating the regulation he attempts to challenge as unconstitutional, such as the sex offender registration law," or "(2) by filing a civil suit seeking a declaration of unconstitutionality and relief from the classification as well as the burdens of . . . registration." 2018 IL 122008, ¶ 21.

may be nuanced enough that it would be inappropriate for the circuit court to dismiss a petition at the first stage." *Id.* ¶ 29. Yet, given the clear precedent holding that petitioner's registration obligation was a collateral, not a direct, consequence, that was "simply not the case here." *Id.*

With Illinois precedent thus squarely against him, petitioner cites two federal habeas cases for the proposition that "new arguments that registry requirements confer standing under the Act" might arise in the future. Pet. Br. 20-21. Petitioner's cases are unavailing.

First, even though the Third Circuit in *Piasecki v. Court of Common Pleas, Bucks Cty., PA*, 917 F.3d 161 (3d Cir. 2019), and the Ninth Circuit in the unpublished decision *Wright v. Alaska*, 819 F. App'x 544 (9th Cir. 2020), opined that a registration requirement can satisfy the "in custody" requirement of the federal corpus statute, every other circuit to consider the issue — including the Seventh Circuit — has reached the opposite conclusion. *See Wilson v. Flaherty*, 689 F.3d 332, 337 (4th Cir. 2012) ("the registration requirements . . . arise from the collateral, independent requirements imposed by the sex offender registration statutes in Virginia and Texas"); *Hautzenroeder v. Dewine*, 887 F.3d 737 (6th Cir. 2018) (holding that Ohio's sex offender registration requirements did not render someone subject to them "in custody"); *Virsnieks v. Smith*, 521 F.3d 707, 720 (7th Cir. 2008) ("the [Wisconsin] registration requirements resemble more closely those collateral consequences of a conviction that do not impose a severe restriction on an

individual's freedom of movement"); *Calhoun v. Att'orney Gen. of Colorado*, 745 F.3d 1070, 1074 (10th Cir. 2014) (the "Colorado sex-offender registration requirements at issue here are collateral consequences of conviction").

Second, as each of these decisions make clear, whether an individual is "in custody" because of a registration requirement is a state-specific question that depends on the terms of the State's registration statute. Thus, petitioner's cited cases are unpersuasive.

Given the Illinois precedent establishing that a petitioner who has completed a sentence lacks standing to seek relief under the PCHA and that registration requirements are collateral consequences of a conviction, petitioner's assertion that "it is still an open question whether a registry requirement might so limit a petitioner's liberty as to provide standing" is incorrect. Pet. Br. 20. Though this Court has not decided the precise question presented here — whether the registration requirement imposed by VOYRA suffices to confer standing in a postconviction challenge to a discharged conviction — this Court's precedent is clear that a sex offender registration obligation does not confer standing, and petitioner makes no argument that the obligations of VOYRA differ in any significant respect to warrant a different result. Accordingly, the appellate court correctly affirmed the circuit court's dismissal of the petition as "frivolous or patently without merit" because petitioner lacked standing.

CONCLUSION

This Court should affirm the judgment of the appellate court.

December 9, 2020

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

MITCHELL J. NESS
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-3692
eserve.criminalappeals@atg.state.il.us

Counsel for Respondent-Appellee
People of the State of Illinois

RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 23 pages.

s/Mitchell J. Ness
Mitchell J. Ness

PROOF OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 9, 2020, the **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

Maggie A. Heim
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 North LaSalle Street, 24th Floor
Chicago, Illinois 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

Counsel for Petitioner-Appellant

Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail 13 copies of the Brief to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

s/Mitchell J. Ness
MITCHELL J. NESS
Assistant Attorney General