

NOTICE
Decision filed 03/22/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (5th) 230282-U

NO. 5-23-0282

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Champaign County.
)	
v.)	No. 22-CF-88
)	
CASSARIOUS M. MEEKS,)	Honorable
)	Randall B. Rosenbaum,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Barberis and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed defendant’s postconviction petition where the dismissal occurred within 90 days and the substantive issue—that the court failed to hold a hearing on defendant’s motion to reconsider the denial of his motion to dismiss—was waived by his guilty plea. As any argument to the contrary would lack merit, we grant defendant’s appointed counsel on appeal leave to withdraw and affirm the circuit court’s judgment.

¶ 2 Defendant, Cassarius M. Meeks, appeals the circuit court’s order summarily dismissing his petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)). His appointed appellate counsel, the Office of the State Appellate Defender (OSAD), has concluded that there is no reasonably meritorious argument that the court erred. Accordingly, it has filed a motion for leave to withdraw as counsel along with a supporting memorandum. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987). OSAD has notified defendant of its motion, and

this court has provided him with ample opportunity to respond, but he has not done so. After considering the record on appeal and OSAD's motion and supporting brief, we agree that this appeal presents no reasonably meritorious issues. Accordingly, we grant OSAD leave to withdraw and affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 Defendant was charged with armed violence, manufacture or delivery of a controlled substance, unlawful possession of a weapon by a felon on mandatory supervised release, and obstructing justice. After waiving his right to counsel and choosing to proceed *pro se*, defendant moved to dismiss the charges. He alleged that he had an agreement with the State pursuant to which he had provided the police with information on other cases. He believed that this cooperation would lead to the dismissal of the charges. However, the charges against him were not dismissed.

¶ 5 At a hearing on the motion, defendant testified about the information he provided to the police, which led to a search warrant being issued. For the State, Officer James Hobson testified that defendant had lied to him in connection with another case. Moreover, he never told defendant that he would be released in exchange for his cooperation. The court denied the motion to dismiss.

¶ 6 Defendant filed a motion to reconsider, which was set for hearing on July 8, 2022. However, on June 22, 2022, defendant agreed to plead guilty to unlawful possession of a weapon by a felon in exchange for a three-year prison sentence. The State would dismiss the remaining charges as well as an unrelated traffic case.

¶ 7 The court admonished defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). He stated that he understood the admonishments. The court found the plea was voluntary, ascertained a factual basis, and imposed the agreed-upon sentence. At the conclusion of the hearing, the prosecutor noted that defendant's motion to reconsider was set for hearing on July

8. The court stated that it would vacate that date. Defendant did not object. He did not move to withdraw the plea or otherwise pursue a direct appeal.

¶ 8 On February 23, 2023, however, he filed a postconviction petition contending that the court violated his due process rights by failing to hold a hearing on his motion to reconsider. The court summarily dismissed the petition and defendant timely appealed.

¶ 9 ANALYSIS

¶ 10 OSAD concludes that there is no meritorious argument that the circuit court erred either procedurally or substantively in dismissing the petition. We agree.

¶ 11 The Act (725 ILCS 5/122-1 *et seq.* (West 2020)) provides a mechanism by which a criminal defendant may assert that his conviction resulted from a substantial denial of his constitutional rights. 725 ILCS 5/122-1(a) (West 2020); *People v. Delton*, 227 Ill. 2d 247, 253 (2008). Because proceedings under the Act are collateral, issues that could have been raised earlier, but were not, are forfeited. *People v. Blair*, 215 Ill. 2d 427, 443-44 (2005).

¶ 12 A petition may be summarily dismissed within 90 days of its filing if the court concludes that it is frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 2022); *People v. Allen*, 2015 IL 113135, ¶ 21. After 90 days, the petition must be advanced to the next stage. 725 ILCS 5/122-2.1 (West 2022); *Allen*, 2015 IL 113135, ¶ 25.

¶ 13 OSAD first concludes, and we agree, that the circuit court's summary dismissal was procedurally proper where the petition was filed on February 23, 2023, and dismissed in a written order filed on March 27, 2023, well within the 90-day period.

¶ 14 We further agree that the dismissal was substantively proper. We initially note that the issue could have been raised in a direct appeal and is thus forfeited for purposes of a postconviction petition. If defendant had a legitimate belief that his motion to reconsider would be heard despite

the guilty plea he could—and should—have raised the issue in a motion to withdraw the plea. See Ill. S. Ct. R. 604(d) (eff. Jan. 1, 2023) (any issue not raised in a motion to “withdraw the plea of guilty and vacate the judgment shall be deemed waived”); see also *People v. Stewart*, 123 Ill. 2d 368, 374 (1988) (applying the forfeiture rule to postconviction proceedings as well as to appeals).

¶ 15 Defendant’s petition clearly lacked merit in any event, as his guilty plea rendered unnecessary a hearing on his motion to reconsider. Generally, a voluntary guilty plea waives all nonjurisdictional errors or irregularities, including constitutional ones. *People v. Peebles*, 155 Ill. 2d 422, 491 (1993). Thus, defendant’s decision to plead guilty waived any claim of error in denying his motion to dismiss. We note that, following defendant’s plea, the court expressly vacated the hearing on the motion to reconsider, and defendant did not object. Moreover, given that defendant was representing himself, he cannot claim that defense counsel’s erroneous advice caused him to plead guilty or forfeit a hearing on his reconsideration motion. See *People v. Johnson*, 2021 IL App (1st) 152310, ¶ 26.

¶ 16 CONCLUSION

¶ 17 As this appeal presents no issue of arguable merit, we grant OSAD leave to withdraw and affirm the circuit court’s judgment.

¶ 18 Motion granted; judgment affirmed.