

NOTICE

Decision filed 06/30/23. 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.

2023 IL App (5th) 220454-U

NO. 5-22-0454

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,	)	Madison County.
	)	
v.	)	No. 19-CF-2644
	)	
SAMMIE L. ROBERTS,	)	Honorable
	)	Kyle A. Napp,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BOIE delivered the judgment of the court.
Justices Barberis and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held*: Where the defendant failed to state the gist of a constitutional claim in his postconviction petition, and where the circuit court summarily dismissed the petition within the statutory timeframe, the defendant's appellate attorney is granted leave to withdraw as counsel, and the judgment of the circuit court is affirmed.

¶ 2 The defendant, Sammie L. Roberts, is serving a 23-year prison sentence for unlawful possession of a weapon by a felon. That offense is a Class 2 felony, but the defendant was sentenced as a Class X offender due to his criminal record. The defendant pleaded guilty to that offense, and received that sentence, in accordance with an agreement with the State, under which five more-serious charges were dismissed. In 2022, the defendant filed a *pro se* petition for postconviction relief. See 725 ILCS 5/122-1 *et seq.* (West 2022). The circuit court summarily dismissed the petition. The defendant now appeals from that dismissal. His appointed attorney

on appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks substantial merit. On that basis, it has filed with this court a motion to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), along with a memorandum of law in support of the motion. OSAD gave proper notice to the defendant, which included serving him with copies of the motion and memorandum. This court gave him an opportunity to file a *pro se* brief, memorandum, or other document explaining why OSAD should not be allowed to withdraw as counsel, or why this appeal has merit. The defendant has not taken advantage of that opportunity. This court has examined OSAD's *Finley* motion and the accompanying memorandum of law, as well as the entire record on appeal, and has concluded that this appeal does indeed lack merit. Accordingly, OSAD is granted leave to withdraw as counsel, and the judgment of the circuit court is affirmed.

¶ 3

BACKGROUND

¶ 4 In August 2019, the State filed an information charging the defendant with three counts of attempt first degree murder (counts I, II, and III), aggravated battery with a firearm (count IV), aggravated discharge of a firearm (count V), and unlawful possession of a weapon by a felon (count VI). It was alleged that on August 10, 2019, the defendant, a convicted felon, shot his wife, Eulisa Roberts, with a handgun, and fired that same handgun into a house occupied by his wife's relatives. An indictment, with those same charges, soon supplanted the information.

¶ 5 In February 2021, the State filed a notice of intent to have the defendant sentenced as a Class X offender, if he were to be convicted of either aggravated discharge of a firearm (count V), a Class 1 felony, or unlawful possession of a weapon by a felon (count VI), a Class 2 felony. See 730 ILCS 5/5-4.5-95(b) (West 2018). The notice alleged that the defendant was born on September 17, 1980. It also alleged that he had been convicted of two drug felonies—a Class 1

felony in Madison County case No. 00-CF-2403, with judgment entered on March 9, 2001, and a Class 1 felony in Jersey County case No. 14-CF-146, with judgment entered on September 17, 2015.

¶ 6 On April 7, 2021, the defendant, private defense counsel, and an assistant state's attorney appeared before the circuit court. Defense counsel informed the court that he and the defendant would stipulate that the defendant's criminal record qualified him to be sentenced as a Class X offender, and that the defendant would plead guilty to count VI and would be sentenced to imprisonment for 23 years, while counts I through V would be dismissed. The assistant state's attorney and the defendant concurred. In response to the court's questions, the defendant stated that he was 40 years old and had earned a GED, and he indicated that he understood English, was not under the influence of drugs or alcohol, and did not have any condition that would prevent him from understanding the courtroom proceedings. The court informed the defendant that count VI, unlawful possession of a weapon by a felon, was ordinarily a Class 2 felony, but because he and his attorney were stipulating to his criminal history, he would be subject to Class X sentencing, which the court independently found to be applicable. The court admonished the defendant as to the nature of the charge of unlawful possession of a weapon by a felon, and the defendant indicated his understanding. The court stated that it would bind itself to the parties' plea negotiations and sentence the defendant as a Class X offender. The court asked the defendant how he wished to plead to count VI, unlawful possession of a weapon by a felon, and the defendant answered, "Guilty."

¶ 7 The court told the defendant that before accepting his guilty plea, it wanted "to go over your rights with you and the range of penalties." It admonished the defendant as to the presumption of innocence and the State's burden of proving guilt beyond a reasonable doubt, and the defendant

indicated his understanding. It admonished the defendant that he had the right to be represented by an attorney of his choice, and that if he could not afford an attorney, the court could appoint a public defender, and the defendant indicated his understanding. The court stated that the defendant could persist in his plea of not guilty and have a trial, whether by a jury or by the court alone, who would listen to the evidence and “decide your guilt or innocence,” and that at either type of trial, the defendant would have the right, through counsel, to confront and cross-examine witnesses, and to subpoena and call witnesses, and that the defendant would have the right to testify, but nobody could force him to testify, and that by pleading guilty, he would waive his right to “a trial of any kind,” and the defendant indicated his understanding. The court informed the defendant that a Class 2 felony “normally carries a range of penalties of three to seven years, seven to 14 extended,” but as a Class X offender, “the range of penalties are six to 30 years in the Department of Corrections.” The court continued:

“Upon release from prison, you would be subject to a Mandatory Supervised Release period of three years. This sentence—this sentence would be served at day for day credit. For every day you spend in custody, you would be given a day’s credit. It is non-probationable. And a fine of up to \$25,000 is possible. That’s not part of the negotiations here. Do you understand the range of penalties?”

The defendant answered, “Yes, ma’am.”

¶ 8 At that point, the prosecutor provided a factual basis, and defense counsel stipulated that the evidence at trial would be substantially as the prosecutor stated. In response to the court’s questions, the defendant indicated that nobody had forced or threatened him into pleading guilty, that nobody had made him any promises apart from the plea negotiations, that he was pleading

guilty voluntarily, that he had had sufficient time to discuss the plea and its consequences with his attorney, and that he still wished to plead guilty.

¶ 9 The court found that the defendant understood the charge against him and the range of penalties, found that he understood his rights, and found that he was waiving his rights knowingly and voluntarily. The court found a factual basis for the plea. The court found that the defendant had been convicted of Class 1 felonies in a 2000 case and a 2014 case, that he was born on September 17, 1980, and that he was eligible for Class X sentencing, as agreed by the parties. The parties waived a presentence investigation report. The court sentenced the defendant on count VI to 23 years in prison, with credit for time spent in custody. “Upon release from prison, you’ll be subject to a Mandatory Supervised Release period of three years.” No fines, etc., would be imposed. When the court asked, “is that the sentence you negotiated for?”, the defendant answered, “Yes, ma’am.” Finally, the court advised him of his appeal rights, including the need for a motion to withdraw plea, and the defendant indicated that he did not have any questions about those rights.

¶ 10 The defendant did not file a motion to withdraw his plea. There was no appeal from the judgment of conviction.

¶ 11 On May 25, 2022, the defendant filed a *pro se* petition for postconviction relief, wherein he claimed that he had not received the benefit of his bargain with the State. The defendant stated that the circuit court had added a 3-year term of mandatory supervised release (MSR) to the defendant’s negotiated 23-year prison term without admonishing him about MSR prior to accepting his guilty plea. According to the defendant, “the trial court failed to explicitly link mandatory supervised release to the sentence to which the [defendant] had agreed in exchange for his negotiated plea.” More detail on the petition’s contents will be provided *infra*.

¶ 12 On June 3, 2022, the circuit court entered a written order summarily dismissing the postconviction petition. The court found that the record of the case “completely contradicted” the defendant’s postconviction claim.

¶ 13 The defendant appealed. OSAD was appointed to represent him on appeal.

¶ 14 ANALYSIS

¶ 15 This appeal is from an order summarily dismissing the defendant’s *pro se* postconviction petition. The summary dismissal of a postconviction petition is reviewed *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). It can be affirmed on any basis supported by the record. *People v. Durr*, 215 Ill. 2d 283, 296 (2005).

¶ 16 As previously mentioned, the defendant’s appointed attorney on appeal, OSAD, has filed with this court a *Finley* motion to withdraw on the basis that this appeal lacks merit. Accompanying the motion was a supporting memorandum of law, wherein OSAD discussed two potential issues in this case. These are issues that OSAD considered raising but ultimately found meritless. Those issues were (1) whether the defendant raised a constitutional claim that he was denied the benefit of his bargain with the State by not being informed of the MSR term he would need to serve after serving his 23-year prison sentence, and (2) whether the circuit court’s summary dismissal of the defendant’s postconviction petition was untimely. The defendant, as noted earlier, has not responded to OSAD’s motion. This court will examine both of OSAD’s potential issues.

¶ 17 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)) provides a method by which any person imprisoned in the penitentiary may assert that his conviction resulted from a substantial violation of his federal or state constitutional rights. *Id.* § 122-1(a)(1); *People v. Smith*, 2015 IL 116572, ¶ 9. A proceeding under the Act is a collateral proceeding, not an appeal from the judgment of conviction. *People v. English*, 2013 IL 112890, ¶ 21. A criminal

defendant initiates a proceeding under the Act by filing a petition in the circuit court. 725 ILCS 5/122-1(b) (West 2022). “The petition shall *** clearly set forth the respects in which [the defendant’s] constitutional rights were violated. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” *Id.* § 122-2. The Act requires the circuit court to examine a defendant’s postconviction petition, and enter an order thereon, within 90 days after the petition is filed and docketed. *Id.* § 122-2.1(a). A circuit court needs to determine within the 90-day timeframe whether it should summarily dismiss the defendant’s petition as frivolous or patently without merit (*id.* § 122-2.1(a)(2)) or should order the petition to be docketed for further consideration (see *id.* § 122-2.1(b)). The court must make that determination independently, without any additional input from the defendant, and with no input from the State. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001).

¶ 18 A *pro se* postconviction petition may be dismissed as frivolous or patently without merit only if its allegations, taken as true and liberally construed, fail to state the gist of a constitutional claim. *Id.* In other words, the petition may be dismissed “only if [it] has no arguable basis either in law or in fact. A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation. An example of an indisputably meritless legal theory is one which is completely contradicted by the record.” *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). In order to meet the “gist” standard, a defendant “ ‘need only present a limited amount of detail’ ” in his petition, and he need not make legal arguments or cite to legal authority. *People v. Delton*, 227 Ill. 2d 247, 254 (2008) (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996)). “However a ‘limited amount of detail’ does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional

deprivation.” *Id.* The pleading requirements for a *pro se* petition are low, but they are real, and they must be met if the petition is to avoid summary dismissal. See *Hodges*, 234 Ill. 2d at 9.

¶ 19 In his postconviction petition, the defendant claimed that he had not received the benefit of his bargain under *People v. Whitfield*, 217 Ill. 2d 177 (2005). In *Whitfield*, our supreme court held that there is no substantial compliance with Illinois Supreme Court Rule 402, and a violation of the constitutional right to due process, when a defendant pleads guilty to an offense in exchange for a specific prison sentence and the circuit court, prior to accepting his plea, fails to admonish him that a term of mandatory supervised release will be added to that sentence. *Id.* at 195. Specifically, the defendant claimed that he had pleaded guilty to unlawful possession of a weapon by a felon in exchange for a sentence of 23 years in prison (plus the dismissal of the five more-serious charges in the indictment), and the circuit court, prior to accepting his plea, failed to admonish him that a 3-year term of MSR would be added to that sentence.

¶ 20 As support for that claim, the defendant pointed to passages in the plea transcript, where the court admonished the defendant prior to accepting his guilty plea. These passages included the following:

“THE COURT: *** Upon release from prison, you would be subject to a Mandatory Supervised Release period of three years. This sentence—this sentence would be served at day for day credit. For every day you spend in custody, you would be given a day’s credit. It is non-probationable. And a fine of up to \$25,000 is possible. That’s not part of the negotiations here. Do you understand the range of penalties?

THE DEFENDANT: Yes, ma’am.”

In his petition, the defendant posited that “no ordinary person” would have thought that three years of MSR would be included in his sentence in light of the circuit court’s stating, “That’s not part of the negotiations here.”

¶ 21 This interpretation of the court’s words is fanciful. As OSAD succinctly states in the memorandum in support of its *Finley* motion, “An ordinary person in [the defendant’s] position would have understood that the statement that ‘that’s not part of the negotiations here,’ applied to the imposition of a fine, not the MSR term.” That is because the court’s qualifier was stated immediately after the admonition about the size of a potential fine. It was not stated immediately after the admonition about MSR. The court explicitly admonished the defendant about the three-year MSR term prior to accepting his plea.

¶ 22 Additional evidence that the defendant understood that an MSR term would be a part of his sentence is found in the record immediately after the sentencing. The court imposed the 23-year prison term, with credit for time spent in presentencing custody, and stated, “Upon release from prison, you’ll be subject to a Mandatory Supervised Release period of three years.” It stated that no fines, etc., would be imposed. Then, the court asked the defendant, “is that the sentence you negotiated for?”, and the defendant answered, “Yes, ma’am.” Again, the record itself contradicts the defendant’s postconviction claim. There would be no merit in arguing on appeal that the defendant had raised the gist of a claim that he was deprived of the benefit of his bargain, or that the circuit court had erred in summarily dismissing the defendant’s postconviction petition.

¶ 23 As for OSAD’s other potential issue—*i.e.*, whether the circuit court’s summary dismissal of the defendant’s postconviction petition was untimely—it is patently meritless. The defendant’s petition was file-stamped by the clerk of the circuit court on May 25, 2022, and the court

summarily dismissed the petition on June 3, 2022. The dismissal came just 9 days into the 90 days allotted for entering an order on the petition. See 725 ILCS 5/122-2.1(a) (West 2022).

¶ 24

CONCLUSION

¶ 25 In his postconviction petition, the defendant failed to state the gist of a constitutional claim that he did not receive the benefit of his bargain. Rightly, the circuit court summarily dismissed his petition, and it did so within the 90-day timeframe of the Act. No arguments to the contrary would have any merit. Therefore, OSAD is granted leave to withdraw as counsel, and the judgment of the circuit court, summarily dismissing the defendant's postconviction petition, is affirmed.

¶ 26 Motion granted; judgment affirmed.