

2022 IL App (2d) 200561-U
No. 2-20-0561
Order filed June 3, 2022

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

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-349
)	
JAIME L. AGUIRRE,)	Honorable
)	John J. Kinsella,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's failure to exercise its discretion to appoint counsel on defendant's section 2-1401 petition was harmless error because counsel could not have amended the claims to render them viable.

¶ 2 Defendant, Jaime L. Aguirre, appeals from the judgment of the circuit court of Du Page County that denied his petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)). He contends that the trial court erred when it failed to rule on his motion for appointment of counsel. Because any error in the failure to rule on the motion to appoint counsel was harmless, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On October 30, 2013, defendant entered a negotiated guilty plea to one count of home invasion, a Class X felony (720 ILCS 5/19-6(a)(3), (c) (West 2012)). The parties explained to the trial court that the agreed sentence was 22 years in prison followed by 3 years of mandatory supervised release (MSR). After hearing the factual basis for the plea, the trial court admonished defendant of his rights given up by pleading guilty. The court advised defendant that (1) the sentencing range was 6 to 30 years in prison (see 730 ILCS 5/5-4.5-25(a) (West 2012)); (2) he was subject to a 15-year firearm enhancement (see 720 ILCS 5/19-6(c) (West 2012)); (3) with the enhancement, the minimum sentence was 21 years in prison and the maximum sentence was 45 years in prison; and (4) any prison term would be followed by a three-year term of MSR. The trial court accepted the plea and imposed the agreed-upon sentence of 22 years in prison followed by three years of MSR.

¶ 5 On March 3, 2020, defendant filed a *pro se* petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)) and a motion for appointment of counsel. In his petition, he alleged that (1) the 15-year firearm enhancement for his home-invasion conviction violated the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. 1, § 11), and (2) when he pled guilty, he was not properly admonished regarding a three-year term of MSR.

¶ 6 At a March 17, 2020, status hearing, at which defendant was not present, the State noted that defendant had requested appointment of counsel. Although the trial court stated that it would need to read defendant's petition, it did not mention specifically the motion to appoint counsel.

¶ 7 On April 20, 2020, a letter from defendant was filed with the circuit clerk. In that letter, defendant asked about the status of both his petition and his motion to appoint counsel. The clerk

sent defendant a copy of a notice that the case had been continued to May 19, 2020. Although the case was continued several times thereafter, the trial court never mentioned the motion to appoint counsel.

¶ 8 On August 14, 2020, the State moved to dismiss defendant’s petition. In its motion, the State mentioned that defendant had a pending motion to appoint counsel.

¶ 9 On September 2, 2020, the trial court conducted a hearing on the State’s motion to dismiss. Defendant was not present, and the court dismissed the petition. In doing so, the court did not mention the motion to appoint counsel. Defendant, in turn, filed a timely notice of appeal, and the Office of the State Appellate Defender was appointed.

¶ 10 On appeal, appellate counsel moved to withdraw, contending that there were no issues of arguable merit. Upon reviewing the record, it appeared to this court that defendant’s motion to appoint counsel had never been ruled on. Thus, we denied the motion to withdraw without prejudice and directed the appellate defender “to file either a new motion to withdraw or a brief addressing whether the defendant’s motion to appoint trial counsel remains pending in the trial court and, if so, whether the defendant was prejudiced by the trial court’s failure to rule on the motion for appointment of counsel.” *People v. Aguirre*, No. 2-20-0561 (Aug. 24, 2021) (unpublished minute order). The appellate defender subsequently filed a brief, which is the subject of this appeal.

¶ 11

II. ANALYSIS

¶ 12 On appeal, defendant contends that the trial court committed reversible error when it failed to rule on his motion for appointment of counsel. The State responds that, among other things, any error in failing to rule on the motion to appoint counsel was harmless.

¶ 13 A petitioner seeking to collaterally attack a judgment has no constitutional right to the assistance of counsel. *People v. Stoecker*, 2020 IL 124807, ¶ 35. Additionally, a petitioner seeking relief under section 2-1401 has no express statutory right to counsel. *Stoecker*, 2020 IL 124807, ¶ 36. Accordingly, a trial court is not obligated to appoint counsel in connection with a section 2-1401 petition. *Stoecker*, 2020 IL 124807, ¶ 36. However, trial courts have the discretionary authority to appoint counsel in such a proceeding. *Stoecker*, 2020 IL 124807, ¶ 36.

¶ 14 Where a court erroneously believes that it has no discretion in a matter, its failure to exercise discretion can itself constitute an abuse of discretion. *People v. Chapman*, 194 Ill. 2d 186, 223-24 (2000). However, the effect of such a failure to exercise discretion must be assessed in the context of the entire proceeding. *Chapman*, 194 Ill. 2d at 224. Indeed, not every error is of such magnitude that relief is warranted. *Chapman*, 194 Ill. 2d at 224.

¶ 15 Here, we need not decide whether the trial court erred by failing to rule on defendant's motion to appoint counsel, because any error was harmless.

¶ 16 By entering a guilty plea, a defendant forecloses any claim of error. *People v. Jones*, 2021 IL 126432, ¶ 20. Indeed, it is well established that a voluntary guilty plea waives all nonjurisdictional errors or irregularities, including constitutional ones. *Jones*, 2021 IL 126432, ¶ 20 (citing *People v. Sophanavong*, 2020 IL 124337, ¶ 33).

¶ 17 Defendant entered a fully negotiated guilty plea by which, in exchange for his plea, his remaining charges were dismissed and he received an agreed sentence of 22 years in prison. See *Jones*, 2021 IL 126432, ¶ 21 (a classic guilty plea permits a defendant to gain a present benefit in exchange for the risk that he may forgo future favorable legal developments). By doing so, defendant waived all nonjurisdictional challenges to the guilty plea. This included his claim that the firearm enhancement was unconstitutional. As for the claim that the MSR admonishment was

defective, we note that the guilty plea waiver rule has several exceptions, including where the plea was involuntary because of faulty admonishments. See *People v. Kimmons*, 2022 IL App (2d) 180589, ¶ 38. A guilty plea is invalid if the trial court fails to admonish the defendant that his sentence includes a term of MSR. *People v. Morris*, 236 Ill. 2d 345, 357 (2010) (“[A] defendant must be admonished that a period of parole (now called MSR) is part of the sentence imposed to ensure that the plea is knowing and voluntary.”) (citing *People v. Wills*, 61 Ill. 2d 105, 109 (1975)). Here, however, the record of the plea hearing unequivocally shows that the trial court properly advised defendant that his sentence included a term of MSR. We conclude that appointed counsel would have been unable to amend the petition’s claims to make them viable. Thus, in this context, the trial court’s failure to rule on the motion to appoint counsel was a harmless error. See *Chapman*, 194 Ill. 2d at 224 (the effect of a failure to exercise discretion must be assessed in the context of the entire proceeding).

¶ 18 Although defendant relies on *People v. Bernard*, 2021 IL App (2d) 181055, and *People v. Dalton*, 2021 IL App (3d) 180093-U, to show that the trial court’s failure to rule on defendant’s motion to appoint counsel was not harmless error, those cases are distinguishable. In both *Bernard* and *Dalton*, the trial court failed to recognize its authority to appoint counsel, and the reviewing court held that the error was not harmless. See *Bernard*, 2021 IL App (2d) 181055, ¶¶ 11-12, 24, 35; *People v. Dalton*, 2021 IL App (3d) 180093-U, ¶¶ 9-10, 15, 17. In *Dalton*, the Third District held that, “[h]ad the court chosen to appoint counsel in an exercise of its discretion, it is impossible to determine whether counsel would have amended the petition or whether any such amendments would have affected the outcome of the proceedings.” *Dalton*, 2021 IL App (3d) 180093-U, ¶ 17. Likewise, in *Bernard*, we held—relying on *Dalton*—that “[w]e [could not] determine whether appointed counsel would have amended the section 2-1401 petition and whether any such

amendments might have changed the outcome of the proceeding.” *Bernard*, 2021 IL App (2d) 181055, ¶ 32.

¶ 19 Unlike the petition here, the petitions in *Bernard* and *Dalton* were not obviously without potential merit. The defendants in *Bernard* and *Dalton* were convicted following jury trials and, thus, did not face the procedural obstacles that follow from a guilty plea as does defendant here. See *Bernard*, 2021 IL App (2d) 181055, ¶ 3; *Dalton*, 2021 IL App (3d) 180093-U, ¶ 4. The petition in *Bernard* raised a claim of actual innocence that could not be discounted as lacking any substantive promise. See *Bernard*, 2021 IL App (2d) 181055, ¶ 13. The same was true of the petition in *Dalton*, which alleged: “newly discovered evidence that established both a ‘412 Brady violation’ and defendant’s actual innocence.” *People v. Dalton*, 2017 IL App (3d) 150213, ¶ 11.

¶ 20 Here, by contrast, we can determine that counsel could not have benefited defendant, because, as we have discussed, one of defendant’s claims was waived by his guilty plea and the other was rebutted by the record. We conclude that neither *Bernard* nor *Dalton* supports defendant’s position.

¶ 21 This case is more akin to *People v. Zemater*, 2021 IL App (2d) 190969-U, ¶ 7, where the trial court failed to recognize its discretionary authority to appoint counsel in a section 2-1401 proceeding. We held that the trial court’s failure to exercise its discretion was harmless. See *Zemater*, 2021 IL App (2d) 190969-U, ¶ 19. We did so, in part, because we could not conceive of any way that appointed counsel could have amended the petition to state a viable claim. *Zemater*, 2021 IL App (2d) 190969-U, ¶ 19. The same is true here.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 24 Affirmed.