

APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

People v. Fathauer

2019 IL App (4th) 180241 · No. 4-18-0241 · Decided June 5, 2020

SUMMARY

The Illinois Appellate Court, Fourth District, reviewed the dismissal of Lynn A. Fathauer's postconviction petition. The court held that postconviction counsel properly explained why the petition's claims were frivolous or patently without merit and that the trial court properly permitted counsel to withdraw before dismissing the petition. The judgment was affirmed.

CASE DETAILS

COURT	Appellate Court of Illinois, Fourth District
WRITING FOR THE COURT	Justice Steigmann; Presiding Justice Holder White; Justice Knecht
JURISDICTION	Illinois
DECIDED	June 5, 2020
DOCKET	4-18-0241
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the Sangamon County circuit court's order granting the State's motion to dismiss his postconviction petition after the court had permitted appointed postconviction counsel to withdraw.
STANDARD OF REVIEW	The opinion reviews the trial court's ruling on postconviction counsel's motion to withdraw and the postconviction proceedings under the applicable statutory and Rule 651(c) standards; the court's analysis treats the legal issues as subject to de novo review.
PRECEDENTIAL VALUE	Published Illinois appellate opinion; precedential
PARTIES	Lynn A. Fathauer v. The People of the State of Illinois

TOPICS

post-conviction relief ineffective assistance criminal procedure appellate procedure standard of review

PRACTICE AREAS

criminal postconviction proceedings ineffective assistance of counsel criminal procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly permitted appointed postconviction counsel to withdraw after counsel explained why each of defendant's pro se claims was frivolous or patently without merit.
2. Whether defendant's postconviction petition stated an arguably meritorious ineffective-assistance-of-trial-counsel claim based on counsel's alleged failure to investigate and effectively cross-examine Trudeau.
3. Whether postconviction counsel provided ineffective assistance by failing to amend defendant's pro se petition to assert that trial counsel inadequately cross-examined Trudeau.

HOLDINGS

1. When a postconviction petition is advanced to the second stage by affirmative judicial action, appointed counsel seeking to withdraw must provide at least some written explanation, based on information beyond the petition's face, showing why each pro se claim is in fact frivolous or patently without merit. Counsel satisfied that requirement here.
2. Defendant's ineffective-assistance claim was meritless because the record showed that trial counsel knew of Trudeau's interviews and cross-examined him about his prior statements, credibility, drug use, pending charges, and motive to lie.
3. Postconviction counsel was not ineffective for failing to amend the petition to assert that trial counsel inadequately cross-examined Trudeau because the proposed claim was meritless and contradicted by the record.

KEY QUOTATIONS

“appointed counsel owes the trial court at least some explanation as to why, despite its superficial virtue, the pro se petition is in fact frivolous or patently without merit, and counsel owes this explanation with respect to each of the defendant’s pro se claims.” (§ 44)

“The burden for establishing that [the petition’s claims in fact lack merit] rests squarely on appointed counsel” (§ 50)

FACTUAL BACKGROUND

In 2010, defendant was in a vehicle with Daron Trudeau when police attempted to stop the vehicle. Trudeau testified that defendant assisted with methamphetamine processing and threw a jar containing methamphetamine from the vehicle at Trudeau's direction. A jury convicted defendant based substantially on Trudeau's testimony, and the convictions and sentences were affirmed on direct appeal. In his postconviction petition, defendant alleged, among other things, that trial counsel failed to investigate and effectively impeach Trudeau with prior inconsistent statements.

PROCEDURAL HISTORY

A jury convicted defendant of participation in methamphetamine manufacturing and obstruction of justice, and the circuit court imposed concurrent prison sentences. The appellate court affirmed on direct appeal. Defendant

later filed a pro se postconviction petition; the circuit court advanced it to the second stage and appointed counsel. Counsel moved to withdraw, the court granted that motion without ruling on the State's dismissal motion, and the appellate court dismissed defendant's initial appeal for lack of a final order. On remand, the circuit court dismissed the petition, and defendant brought this appeal.

DISPOSITION

affirmed

CASES CITED

- People v. Fathauer, 2013 IL App (4th) 120424-U
- People v. Fathauer, 2017 IL App (4th) 160364-U
- People v. Kuehner, 2015 IL 117695, 32 N.E.3d 655
- People v. Crenshaw, 2015 IL App (4th) 131035, 38 N.E.3d 1256
- People v. Allen, 2015 IL 113135, 32 N.E.3d 615
- People v. Hodges, 234 Ill. 2d 1, 912 N.E.2d 1204 (2009)
- People v. Johnson, 2018 IL App (5th) 140486, 99 N.E.3d 1
- People v. Greer, 212 Ill. 2d 192, 817 N.E.2d 511 (2004)
- People v. Bocclair, 202 Ill. 2d 89, 789 N.E.2d 734 (2002)
- People v. Blair, 215 Ill. 2d 427, 831 N.E.2d 604 (2005)
- People v. Pecoraro, 175 Ill. 2d 294, 677 N.E.2d 875 (1997)