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2019 IL App (3d) 160615-U

Order filed January 23, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0615
)	Circuit No. 09-CF-1335
YOHNI ANISE BROWN,)	
Defendant-Appellant.)	Honorable John P. Vespa, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in dismissing defendant's postconviction petition at the second stage of proceedings where the petition failed to make a substantial showing of a constitutional violation.

¶ 2 Defendant, Yohni Anise Brown, appeals the second-stage dismissal of her postconviction petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with first degree murder (720 ILCS 5/9-1(a)(3) (West 2008)) and two counts of armed robbery (*id.* § 18-2(a)(2)). The circuit court appointed a public defender to represent defendant. Defendant changed counsel several times. Ultimately, the circuit court reappointed the same public defender (plea counsel) over defendant’s objection.

¶ 5 Subsequently, defendant entered a negotiated plea to plead guilty to one count of armed robbery. Pursuant to the plea, defendant agreed to testify against her codefendant at his trial. In exchange, the State agreed to a term of 18 years’ imprisonment.

¶ 6 At the hearing on the plea, defendant informed the court that she had spoken with plea counsel about the guilty plea and that plea counsel had had answered all of her questions. Defendant stated that she was satisfied with plea counsel’s services and she understood the guilty plea and its terms. Defendant also stated that she understood the rights she was giving up by pleading guilty. Defendant stated that she was pleading guilty on her own volition, that she did not require any more time to decide, and that nobody made any threats or promises for her plea.

¶ 7 On March 24, 2011, the court accepted defendant’s plea and imposed the 18-year sentence. Defendant did not appeal.

¶ 8 Four years after sentencing, defendant filed a *pro se* postconviction petition. For clarity, we only discuss the facts contained in the petition which are relevant to this appeal. Defendant’s petition alleged that plea counsel provided ineffective assistance. According to defendant, plea counsel was unresponsive to her and her family and “very lackadaisical in [her] defense.” Defendant also argued that it was wrong for the circuit court to reappoint plea counsel over her objection. Defendant claimed, “because of these circumstances of me not having the proper counsel of my choice I gave into a plea that I really did not want to take. I just said yes because I was tired of the back and forth with the court and no one listening to me. *** My rights were

violated. I had ineffective assistance of counsel; I felt I was rushed to take a plea and or go to trial.”

¶ 9 The petition advanced to the second stage and defendant was appointed postconviction counsel. The State filed a motion to dismiss defendant’s petition. The State alleged defendant’s petition was untimely and defendant failed to allege a constitutional error that entitled her to postconviction petition relief.

¶ 10 Subsequently, postconviction counsel filed a supplemental postconviction petition incorporating defendant’s *pro se* petition. The supplemental petition alleged that defendant’s untimely petition should be excused because the delay in filing was not due to defendant’s culpable negligence. Attached to the supplemental petition is a notarized letter written by defendant, which alleged that she did not enter her guilty plea voluntarily because of problems she had with plea counsel. According to defendant, plea counsel “was not putting in the proper motions that [she] was asking him.” Defendant also claimed that plea counsel insisted that she accept the State’s plea offer despite defendant’s desire to go to trial. Additionally, defendant alleged that plea counsel was willing to go to trial, but defendant was not confident in plea counsel’s desire to take the case to trial. Finally, defendant claimed that because she did not understand what transpired in her case, therefore her plea was involuntary.

¶ 11 At the second-stage hearing, postconviction counsel filed an additional supplemental petition which alleged that plea counsel performed deficiently and had plea counsel not performed deficiently, defendant would have insisted on going to trial. Ultimately, the circuit court found that defendant failed to allege that her untimely filing was not the result of her culpable negligence. Additionally, the court found that defendant failed to allege a constitutional deprivation. The court, therefore, dismissed defendant’s petition.

¶ 12

II. ANALYSIS

¶ 13

On appeal, defendant argues that she is entitled to a third-stage postconviction hearing because she sufficiently alleged a claim of ineffective assistance of plea counsel. A postconviction petition will be dismissed at the second stage of proceedings “only when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation.” *People v. Hall*, 217 Ill. 2d 324, 334 (2005). At this stage, a petitioner’s factual allegations are taken as true unless they are affirmatively rebutted by the record. *People v. Domagala*, 2013 IL 113688, ¶ 35. Thus, the “substantial showing” standard is an inquiry into whether the allegations in the petition, if proven true at an evidentiary hearing, would entitle the petitioner to relief. *Id.* We review the second-stage dismissal of a postconviction petition *de novo*. *Hall*, 217 Ill. 2d at 334.

¶ 14

Defendant contends that her postconviction petition sufficiently alleged that plea counsel was ineffective for failing to “visit, consult, and advise [defendant],” and failing to “sufficiently explain the proceedings and important issues.”¹ Defendant makes no further argument explaining how plea counsel performed deficiently or how defendant was prejudiced by counsel’s conduct. However, defendant contends that these allegations are sufficient to advance her petition to a third-stage hearing to “further investigate the merits of her petition.” We find defendant failed to make a substantial showing that she was prejudiced based on counsel’s performance. *People v. Griffin*, 178 Ill. 2d 65, 74 (1997) (if an ineffective assistance claim can be disposed of because defendant suffered no prejudice, we need not determine whether counsel’s performance was deficient).

¹In defendant’s brief, she contends that her petition alleged several claims of ineffective assistance of counsel that are not limited to the above claims. However, defendant fails to identify these claims and makes no argument that these additional claims make a substantial showing of ineffective assistance. We will not address the points not argued by defendant on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017).

¶ 15 To advance to a third-stage evidentiary hearing on a postconviction claim of ineffective assistance of plea counsel, the defendant must make a substantial showing that, but for counsel's errors, the result of the proceeding would have been different. *People v. Hughes*, 2012 IL 112817, ¶ 44. To satisfy this " 'prejudice' requirement," the defendant must show that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *People v. Pugh*, 157 Ill. 2d 1, 15 (1993) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). A bare assertion that the defendant would not have pleaded guilty is not sufficient to establish prejudice. *Hughes*, 2012 IL 112817, ¶ 64. The defendant must assert either a claim of actual innocence or articulate a plausible defense that could have been raised at trial. *Id.* Overall, the defendant "must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010).

¶ 16 In this case, defendant did not make a claim of innocence or articulate a plausible defense. Defendant rested solely on her allegation that she only pled guilty based on her personal belief that plea counsel did not want to go to trial and was not working hard enough on her case. Defendant's bare assertion that she would not have pled guilty, but for plea counsel's conduct, does not establish prejudice. See *People v. Presley*, 2012 IL App (2d) 100617. Even if defendant did not need to raise either a claim of innocence or a possible defense, defendant failed to provide any specific example of erroneous or misleading advice that caused her to accept the State's plea offer. Also, defendant's personal belief that plea counsel did not want to take her case to trial is contradicted by her own petition which explicitly stated that counsel told her that he would go to trial. In sum, defendant failed to demonstrate that it would have been rational to

reject the State's offer under the circumstances. Therefore, we affirm the circuit court's dismissal of defendant's second-stage postconviction petition.²

¶ 17

III. CONCLUSION

¶ 18

The judgment of the circuit court of Peoria County is affirmed.

¶ 19

Affirmed.

²Because defendant's claim fails on the merits, we need not address defendant's second argument that her untimely filing should be excused because her delay in filing the petition was not the result of her culpable negligence.