

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-17-0149

Order filed August 22, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

HERBERT BURGESS,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Cook County.
)
) No. 11 CR 14714
)
) Honorable
) James N. Karahalios,
) Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant-Herbert Burgess appeals from an order of the circuit court of Cook County summarily dismissing his *pro se* postconviction petition as frivolous and patently without merit.

¶ 2 Following a jury trial, defendant was convicted of aggravated criminal sexual assault, criminal sexual assault, and unlawful restraint. The trial court sentenced defendant to concurrent prison terms of 24 years, 15 years, and 3 years, respectively. On direct appeal, this court vacated the criminal sexual assault conviction under the one-act, one-crime principle and affirmed

~~A-19~~ APPENDIX B A

defendant's remaining convictions and sentences in all other respects. *People v. Burgess*, 2015 IL App (1st) 130657.

¶ 3 On November 23, 2016, defendant filed the instant *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)). Defendant raised numerous claims that his trial counsel rendered ineffective assistance based on counsel's actions throughout the trial proceedings. Defendant alleged that counsel: failed to demand a speedy trial and move for dismissal based on a violation of his right to a speedy trial; failed to impeach multiple witnesses; failed to object to testimony; failed to investigate and present exculpatory evidence; advocated for the State; misrepresented facts to the court; and failed to present a "full defense." Defendant also alleged that the State committed prosecutorial misconduct based upon improper statements made by the prosecutor during the trial. In addition, defendant alleged that he was denied a fair trial due to judicial bias based on numerous comments made by the court which demonstrated that it favored the State. The circuit court summarily dismissed defendant's postconviction petition as frivolous and patently without merit.

¶ 4 The Office of the State Appellate Defender, who was appointed to represent defendant in his appeal from the dismissal of his postconviction petition, has filed a motion for leave to withdraw based on counsel's conclusion that an appeal in this cause would be without arguable merit. The motion was made pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and is accompanied by a memorandum in which counsel concludes that the circuit court correctly determined that the issues raised in defendant's petition are without merit. Counsel states that defendant's claims that trial counsel failed to demand a speedy trial, move for dismissal, object to testimony, and impeach witnesses are directly rebutted by the record. Counsel asserts that trial

counsel conducted rigorous cross-examination of the State's witnesses regarding inconsistent testimony and emphasized those inconsistencies during his closing argument. Counsel states that defendant's claim that trial counsel failed to investigate and present exculpatory evidence lacks specificity, and is speculative and conclusory. Counsel further states that defendant's claim that trial counsel failed to present a full defense lacks specificity and is rebutted by the record which shows that counsel was a thorough and zealous advocate for defendant throughout the trial. Counsel notes that all of defendant's claims of ineffective assistance are based on facts contained in the record, and thus, are barred by forfeiture because they should have been raised on direct appeal. In addition, counsel states that defendant's claims of prosecutorial misconduct and judicial bias are barred by the doctrine of *res judicata* as both of these issues were extensively argued on direct appeal and rejected by this court. Counsel concludes that in his "lengthy and rambling petition" defendant has attempted to relitigate his trial rather than raising specific claims of constitutional violations, and therefore, summary dismissal was proper.

¶ 5 Copies of counsel's motion and memorandum were sent to defendant and he was advised that he might submit any points in support of his appeal. Defendant submitted a *pro se* response rearguing his claims and maintaining that they have merit. Defendant also requests that this court appoint him "an independent bar association appellate counsel."

¶ 6 We have carefully reviewed the record in this case, counsel's memorandum, and defendant's *pro se* response and have found no issues of arguable merit to be asserted on appeal. We therefore grant the motion of the State Appellate Defender for leave to withdraw as counsel and affirm the judgment of the circuit court of Cook County. This order is entered in accordance with Supreme Court Rule 23(c)(2) (eff. Apr. 1, 2018).

¶ 7 Affirmed.



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

Herbert Burgess
Reg. No. M-35077
Lawrence Correctional Center
10930 Lawrence Road
Sumner IL 62466

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

January 29, 2020

In re: People State of Illinois, respondent, v. Herbert Burgess, petitioner.
Leave to appeal, Appellate Court, First District.
125544

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 03/04/2020.

Very truly yours,

Carolyn Taft Gosbell

Clerk of the Supreme Court

APPENDIX B