2011 IL App (1st) 100469-U

FIRST DIVISION
November 14, 2011

No. 1-10-0469

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 01 CR 23890
	)	
MAURICE LANIER,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 *Held*: Summary dismissal of defendant's post-conviction petition affirmed where defendant failed to provide an affidavit or supplemental material for his allegations of ineffective assistance of counsel.

¶ 2 Defendant Maurice Lanier appeals the summary dismissal of his *pro se* petition seeking relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2008)). He contends that the circuit court erred in dismissing his petition at the first stage of proceedings because he raised an arguable claim that his trial counsel failed to investigate potential witnesses who would have impeached the State's only eyewitness.

¶ 3 Following a simultaneous, but severed, bench trial with a co-defendant who is not party to this appeal, defendant was found guilty of aggravated criminal sexual assault based on evidence showing that he held down the arms of the 10-year-old victim, G.C., while his co-defendant sexually assaulted her. Defendant was sentenced to seven years' imprisonment and this court affirmed that judgment on direct appeal. *People v. Lanier*, No. 1-07-2312 (2009) (unpublished order under Supreme Court Rule 23).

¶ 4 Ten months later, defendant filed the instant *pro se* post-conviction petition alleging, *inter alia*, ineffective assistance of trial and appellate counsel. Defendant claimed that trial counsel was ineffective for failing to investigate two witnesses, G.C.'s cousin and Jessica Bogan, who he claimed, would have testified in a manner to refute G.C's testimony, including an admission to Bogan that G.C. lied about being raped. Defendant further claimed that appellate counsel was ineffective for failing to raise this issue on direct appeal. In support of his claims, defendant appended to his petition his own "affidavit" in which he stated that he had told trial counsel about both of these witnesses, but that counsel never called the witnesses and never told defendant why he had not.

¶ 5 In a written order, the circuit court summarily dismissed defendant's petition as frivolous and patently without merit. In doing so, the court noted that defendant failed to make the requisite factual showing that trial counsel was ineffective because defendant did not attach affidavits or identify the cousin by name; and further, noted that defendant did not establish that the testimony of the witnesses would alter the outcome of the trial. The court also noted that defendant failed to establish ineffective assistance of appellate counsel because the issues that defendant challenged were not meritorious.

¶ 6 In this appeal from that ruling, defendant contends that the trial court erred in summarily dismissing his *pro se* petition because he raised an arguable claim that his trial counsel failed to

investigate potential witnesses who would have contradicted G.C.'s version of events. Our review of this first-stage dismissal is *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

¶ 7 Section 122-2 of the Act requires that a post-conviction petitioner set forth the respects in which his constitutional rights have been violated. 725 ILCS 5/122-2 (West 2008). Although there is a low pleading threshold for the first stage of post-conviction proceedings, a *pro se* petitioner is not excused from providing any factual detail surrounding the alleged constitutional violation. *Hodges*, 234 Ill. 2d at 10.

¶ 8 Section 122-2 of the Act provides that a petitioner must attach affidavits, records, or other evidence to support his allegations, or explain why they are absent. 725 ILCS 5/122-2 (West 2008). The purpose of this requirement is to establish that the allegations in the petition are capable of "objective or independent corroboration." *People v. Delton*, 227 Ill. 2d 247, 254 (2008).

¶ 9 At the dismissal stage of a post-conviction proceeding, the post-conviction court is concerned merely with determining whether the allegations in the petition sufficiently demonstrate a constitutional infirmity which would necessitate relief under the Act. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). If the court determines that the petition is frivolous and patently without merit, as the court did with the claims herein, the claims must have no arguable basis in law or fact (*Hodges*, 234 Ill. 2d at 11-12), and the court must dismiss it in a written order (725 ILCS 5/122-2.1(a)(2) (West 2008)).

¶ 10 In this case, defendant attacked the competency of his trial counsel for failing to investigate or call two witnesses at trial and his appellate counsel for failing to raise the ineffectiveness issue on direct appeal. As support for his allegations, defendant attached his own signed, but unnotarized, "affidavit" stating that he told his trial counsel about G.C.'s unnamed cousin, who allegedly saw G.C. and one of the co-defendants hugging in the street, and another

woman named Jessica Bogan, to whom G.C. had purportedly told that she "was lying about being raped."

¶ 11 We initially observe that affidavits filed pursuant to the Act must be notarized in order to be valid. *People v. Carr*, 407 Ill. App. 3d 513, 516 (2011), citing *People v. Niezgoda*, 337 Ill. App. 3d 593, 597 (2003). Since defendant's affidavit was not notarized, it was not valid (*Carr*, 407 Ill. App. 3d at 516), had no legal effect (*Niezgoda*, 337 Ill. App. 3d at 597), and merits no further consideration. We further observe that defendant's invocation of the verification requirement pursuant to section 109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2008)) at the conclusion of his petition is not a substitute for the affidavit required under the Act. *People v. Tlatenchi*, 391 Ill. App. 3d 705, 715-16 (2009).

¶ 12 Moreover, where, as here, defendant attacks the competency of his counsel for failing to call or investigate witnesses, he must introduce affidavits from those individuals who would have testified (*People v. Guest*, 166 Ill. 2d 381, 402 (1995)), showing the potential testimony of such witnesses and explaining the significance of their testimony (*People v. Dean*, 226 Ill. App. 3d 465, 468 (1992)). Without affidavits, the reviewing court cannot determine whether these witnesses could have provided any information or testimony favorable to defendant. *Guest*, 166 Ill. 2d at 402. Here, defendant provided no affidavit or supporting material to support his claims. This failure to comply with section 122-2 is "fatal" to a post-conviction petition and by itself justifies the summary dismissal of his petition. *Delton*, 227 Ill. 2d at 255.

¶ 13 Accordingly, we affirm the summary dismissal of defendant's *pro se* post-conviction petition by the circuit court of Cook County.

¶ 14 Affirmed.