

No. 1-10-1762

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. 06 CR 25177
)	
JAMES TAYLOR a/k/a JIMMY SMITH,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's orders denying defendant's *pro se* postconviction petition and assessing charges for filing a frivolous petition were affirmed where the petition's unsupported allegations of defendant's trial counsel's ineffectiveness stated no factual basis, and the legal theory of a sixth amendment deprivation was completely contradicted by the record.

¶ 2 Defendant James Taylor, A/K/A Jimmy Smith, appeals from the denial of his *pro se* postconviction petition. He contends his petition raised a claim with an arguable basis in law and fact, *i.e.*, that his trial counsel was ineffective for failing to investigate his case and advise

him of a defense, and for coercing him to plead guilty to attempted murder. Defendant also appeals the imposition of a \$105 charge for filing a frivolous petition. We affirm.

¶ 3 Defendant was charged by indictment with the attempted first degree murder of Maurice Williams and the aggravated battery of Williams with a firearm. On March 12, 2007, defendant entered into a negotiated guilty plea to attempted first degree murder and was sentenced to 10 years in prison. During the proceeding, the circuit court questioned defendant about the voluntariness of his plea following his acceptance of an offer by the State.

"THE COURT: You're accepting that [offer of 10 years], is that right?

THE DEFENDANT: Yes.

THE COURT: Do you understand, Mr. Taylor, that nobody is forcing you to do that?

THE DEFENDANT: Yes.

THE COURT: Other than the results of the conference, any other promises made to you to cause you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Anybody threaten you or coerce you to make you plead guilty?

THE DEFENDANT: No, sir.

THE COURT: You're doing this of your own free will, are you?

THE DEFENDANT: Yes, sir."

¶ 4 The State and defendant, through his counsel, stipulated to a factual basis for the guilty plea which included the following. Maurice Williams would testify that on September 28, 2006, he was in a vacant lot on South Mozart in Chicago with several other men when he heard several

loud gunshots in his direction. Williams would testify that he was not armed at that time. He began to run, but he tripped and fell. Williams would further testify that he turned around and saw defendant, who was holding a handgun, and Williams asked defendant not to shoot him. Defendant then shot Williams several times in the lower extremities, wounding him in both legs and grazing his foot. Subsequently, Williams identified defendant in a photo array, defendant was arrested, and Williams identified defendant in a lineup. Detective Bor would testify that, after he advised defendant of his *Miranda* rights, defendant gave a handwritten statement admitting that he shot Williams; that defendant had a .45-caliber handgun; that after he saw some of the men whom Williams was with pull out a handgun, defendant pulled out his own handgun; that shots were exchanged between the two groups, although that did not include Williams having a handgun; and that when defendant saw Williams fall down, he stood over Williams and shot him in order to scare him.

¶ 5 The circuit court accepted defendant's plea of guilty and sentenced him to 10 years in prison. Defendant did not pursue a direct appeal.

¶ 6 In 2009, defendant filed in the circuit court a handwritten *pro se* motion for sentence reduction, which stated in part that defendant took "full responsibility" for his crime and was "deeply remorseful for the pain and suffering" that he caused the victim, the victim's family and his community. On August 20, 2009, the circuit court denied defendant's motion for sentence reduction. Defendant re-filed his motion, again taking "full responsibility" for the attempted first degree murder and expressing his deep remorse for the pain and suffering he caused. On November 10, 2009, the circuit court again denied defendant's motion.

¶ 7 In 2010, defendant filed a *pro se* postconviction petition in the circuit court. The petition contended, *inter alia*, that defendant was denied his sixth amendment right to counsel. Relative to that claim, the petition stated in full:

"Petitioner's 6th U.S. Amendment right to effective assistance of counsel and lawful practice of law was violated.

Pre-trial counsel failed to effect [sic] represent Petitioner.

Pre-trial counsel failed to adequately investigate case, witness & constantly lied to Petitioner that he was in fact investigating his case, witness & other support.

Pre-trial counsel coerced Petitioner to Plea [sic] guilty to conviction, that he is actually innocent of & had a right to defend himself under the circumstances, Protected & Promoted by the 2nd U.S. Amendment.

Pre-trial counsel failed to inform petitioner of his defense.

Pre-trial counsel failed to request for re-consideration of Judgment.

Pre-trial counsel failed to inform Petitioner of the voidness of his Judgment. See sentencing transcripts."

The petition was unsupported by transcripts, affidavits, or other documentation.

¶ 8 On April 16, 2010, the circuit court judge, who had denied defendant's previous motions for sentence reduction, characterized defendant's *pro se* postconviction petition "as a second or subsequent filing of a petition for postconviction relief" and denied defendant leave to file the petition. The court also found that the petition was frivolous and patently without merit, and assessed \$105 (a \$90 filing fee and \$15 in costs) against defendant for filing a frivolous petition.

¶ 9 On appeal, defendant contends that the denial of his *pro se* postconviction petition was error where the petition had an arguable basis both in law and in fact that his trial counsel was ineffective by failing to investigate his case and lying to him that an investigation was being

conducted, failing to inform him of a potentially meritorious self-defense claim, and coercing him to plead guilty.

¶ 10 We review *de novo* the dismissal of a postconviction petition at the first stage. *People v Hodges*, 234 Ill. 2d 1, 9 (2009). A *pro se* petition seeking relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) may be dismissed summarily as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. *Id.* at 11-12, 16. A petition lacking an arguable basis either in law or in fact is one based on an indisputably meritless legal theory (*e.g.*, a theory completely contradicted by the record) or a fanciful factual allegation (*e.g.*, one which is fantastic or delusional). *Id.* at 16-17. The petition cannot consist of nonfactual and nonspecific assertions that merely amount to conclusions that errors occurred at trial. *People v. Wilborn*, 2011 IL App (1st), 092802, ¶54.

¶ 11 A defendant's claim of ineffective assistance of counsel is guided by the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), which requires a showing of deficient performance by counsel and prejudice to the defendant from the deficient performance. *People v. Torres*, 228 Ill. 2d 382, 394-95 (2008). The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010). A petition alleging ineffective counsel at the first stage of postconviction proceedings may not be dismissed summarily if it is arguable that counsel's performance fell below an objective standard of reasonableness and the defendant was prejudiced. *Hodges*, 234 Ill. 2d at 17.

¶ 12 Defendant's petition had no arguable factual basis where it failed to set forth any facts to establish a constitutional violation for purposes of invoking the Act. The petition failed to comply with section 122-2 of the Act, requiring that the petition "shall identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment

complained of, and clearly set forth the respects in which petitioner's constitutional rights were violated." 725 ILCS 5/122-2 (West 2008). The petition lacked the most basic information about defendant's guilty plea and contained no factual support for its conclusory allegations of ineffective counsel.

¶ 13 For example, the petition made the undocumented claim that defendant's counsel "failed to inform [defendant] of his defense." A liberal reading of the petition as a whole indicates defendant was referring to a claim of self-defense. However, the petition contained no allegation that defendant communicated the pertinent facts relating to a possible self-defense claim to his counsel, who was not required "to read the defendant's mind." See *People v. Irvine*, 379 Ill. App. 3d 116, 130 (2008). In *People v. Harris*, 206 Ill. 2d 293 (2002), the defendant's postconviction petition advanced a claim of ineffective assistance of trial counsel because his attorney failed to investigate and present alibi evidence. The supreme court held that "defendant is clearly the source of this evidence and, yet, does not explain why he failed to inform his attorney about the existence of his alibi defense before trial. He cannot now blame his attorney for failing to investigate and discover this evidence." *Id.* at 306. Similarly, defendant's bald claims that his counsel coerced him to plead guilty and that he was "actually innocent" were also unsupported assertions that amounted to mere conclusions and conjecture.

¶ 14 We also conclude that defendant's legal theory was indisputably meritless where it was completely contradicted by the record. The legal theory advanced was that defendant's sixth amendment right to effective assistance of counsel was abridged based on defendant's claim that his counsel failed to inform defendant "of his defense," failed to adequately investigate his case, and coerced defendant to plead guilty despite his innocence. Defendant's claims of innocence and of the existence of a defense were negated by defendant's stipulation to facts establishing that, as the unarmed victim lay on the ground begging defendant not to shoot him, defendant shot

the victim several times in order to "scare" him. In two subsequent *pro se* motions for reduction of sentence, defendant stated that he took "full responsibility" for the attempted murder of the victim and was "deeply remorseful for the pain and suffering" that he caused the victim. The claim of coerced guilty plea was contradicted by the record which revealed that during the guilty plea proceeding, the circuit court questioned defendant about the voluntariness of his plea and defendant responded that no one had threatened or coerced him to plead guilty. The record established that defendant's legal theory of ineffectiveness of counsel was baseless.

Consequently, the denial of defendant's *pro se* postconviction petition and the court's conclusion that the petition was frivolous and patently without merit were warranted.

¶ 15 Defendant's opening brief also contended that the circuit court erred in imposing charges totaling \$105 for filing a frivolous petition. The charges were based on section 22-105 of the Code of Civil Procedure (735 ILCS 5/22-105 (West 2008)), which allows for the assessment of filing fees and court costs against prisoners who file frivolous pleadings. Defendant had argued that the statute was unconstitutional as violating due process and equal protection, and that the statute's use of the term "frivolous" was distinct from the meaning of that term in evaluating first-stage postconviction petitions. Defendant's reply brief concedes that our supreme court's opinion in *People v. Alcozer*, 241 Ill. 2d 248 (2011), obviates his arguments on this issue. As we have concluded that the circuit court's assessment of defendant's petition as frivolous was correct, we also affirm the court's order imposing the charge of \$105.

¶ 16 For the reasons stated, we affirm the judgment of the circuit court.

¶ 17 Affirmed.