

No. 1-08-3582

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County, Illinois.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 04 CR 283
	)	
QUENTIN COX,	)	The Honorable Lawrence P. Fox,
	)	Judge Presiding.
Defendant-Appellant.	)	

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JUSTICE MURPHY delivered the judgment of the court.  
Quinn, P.J. and Neville, J. concurred in the judgment.

**ORDER**

*Held:* Summary dismissal of a post-conviction petition affirmed where defendant's claims of ineffective assistance of trial and appellate counsel had no arguable basis in law or in fact.

Defendant Quentin Cox appeals from the summary dismissal of his *pro se* petition for 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 where he set forth cognizable claims of ineffective assistance of trial and appellate counsel.

Following a jury trial, defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2002)) in the shooting death of James Davis, then sentenced to 65 years'

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imprisonment. This court affirmed that judgment on direct appeal. *People v. Cox*, 377 Ill. App. 3d 690 (2007).

Defendant filed a timely *pro se* petition for post-conviction relief raising numerous allegations, including ineffective assistance of counsel. As pertinent to this appeal, defendant claimed that trial counsel was ineffective for failing to investigate and develop his alibi defense. In support of that allegation, defendant attached his signed statement to his petition. He stated therein that trial counsel asked him where he was on the night of the shooting, and he "repeatedly" told her that he was in Minneapolis, Minnesota, with his older brother, Martel Cox, and the mother of his child, Lashonda Gail. He also stated that counsel asked him why he was not in school (defendant was 16 years of age at the time of the offense) and he responded that he had been suspended for 10 days for "not wearing the school uniform and walking out of the room." Defendant asserted that counsel never discussed these matters with him again.

Defendant further alleged that his right to due process was violated when the State elicited testimony of his alleged gang affiliation at trial. He maintains that this action reflected the State's plan to "make inferences" that his murder trial was gang-related, and when the trial court realized this, it sustained defense counsel's objection to the line of questioning and the inferences being made. Defendant claimed, however, that "the damage had already been done," and that he suffered prejudice as a result.

The circuit court timely reviewed defendant's petition which it characterized as "38 pages of rambling, repetitive, at times incoherent and incomprehensible allegations, all of which are unsupported by factual and/or legal basis [*sic*]." The court also noted the lack of "logical organization" to defendant's petition and the consequent difficulty in responding to his claims in the order they were raised. Notwithstanding, the court conducted an exhaustive review, noting

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that most of the allegations were couched in terms of ineffective assistance of trial and appellate counsel. In the end, the court summarily dismissed defendant's petition as frivolous and patently without merit.

In this appeal, defendant challenges the propriety of that dismissal. He contends that his allegations that trial counsel failed to investigate and develop his alibi defense, and appellate counsel's failure to argue on direct appeal the impropriety of the gang references elicited by the State at trial, set forth constitutional violations with an arguable basis in law and fact, requiring further proceedings.

The Act provides a mechanism by which a criminal defendant may assert that his conviction was the result of a substantial denial of his constitutional rights. *People v. Delton*, 227 Ill. 2d 247, 253 (2008). Proceedings under the Act are initiated by the filing of a petition verified by affidavit in the circuit court in which the conviction took place. 725 ILCS 5/122-1(b) (West 2008).

The Act further requires that the petition be supported by "affidavits, records, or other evidence," or state why they are not attached (725 ILCS 5/122-2 (West 2008)). *Delton*, 227 Ill. 2d at 253. At the first stage of proceedings, defendant need only set forth the "gist" of a constitutional claim (*Delton*, 227 Ill. 2d at 254); however, the circuit court must dismiss the petition if it finds that the petition is frivolous or patently without merit (725 ILCS 5/122-2.1(a)(2)), *i.e.*, it has no arguable basis either in law or in fact (*People v. Hodges*, 234 Ill. 2d 1, 16 (2009)). We review the summary dismissal of a post-conviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388 (1998).

Defendant maintains that he set forth claims of ineffective assistance of counsel warranting further proceedings under the Act. To establish a claim of ineffective assistance of

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counsel, defendant must first show that counsel's performance was deficient, *i.e.*, it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

Secondly, defendant must show that counsel's deficient performance resulted in prejudice to the defense, *i.e.*, a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687, 694. Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel. *People v. Flores*, 153 Ill. 2d 264, 283 (1992).

Defendant first contends that trial counsel was ineffective for failing to investigate and develop his alibi defense that he was in Minneapolis with Martel and Lashonda on the night of the shooting. The State responds that defendant has failed to "clearly" state an alleged constitutional violation or provide proper evidentiary support for his claim.

Under the Act, defendant must clearly set forth the alleged constitutional violations in his petition and provide supporting materials, or an explanation for the absence of such materials. 725 ILCS 5/122-2. In this case, defendant offered his signed statement in which he claimed that he told counsel that he was in Minneapolis with Martel and Lashonda during the shooting but that counsel did not pursue this alibi defense. The statement was unnotarized and, therefore, cannot be considered a valid affidavit. *People v. Niezgoda*, 337 Ill. App. 3d 593, 597 (2003).

Moreover, a claim that counsel was deficient in failing to investigate and call a witness must be supported by an affidavit from that witness. *People v. Enis*, 194 Ill. 2d 361, 380 (2000). Here, the alibi defense that trial counsel allegedly failed to investigate and advance is predicated on the purported testimony of Martel and Lashonda. Defendant did not provide an affidavit from either of those two witnesses indicating that they would have testified to that effect, nor explain the absence of such documentation. Given their familial relationship with him, we do not

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perceive any reason why obtaining those affidavits would pose a problem to defendant. *Delton*, 227 Ill. 2d at 257.

Defendant attempted to explain this deficiency by stating that he sought affidavits from trial and appellate counsel, and attached those letters which requested counsels' affidavits to his petition. We note that these requests contain no reference to the purported alibi witnesses. Although the failure to attach supporting materials or explain their absence may be excused where the petition contains facts sufficient to infer that the only affidavits defendant could have furnished, besides his own sworn statement, was that of his attorneys, this was not such a case. *People v. Hall*, 217 Ill. 2d 324, 333 (2005). Here, it was not the attorneys' affidavits that were required; but rather, the affidavits of those who could offer testimony in support of his alibi that were relevant and necessary. Under these circumstances, we find that defendant has failed to support his claim, leaving us unable to determine whether Martel and Lashonda could have provided testimony or information favorable to defendant which was overlooked or disregarded by his trial counsel. As a result, further review of his claim is unwarranted. *Enis*, 194 Ill. 2d at 380.

Defendant also contends that appellate counsel was ineffective for failing to raise an issue on direct appeal as to the impropriety of gang references elicited by the State at trial. The State responds that defendant has waived this issue by failing to raise it in his *pro se* petition. Defendant replies that he raised this issue when he alleged that his right to due process was violated by the alleged gang references made at trial, and also that appellate counsel failed to raise all appealable issues.

The record shows two bases for defendant's claim of ineffective assistance of appellate counsel: (1) the failure to raise an issue of ineffective assistance of trial counsel; and (2) the

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failure to pursue his claim of innocence based on new evidence. Defendant did not specifically raise any issue of ineffective assistance of appellate counsel based on gang references, but rather, claimed that his right to due process was violated where gang references were elicited at trial. The circuit court considered the issue in that context, addressing the alleged gang references in the context of whether defendant received a fair trial. Based on the record, we conclude that defendant did not raise this issue in the circuit court.

Defendant, nonetheless, relies on a single allegation in his petition that appellate counsel was ineffective for failing to raise "all appealable issues." This type of broad, conclusory allegation of ineffective assistance of counsel is not allowed under the Act (*Delton*, 227 Ill. 2d at 258), and, thus, may not serve as the basis for us to find that his present claim was included in his petition. Accordingly, we find that defendant has forfeited this claim of constitutional error raised for the first time in this appeal, and affirm the first-stage summary dismissal of his post-conviction petition. *People v. Jones*, 211 Ill. 2d 140, 148 (2004).

Affirmed.