

2011 IL App (1st) 093490-U  
No. 1-09-3490

**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. 00 CR 1791
	)	
JAMARIO PRUITT,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

---

**ORDER**

*HELD:* The circuit court's summary dismissal of defendant's *pro se* postconviction petition was proper where it lacked an arguable basis to support his claim that he was prejudiced by his trial counsel's ineffectiveness in presenting an alibi defense which counsel mistakenly believed could not be contradicted by defendant's prior statement.

¶ 1 Defendant Jamario Pruitt appeals from the summary dismissal of his *pro se* postconviction petition. On appeal, defendant contends his petition sufficiently raised the claim that his trial counsel was ineffective for attempting an alibi defense when counsel was unaware

the State could rebut the testimony of the alibi witness by a prior statement of defendant, and that defendant was prejudiced by counsel's ineffectiveness. We affirm.

¶ 2 Defendant and two codefendants, Cedric Grover and Nate Harris, were charged with the first-degree murder of Linda Winter and the aggravated battery with a firearm and attempted murder of Joseph Jackson. Prior to trial, a hearing was held on defendant's motion to suppress custodial statements on the ground they were obtained by police interrogation after he had invoked his rights to remain silent and to have an attorney present. Testimony presented at the hearing revealed that defendant was arrested for the crimes on the evening of December 13, 1999. On the following morning, after being advised of his rights under *Miranda*, defendant spoke briefly with detectives and then asserted his rights to counsel and to remain silent. Later that morning, while still in custody, defendant initiated conversations with police officers by asking questions about the progress of their investigation and, in turn, defendant was subjected to questioning by the officers. The court denied the motion to suppress defendant's statements.

¶ 3 At defendant's subsequent jury trial, the State presented testimony of eyewitnesses to the shooting as well as inculpatory statements defendant made on his second day of incarceration. Defendant was found guilty of first degree murder, attempted murder, and aggravated battery with a firearm. Defendant was sentenced to consecutive terms of 35 years for first degree murder and 10 years for attempted murder.

¶ 4 Defendant appealed, and we reversed defendant's conviction and remanded for a new trial based, in part, on the trial court's erroneous denial of defendant's motion to suppress his custodial statements because those statements were obtained in violation of defendant's fifth amendment rights after he had invoked the right to counsel. *People v. Pruitt*, No. 1-01-3523 (2004) (unpublished order under Supreme Court Rule 23).

¶ 5 At his 2006 retrial following remand, defendant elected to be tried by the court. The evidence established that the charges stemmed from a street shooting shortly after midnight on July 6, 1999, that left Linda Winters dead and Joseph Jackson wounded. The shooting incident arose from a territorial dispute in an area between two rival gangs, the Gangsters Disciples and the New Breed, of which defendant and codefendants Grover and Harris were members.

¶ 6 Rontral Lee, a member of the Gangsters Disciples, testified that he had known defendant for six years when, on the night of the shooting, he saw defendant drive up to a nearby alley in a black car. Defendant and three other men emerged from the car and three of the four men, including defendant, started shooting. They first shot at Lee and his two companions, Shamyra Harris and Harris's sister Eneshia Davis, and then they shot at Winters and Jackson, who were across the street. Winters was fatally shot in the neck; Jackson was shot in the wrist. Lee, Harris and Davis ran into a building where Lee's aunt resided. They then drove away from the scene. The black car chased them for several blocks, with defendant leaning out the passenger window and firing two or three shots at them.

¶ 7 Harris's testimony recounted the same events as testified to by Lee. Harris identified defendant in a 1999 lineup and at trial as one of the shooters.

¶ 8 Cedric Grant testified he was near the crime scene but did not see who was shooting. Grant was impeached, both by his grand jury testimony and by a prior statement to an assistant State's Attorney identifying defendant as one of the shooters.

¶ 9 Joseph Jackson, the surviving gunshot victim, testified that he never saw who was shooting. Jackson was impeached by his prior written statement to an assistant State's Attorney, his identification of defendant in a lineup and his grand jury testimony in which he identified defendant as the shooter. Jackson had known defendant for a few years. After the

shooting, defendant approached Jackson and said he did not know what was wrong with himself on the day of the shooting and did not need to shoot Jackson or Linda Winters, but was not going to jail for it.

¶ 10 Detective Thomas Flaherty testified that Joseph Jackson had viewed a lineup on December 15, 1999, and identified defendant as one of the shooters. Flaherty also testified that Joseph Jackson, Rontral Lee, and Cedric Grant had identified codefendant Cedric Grover in a lineup.

¶ 11 The defense presented the testimony of two defense witnesses. Eneshia Davis, who was with Shamyra Harris and Rontral Lee during the shooting incident, testified that she did not see the shooting or see anyone with a gun. She also testified that when she, Harris and Lee drove away from the scene of the shooting, they were not chased by a black car containing someone who was shooting at them. Davis's testimony was later impeached by the stipulated testimony of Detective Conley that on the day of the shooting, she spoke to Davis who said she had noticed a black car following them and heard gunshots.

¶ 12 The second witness for the defense, Genesha Richardson, testified on direct examination that defendant was her former boyfriend. At about 10 p.m. on July 5, 1999, defendant came to her house at 14<sup>th</sup> and Sawyer. The two left her home and went to defendant's father's house at Jackson and Hoyne. She and defendant were together at that location continuously until about 11 a.m. the following day, July 6. She told that to two police detectives when they interviewed her at her home on January 3, 2000. During examination by the court, Genesha also testified that while she was at defendant's home, his father, stepmother, and brother were also present.

¶ 13 Detective Flaherty testified in rebuttal that late in the evening of December 13, 1999, shortly after defendant was arrested, Flaherty and another detective advised defendant of

the *Miranda* warnings and then had a conversation with defendant. When Flaherty was asked whether defendant said anything at that time, defense counsel objected. The State advised the court the statement was made prior to the statements that the appellate court held should have been suppressed. Defense counsel argued that the statement was not inculpatory and also that defendant's in-custody statements to police constituted "all one statement" that was required to be suppressed. The trial court overruled the defense objection, ruling the statement was admissible because it was made prior to the police conduct which this court held required that statements of defendant be suppressed. Flaherty testified defendant told the detectives shortly after his arrest that he had spent the entire night of the shooting at Genesha's home on Sawyer Avenue and that Elijah Goudy, Eddie Hill, and Devon Chamberlain also spent the night there.

¶ 14 In stating its findings after the parties had rested, the trial court rejected the alibi defense after observing that Genesha's testimony was contradicted by defendant's statement in that "[h]is version of the alibi is totally different than hers: Different location, different people present for the same time." The court reviewed the testimony of the State's witnesses and found that Shamyra Harris was a very credible witness whose version of the shooting corroborated the testimony of Rontral Lee. The court noted that Joseph Jackson and Cedric Grant had attempted to exonerate defendant but had been impeached by their prior statements in which they had identified defendant as one of the offenders. The court found defendant guilty of the first degree murder of Winters and the aggravated battery with a firearm of Jackson.

¶ 15 Defense counsel filed a written posttrial motion which included the claim that "[t]he Court erred in allowing the Defendant's statement over defense objection." The motion was denied. Defendant was sentenced to consecutive terms of 33 years for first degree murder and 6 years for attempted murder.

¶ 16 Defendant appealed, and this court affirmed the judgment of the trial court. *People v. Pruitt*, No. 1-06-2082 (2008) (unpublished order under Supreme Court Rule 23). The issue of the impeachment of Genesha with defendant's alibi statement was not raised on direct appeal.

¶ 17 In 2009, defendant filed a *pro se* postconviction petition raising, *inter alia*, a claim of ineffective trial counsel. The petition alleged that defendant asked his trial counsel to move to suppress his alibi statement to avoid the alibi being contradicted by the defense alibi witness. Defendant's trial counsel told him not to worry because a motion to suppress the alibi statement "would be of no use" and the State could not use any previous statements made by defendant, because all of defendant's statements had been suppressed by a higher court. The petition also asserted trial counsel was ineffective in misinforming defendant there was no need for him to testify to repudiate claims made by detectives that he "gave a contradicting alibi statement." Even after the alibi statement was used at trial and defendant wanted to know why it had been used, his "trial counsel was assuring and adamant that [defendant] didn't need to take the stand because the judge \*\*\* wouldn't honor alibi statement which later proved to be untruthful." The petition contended that counsel's actions vitiated the only defense available. The trial court summarily dismissed defendant's *pro se* postconviction petition, finding that the issues raised therein were frivolous and patently without merit.

¶ 18 On appeal, defendant contends the summary dismissal of his postconviction petition was error where it raised the gist of a constitutional violation, ineffective assistance of trial counsel. Defendant asserts that where counsel presented an alibi defense without comprehending that defendant's prior alibi statement to police was admissible to impeach the alibi witness, the State's use of that statement for impeachment vitiated his alibi defense.

¶ 19 We review *de novo* the summary dismissal of a postconviction petition. *People v. Brown*, 225 Ill. 2d 188, 198 (2007). A *pro se* petition seeking postconviction relief for a denial of constitutional rights may be dismissed summarily as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12, 16 (2009). In resolving whether the petition is frivolous or patently without merit, the circuit court must construe as true all well-pleaded allegations, unless the allegations are positively rebutted by the record. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001).

¶ 20 A claim of ineffective assistance of trial counsel requires a showing that (1) trial counsel's performance was so deficient that it fell below an objective standard of reasonableness, and (2) trial counsel's deficient performance so prejudiced the defendant that, but for counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *People v. Colon*, 225 Ill. 2d 125, 135 (2007), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A petition alleging a *Strickland* claim of ineffective assistance of counsel may not be summarily dismissed at the first stage of postconviction proceedings if it is arguable that (1) counsel's performance fell below an objective standard of reasonableness, and (2) defendant was prejudiced. *Hodges*, 234 Ill. 2d at 17. Courts indulge in the strong presumption that counsel's performance fell within a wide range of reasonable professional assistance. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). The decisions of what witnesses to call and what evidence to present are generally unassailable matters of trial strategy, rather than incompetence, that cannot form the basis of a claim of ineffective assistance of counsel. *People v. Ward*, 371 Ill. App. 3d 382, 433 (2007).

¶ 21 The record shows defendant's trial counsel believed this court had ruled on direct appeal from the first trial that all defendant's custodial statements, including his alibi statement of December 13, 1999, were inadmissible as violating defendant's fifth amendment

rights. If this had been the case, counsel was on sound ground in believing the State could not use that alibi statement to impeach Genesha. *James v. Illinois*, 493 U.S. 307, 320 (1990). However, trial counsel was in error. The trial court correctly noted that we had ruled only that defendant's statements made after mid-morning on December 14 should have been suppressed. Given the fact that defendant's alibi statement had been lawfully obtained, the State properly used it to rebut Genesha's alibi testimony. A prior statement by a nontestifying defendant, legally obtained, may be used to rebut defense witnesses. *People v. McCartney*, 206 Ill. App. 3d 50 (1990); *People v. Newsome*, 110 Ill. App. 3d 1043 (1982); *People v. Harvey*, 92 Ill. App. 3d 465 (1980); *People v. Green*, 26 Ill. App. 3d 662 (1975). In each of those cases, the prior statement of defendant completely negated the alibi testimony offered at trial by defense witnesses, unlike the present case where both defendant's statement and Genesha's trial testimony placed them together at a place removed from the crime scene and at the time the crimes occurred. However, defendant's alibi statement contradicted Genesha's testimony as to where they were at the time of the shooting incident and whom they were with. Rebuttal evidence may be presented by the State to explain, repel, contradict, or disprove evidence presented by the defendant. *People v. Mischke*, 278 Ill. App. 3d 252, 264 (1995). Thus, defendant's trial counsel was mistaken in believing the use of the statement was inadmissible to rebut portions of Genesha's testimony.

¶ 22 We conclude that, under the first prong of *Strickland*, it was arguable that defense counsel's performance was so deficient that it fell below a standard of reasonableness where counsel advanced an alibi defense without being aware the testimony of the alibi witness could be rebutted by defendant's prior alibi statement.

¶ 23 Even assuming defendant's petition alleged an arguable claim of counsel's deficient performance, however, defendant has not established under *Strickland's* second prong

how he was prejudiced by counsel's action in propounding the alibi defense. The only alternative to the alibi defense would have been to present no defense at all and attempt merely to attack the strength of the State's case. However, the State had presented a strong case that defendant was one of the shooters. Where the identification of the defendant constitutes the central question in a criminal prosecution, the testimony of even a single witness who had an ample opportunity to observe is sufficient to support a conviction. *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007). The trial court carefully reviewed all of the evidence presented and observed that two witnesses, Harris and Lee, positively identified defendant at trial as one of the assailants. In addition, both Joseph Jackson and Cedric Grant, who declined to identify defendant at trial, were impeached with their prior identifications of defendant as one of the shooters. Lee, Jackson, and Grant had known defendant for some time prior to the shooting. Where the evidence of defendant's guilt was overwhelming, defendant's *pro se* petition failed to allege an arguable claim of prejudice resulting from trial counsel's ineffectiveness that amounted to a reasonable probability that the result of the trial would have been different. We conclude that the trial court's summary dismissal of defendant's *pro se* postconviction petition was not error. Accordingly, we affirm the judgment of the trial court.

¶ 24                    Affirmed.