

2011 IL App (1st) 092533-U
No. 1-09-2533

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FOURTH DIVISION
July 21, 2011

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. 02 CR 21309
)	
ALBERT WOODLAND,)	Honorable
)	Thomas J. Hennelly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in
the judgment.

O R D E R

HELD: The circuit court did not err in summarily dismissing defendant's *pro se* postconviction petition where it lacked an arguable basis in law and fact to support his claims that his trial and appellate counsel were ineffective and that the circuit court erred in not conducting a *Krankel* inquiry.

¶ 1 Defendant Albert Woodland appeals from the summary dismissal of his *pro se* postconviction petition. On appeal,

defendant contends the petition sufficiently raised claims that his trial counsel was ineffective for failing to file a motion to suppress identification and his appellate counsel was ineffective for not raising on direct appeal that the trial judge erred in not ruling on his *pro se* motion to dismiss his trial counsel. We affirm.

¶ 2 Following a jury trial, defendant was convicted of first degree murder and sentenced to 65 years in prison, including a 20-year enhancement for personally discharging a firearm, for the murder of Lamont Winters (Lamont), who had been gunned down on the street by two gunmen. The trial evidence included the testimony of Angelina Donahue, Shawnee Donahue, and Kenneth Winters. All three witnesses were related to the victim, witnessed the shooting, and subsequently identified defendant in police lineups and at trial as one of the two shooters. Another State witness, Andre Williams, testified that he, Gilbert Harris, and Lamont were members of the Gangster Disciples street gang. Lamont had murdered another member of the Gangster Disciples, and for that reason Williams ordered defendant and Harris to kill Lamont. On April 29, 2001, Williams supplied defendant and Harris with guns, accompanied them to Jackson and California where Lamont was known to hang out, and pointed out Lamont to the two gunmen, who shot and killed Lamont. In return for his trial testimony, Williams negotiated an immunity agreement with the

State whereby he was to serve eight years on a reduced charge of robbery and cooperate with authorities in other criminal cases.

¶ 3 Defendant's conviction and sentence were affirmed in *People v. Woodland*, No. 1-05-2112 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 Subsequently, defendant filed a *pro se* postconviction petition raising two allegations relevant to this appeal. One claim alleged that trial counsel's performance fell below an objective standard of reasonableness by failing to move to suppress identification at a confrontation procedure that defendant alleged was unnecessarily suggestive and conducive to irreparable mistaken identification. The petition contended that at the police station where lineups were conducted, Andre Williams pointed out defendant to family members of the victim.

The postconviction petition also alleged defendant's constitutional rights were violated "when he made a pro-se claim after his trial counsel was ineffective in his pro-se motion titled 'motion to release attorney'. *** The motion dated 5/18/05 and signed by the petitioner was never ruled on and basically disregarded by the trial court." Among exhibits attached to the petition was the *pro se* motion to release attorney. The motion was in the form of a court document, but was not file-stamped and was not part of the common law record before the postconviction

pleading was filed. The motion was signed by defendant but not authenticated by a notary public.

¶ 5 The circuit court summarily dismissed the *pro se* postconviction petition, finding that the issues raised therein were frivolous and patently without merit.

¶ 6 On appeal, defendant contends that the summary dismissal of his postconviction petition was error where it raised the gist of a constitutional violation, namely, ineffective assistance of appellate counsel on direct appeal. Defendant claims that he had "filed" his *pro se* posttrial motion to release attorney which alleged deficiencies in his trial counsel's representation, that the court ignored the motion, and that defendant's appellate counsel on direct appeal was ineffective in not raising the issue of the circuit court's failure to conduct an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 189 (1984).

¶ 7 A defendant's claim of ineffective counsel is guided by the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), which requires showings of deficient performance by counsel and prejudice to the defendant from the deficient performance. *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). A *pro se* petitioner seeking postconviction relief for a denial of constitutional rights may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis

either in law or in fact. *Hodges*, 234 Ill. 2d at 11-12. Both prongs of the *Strickland* test must be satisfied in the first stage of postconviction proceedings. *Hodges*, 234 Ill. 2d at 17. The *Strickland* test applies to claims of ineffective appellate counsel. *People v. Jones*, 219 Ill. 2d 1, 23 (2006).

¶ 8 Defendant claims his initial appellate counsel was ineffective for failing to raise a *Krankel* violation issue on direct appeal. When a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should conduct an adequate inquiry (commonly known as a *Krankel* inquiry) to determine the factual basis for defendant's claim. *Krankel*, 102 Ill. 2d at 189; *People v. Johnson*, 159 Ill. 2d 97, 125 (1994). However, no *Krankel* inquiry is mandated where the allegations of ineffectual counsel are merely conclusory on their face and defendant provides no detail when afforded the opportunity. *People v. Bolton*, 382 Ill. App. 3d 714, 720 (2008).

¶ 9 Initially we note that there is no evidence defendant's *pro se* motion to release attorney was brought to the attention of the circuit court, as he was required to do. *People v. Harris*, 352 Ill. App. 3d 63, 72 (2004). Defendant argues on appeal that his claim that he filed the motion was required to be taken as true in first-stage postconviction proceedings. Contrary to defendant's claim on appeal that he filed the motion, however, his postconviction petition alleged

only that the *pro se* motion to release attorney "made a *pro-se* claim" of ineffective trial counsel. The petition never alleged he filed the motion, which was neither properly notarized nor file-stamped. There must be some allegation in the petition or supporting documentation that the motion was properly filed before the trial court and called to the court's attention for a ruling.

¶ 10 The main impediment to defendant's argument, however, is that no *Krankel* inquiry was mandated where the allegations of ineffective counsel in the motion were merely conclusory on their face. See *Bolton*, 382 Ill. App. 3d at 720. The *pro se* motion contained mere allegations that defendant's counsel had a "possible conflict of interest caused by interested third parties," that his attorney "has not acted in his best interest," and that defendant's attorney ignored defendant's direct wishes and orders. The motion referenced a supporting affidavit, but no affidavit was attached to the motion. The *pro se* motion contained no supporting facts or specific claims of ineffective counsel that would have required a *Krankel* inquiry. We conclude that defendant has failed to establish that his postconviction petition set forth the gist of a constitutional claim on the *Krankel* issue.

¶ 11 Defendant's second assignment of error is that the circuit court erred in dismissing his postconviction petition's

claim of ineffective assistance of trial counsel due to counsel's failure to file a motion to suppress lineup identification. The petition asserted the lineup identification procedure was unnecessarily suggestive because at the police station where the lineups were conducted, Andre Williams pointed out defendant to the family of the victim.

¶ 12 An attorney's decision whether or not to file a motion is regarded as a matter of trial strategy which must be given great deference and is immune from claims of ineffective assistance of counsel. *People v. Martinez*, 348 Ill. App. 3d 521, 537 (2004). This includes decisions regarding lineup identification procedures. *People v. Shlimon*, 232 Ill. App. 3d 449, 458 (1992).

¶ 13 Here, the circuit court correctly dismissed defendant's petition postconviction as frivolous or patently without merit where his claim of a suggestive identification had no arguable basis either in law or in fact and was unsupported by affidavit or other documentation. A petition lacking an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory, such as one completely contradicted by the record, or a fanciful factual allegation. *Hodges*, 234 Ill. 2d at 16. Here, the claim of a suggestive identification procedure was completely contradicted by the record where the trial testimony of the three eyewitnesses in

question negated defendant's claim that Andre Williams pointed out defendant to them at the police station. Angelina Donahue testified that when she viewed the lineup and identified defendant as one of the two men who shot Lamont, she had not been allowed to talk to anyone before viewing the lineup and that only a detective was present viewing the lineup with her. Shawnee Donahue also testified that only a detective was present when she viewed the lineup and identified defendant. Kenneth Winters testified that no one told him whom to identify, either before or during the lineup. In contrast, the petition contains no supporting documentation to support his allegation that Williams was at the police station at the same time as the witnesses.

¶ 14 In reviewing a first-stage postconviction petition, all well-pleaded facts in the petition and affidavits are to be taken as true, but nonfactual and nonspecific assertions merely amounting to conclusions are insufficient. *People v. Barnslater*, 373 Ill. App. 3d 512, 519 (2007). Here, defendant's assertion that Williams was at the police station at the time the witnesses viewed lineups is a nonspecific assertion which defendant does not substantiate even by asserting how he came to have knowledge of Williams' presence at the police station. A petition filed under the Post-Conviction Hearing Act (Act) must be verified by affidavit (725 ILCS 5/122-1(b) (West 2008)) and be supported by "affidavits, records, or other evidence supporting its

allegations" or the petition "shall state why the same are not attached" (725 ILCS 5/122-2 (West 2008)). Defendant's petition contains no affidavit or any other documentation to support the existence of his claim, nor does it state why such documentation is not attached.

¶ 15 We conclude defendant's postconviction petition was properly dismissed where it failed to set forth the gist of a constitutional claim that his trial attorney was ineffective for failing to file a motion to suppress the identifications.

¶ 16 For all of the above reasons, we affirm the judgment of the circuit court summarily dismissing defendant's *pro se* postconviction petition.

¶ 17 Affirmed.