

No. 1-10-0672

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).

FIRST DIVISION
June 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the
OF ILLINOIS,)	Circuit Court
)	of Cook County
Respondent-Appellee,)	
)	
v.)	No. 01 CR 19824
)	
CHRISTOPHER EVERETT,)	Honorable
)	James M. Obbish,
Petitioner-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HALL delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

O R D E R

HELD: The trial court did not err in summarily dismissing defendant's postconviction petition claiming ineffective assistance of trial and appellate counsel.

Defendant Christopher D. Everett was charged with six counts

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of first-degree murder, eight counts of attempt first-degree murder, and five counts of aggravated discharge of a firearm in connection with the shooting death of Robert A. Locke. At his bench trial, defendant testified that he was acting in self-defense when he shot the victim.

The trial court rejected defendant's claim of self-defense and convicted him of six counts of first-degree murder, one count of attempt first-degree murder, and five counts of aggravated discharge of a firearm. Defendant was sentenced to 51 years of incarceration -- 20 years for first-degree murder, an added 25 years for personally discharging a firearm during commission of the murder pursuant to the "15/20/25-to-life" sentence-enhancing provision (25-years-to-life firearm enhancement) (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2000)), a consecutive 6 years for attempt first-degree murder, and a concurrent 6-year term for each of the five aggravated discharge of a firearm counts.

On direct appeal, we corrected defendant's mittimus to reflect one conviction for first-degree murder and then we affirmed his convictions and sentences. *People v. Everett*, No. 1-04-1201 (June 30, 2005) (unpublished order pursuant to Supreme Court Rule 23). Defendant filed a *pro se* postconviction petition, which the trial court summarily dismissed at the first stage of the post-conviction proceeding as frivolous and patently

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without merit.

Defendant now contends on appeal that the trial court erred in summarily dismissing his petition, arguing that the allegations in the petition stated the gist of meritorious claims of ineffective assistance of both trial counsel and appellate counsel. We must disagree.

Because the facts surrounding this case have already been set out in some detail in our prior order, we repeat only those facts necessary to resolve the issues raised on appeal.

The record shows that on June 30, 2001, shortly after 8:30 p.m., Locke sustained a fatal gunshot wound to the head as he sat in the backseat of a traveling vehicle driven by Jafar Graves. Graves was a boyfriend of defendant's estranged wife, Gadealayh (Goody) Norman. Just prior to the shooting, Graves and about five members of his jazz band, including Locke, arrived at Graves' home located at 2727 E. 76th Street in Chicago, Illinois. Graves testified that the band had returned from a downtown "gig" and was planning on going to a recording studio that evening.

A little after 8:30 p.m., Graves, his friend Tremaine Dawson, Locke and two other band members, left Graves' home and entered his vehicle to travel to the recording studio. On the way to the studio, Graves planned on dropping Dawson off near 83rd Street and St. Lawrence Avenue. Graves testified that when

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he reached the intersection of Coles Avenue and Cheltenham Place, he saw defendant sitting on the steps of the South Shore Baptist Church located on the southeast corner. Graves and defendant stared at each other as Graves drove through the intersection. Graves testified that none of the passengers in his vehicle were aware of defendant.

Graves testified that minutes later, Locke stated that he was missing his notebook containing new songs for the recording. Locke believed he had left the notebook back at Graves' house. Graves doubled back to return home to retrieve the notebook, but Locke found the notebook before they reached the house. Graves then turned back around to drop Dawson off and thereafter proceed to the studio.

Graves testified that when he made the turn, it brought him back to the same intersection where he had previously seen defendant minutes before. As Graves drove toward the intersection, he saw defendant walk diagonally across the street toward the northwest corner. Defendant was standing at the corner when Graves approached the stop sign at the intersection.

As Graves proceeded through the intersection, defendant began shooting at the vehicle. Graves testified that he did not realize his vehicle was being shot at until the second or third shots, since he was accustomed to hearing gunshots in the

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neighborhood. As Graves made a right turn, the vehicle's back windshield shattered. When he looked out the window, he saw defendant "standing there with the gun pointed."

Graves then sped-up, telling his passengers to duck down. Graves testified that when he looked back again, he saw Locke slumped down in the backseat with his head back. Graves was on his way to the hospital when he was stopped by police near 79th Street and South Shore Drive.

Locke died on July 3, 2001 at Cook County Hospital. The parties stipulated that if called to testify, Dr. Barry D. Lifschultz, a forensic pathologist for the county, would testify that he performed an autopsy on Locke's body and that the cause of death was a single gunshot wound to the head and the manner of death was homicide.

Graves testified that he met Goody Norman in 1995, dating her for about four to six months before he moved to Joliet and lost contact with her. Graves testified that Goody Norman came back into his life in April 2001. Graves stated that at this time, he knew Goody Norman was married and separated from defendant.

Tremaine Dawson, a convicted felon who was a passenger in Graves' vehicle during the shooting, also testified. His testimony regarding the incident generally corroborated Graves'

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testimony. On cross-examination, defense counsel, in an apparent attempt to establish that Graves sought to intimidate defendant by purposefully driving past him a second time, questioned Dawson as to whether he ever told police he was surprised at the circuitous route Graves took to get from his house to 83rd Street and St. Lawrence Avenue. Dawson responded that he did not remember making such a statement because it made sense for Graves to take the route he took.

Detective Robert McVicker testified that Graves identified defendant as the shooter in a photo array. Subsequent efforts to locate Goody Norman proved unsuccessful. The detective obtained a warrant for defendant's arrest. Defendant was eventually located at a jail in the State of Kentucky. Defendant waived extradition and was transported back to Chicago.

Ahvicom Norman, defendant's brother-in-law, testified for the defense. Norman testified that his sister, Goody Norman, "started talking" to Graves during her brief split-up with defendant.

Norman testified that on the date of the shooting, he, Graves and another individual named Marcus Reeves traveled together in Graves' car to Rainbow Beach at 78th Street and Lake Shore Drive to smoke marijuana. According to Norman, when they arrived at the beach, Graves retrieved a 9-millimeter handgun

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from underneath the driver's seat and displayed the weapon while threatening to kill defendant because he had "f****d up." Norman testified that after he returned from the beach, he immediately warned defendant of the threats.

On cross-examination, Norman admitted that after the shooting he did not tell police about Graves' threats. He also admitted that the first time he ever told anyone about the threats was about a year after the shooting when he was contacted by defense counsel. On redirect examination, Norman acknowledged that he did not see the shooting and that the police did not ask him about the shooting.

Norman's testimony regarding the handgun and threats conflicted with Graves' testimony on these matters. Graves acknowledged he had a conversation with Norman in his vehicle on the date of the shooting, but he denied showing Norman a firearm or making any threats. Graves stated that he did not own a gun, he did not have access to a gun, he never handled a 9mm handgun, and he did not have a firearm in his possession on the date of the incident. He also testified that on the date of the incident, no one from his car spoke any words to defendant and he did not see anyone in his car with a firearm.

Defendant testified on his own behalf. He stated that he knew Graves as a friend to his brother-in-law, Ahvicom Norman,

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and as a friend to his wife. Defendant testified that after he and his wife reconciled in June 2001, around Father's Day, they returned home to Kentucky. Defendant testified that he came back to Chicago to transact business regarding a car note. During his visit, defendant stayed at his grandmother's house located at 2913 East 78th Place. The grandmother's house was located about 50 yards away from the scene of the shooting.

Defendant testified that on the date of the shooting, he saw Ahvicom Norman, Marcus Reeves, and Graves, sitting in a parked car. Defendant stated that after Norman and Reeves exited the vehicle, they approached and told him that Graves had shown them a gun and had threatened to kill him. Defendant testified that shortly thereafter, Graves drove off shaking his head and looking at defendant. Defendant testified that Graves' behavior served to confirm the information he received from Norman and Reeves regarding the threat.

Defendant testified that later that evening, at around 8:30 p.m., he was sitting in front of the South Shore Baptist Church located on the southeast corner of Coles Avenue and Cheltenham Place, when he saw Graves slowly drive pass shaking his head and smirking. Defendant stated that the car continued southbound on Coles, stopping at a stop sign on 79th Street and Coles Avenue, before turning westbound. Defendant testified that when he saw

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the car make the turn, he started walking over to the northwest corner of Coles Avenue. Defendant testified that as he walked to the corner, he noticed that the car had circled back and was driving toward him.

Defendant testified that as the car approached the corner, he saw that Graves had his left arm extended and resting on the window with his hand formed in the shape of a handgun. According to defendant, Graves looked like he was talking to someone in the backseat and everyone in the car was looking at defendant. Defendant stated that one "of the guys in back seat of the car hollered kill something and I noticed the gun come up. All the windows in the car was going down."

Defendant testified that he shot at the vehicle because he believed Graves was carrying out his death threat. After the shooting, defendant returned to Kentucky.

On cross-examination, defendant admitted arming himself with the handgun before going out the evening of the shooting; he admitted that he never attempted to leave the corner when he saw Graves' car pass by the church; he acknowledged that he never went to the police to tell them that he was almost killed; he also admitted that the car was driving away from him when he fired at the vehicle and that he did not see any gunfire come from the vehicle.

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On redirect examination, defendant testified that when he was sitting in front of the church he was about 50 yards away from his grandmother's house. He also stated that he did not expect Graves to drive by the corner where he was sitting.

The trial court rejected defendant's claim of self-defense. The court stated that it had resolved the credibility issues in favor of the State's witnesses and determined that the State had proven beyond a reasonable doubt that the defendant did not have either a justifiable nor sincere, but unreasonable belief in the need for self-defense. The matter was then continued for posttrial motions and sentencing.

Defendant filed a posttrial motion for a new trial, alleging among other things, ineffective assistance of counsel. The trial court allowed defense counsel to withdraw and the court appointed new counsel to represent defendant during posttrial proceedings.

Defense counsel presented a supplemental motion for a new trial which alleged that trial counsel was ineffective for, among other things, failing to call several witnesses to testify on defendant's behalf. Attached to the supplemental motion were defendant's affidavit and the affidavits of defendant's cousin, Amanda L. Sanders, and his grandmother, Eloise Everett. According to the supplemental motion, the affiants would have given testimony supporting defendant's self-defense claim.

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The trial court denied defendant's supplemental motion for a new trial, stating that the additional evidence did not show that trial counsel was ineffective. On direct appeal, we affirmed defendant's convictions and sentences after we corrected his mittimus to reflect one conviction for first-degree murder. *People v. Everett*, No. 1-04-1201 (June 30, 2005) (unpublished order pursuant to Supreme Court Rule 23). Defendant now appeals from the first-stage summary dismissal of his postconviction petition.

ANALYSIS

The Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2000)), provides a procedure by which an imprisoned criminal defendant can collaterally attack his conviction or sentence based on a substantial denial of his federal or state constitutional rights. *People v. Tenner*, 175 Ill. 2d 372, 377, 677 N.E.2d 859 (1997); *People v. Haynes*, 192 Ill. 2d 437, 464, 737 N.E.2d 169 (2000). The Act provides defendants the opportunity to present claims that were neglected on direct appeal or based on matters outside the record. *People v. Chatman*, 357 Ill. App. 3d 695, 698, 830 N.E.2d 21 (2005).

A post-conviction proceeding not involving the death penalty is divided into three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102 (1996). We review this case at the

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first stage of the postconviction process.

At the first stage, the trial court evaluates the petition on its face and determines 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, 701 N.E.2d 1063 (1998). At this stage, the trial court may summarily dismiss the petition if it finds that the allegations in the petition are frivolous and patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2000).

A petition is considered frivolous and patently without merit if the allegations in the petition, when taken as true and liberally construed, fail to present the "gist" of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442 (2001). The "gist" standard is low, since in many cases a defendant initially files his postconviction petition *pro se* without the aid of counsel. See *Gaultney*, 174 Ill. 2d at 418.

In order to set forth the "gist" of a constitutional claim, the postconviction petition need only present a limited amount of detail and need not include legal arguments or citations to legal authority. *Gaultney*, 174 Ill. 2d at 418. However, the "gist" of a meritorious claim is more than a bare allegation of a deprivation of a constitutional right. *People v. Lemons*, 242 Ill. App. 3d 941, 946, 613 N.E.2d 1234 (1993). Rather, a defendant

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must plead sufficient facts from which the trial court could find a valid claim of deprivation of a constitutional right. *Lemons*, 242 Ill. App. 3d at 946. A trial court's summary dismissal of a defendant's postconviction petition is reviewed *de novo*. *People v. Barrow*, 195 Ill. 2d 506, 519, 749 N.E.2d 892 (2001).

In the instant case, defendant contends that his petition stated the gist of meritorious claims of ineffective assistance of trial and appellate counsel. Claims of ineffective assistance of trial counsel and appellate counsel are measured against the same standard. *People v. Plummer*, 344 Ill. App. 3d 1016, 1019, 801 N.E.2d 1045 (2003).

In order for a defendant to obtain reversal of a conviction based on an ineffective assistance of counsel claim, he or she must show that: (1) counsel's performance was so deficient as to fall below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance so prejudiced defendant that there is a reasonable probability that, absent the errors, the outcome would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525, 473 N.E.2d 1246 (1984).

A defendant must satisfy both prongs of the *Strickland* test to prevail on a claim of ineffective assistance of counsel. However, it is well settled that if the claim can be disposed of

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on the ground that defendant did not suffer prejudice from the alleged ineffective performance, then the court need not decide whether counsel's performance was constitutionally deficient. *Strickland*, 466 U.S. at 697; *People v. Griffin*, 178 Ill. 2d 65, 687 N.E.2d 820 (1997). Applying these principles to the instant case, we find that defendant has failed to show that he was prejudiced by his counsels' performance under the *Strickland* test.

In the instant case, defendant first argues that his trial counsel was ineffective for not investigating or presenting the testimony of eyewitness Ali Knox, whom defendant maintains would have supported his otherwise uncorroborated claim that he shot the victim in self-defense. We must disagree.

An attorney's decision regarding which witness to call and what evidence to present are generally matters of trial strategy. *People v. Jones*, 323 Ill. App. 3d 451, 457, 752 N.E.2d 511 (2001). However, courts have found incompetence where counsel failed to present exculpatory evidence of which he is aware, including the failure to call a witness whose testimony would support an otherwise uncorroborated defense. *People v. Tate*, 305 Ill. App. 3d 607, 612, 712 N.E.2d 826 (1999).

In this case, defendant has failed to demonstrate that he suffered any prejudice as a result of his trial counsel's

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decision not to call Ali Knox as a defense witness. An examination of the record and Knox's affidavit indicate that even if defendant had called him as witness, there is no reasonable probability that the outcome of the trial would have been different.

In his affidavit, Ali Knox averred, in relevant part, that "the car made the hard turn at 79th and Chelton circling back towards us. Then they stopped in front of [defendant] and one of them hollered 'kill that Motha F****r' from inside the car. Next I saw [defendant] jump back and started shooting really fast." In this regard, Knox's statements are similar to defendant's trial testimony where he testified that "[o]ne of the guys in back seat of the car hollered kill something and I noticed the gun come up." Knox's proposed testimony regarding the gun would have been essentially cumulative of the testimony provided by defendant.

In addition, a review of Knox's affidavit shows that his proposed testimony conflicted with defendant's version of events. Knox averred that when defendant began shooting at the vehicle it had stopped in front of defendant. Knox also claimed that shots came from the vehicle. Defendant's version was that the car was driving away from him when he fired at the vehicle and that he did not see any gunfire come from the vehicle.

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Knox's affidavit setting forth his proposed testimony shows that his testimony would have either been cumulative of defendant's trial testimony or it would have conflicted to a certain degree with defendant's testimony. Under these circumstances we do not believe that trial counsel's decision not to call Knox as a defense witness constituted ineffective assistance of counsel. See *People v. Uselding*, 217 Ill. App. 3d 1063, 1076, 578 N.E.2d 100 (1991) (trial counsel not ineffective for not calling witness whose testimony would have conflicted with defendant's version of the case or would have been cumulative of defendant's testimony).

Defendant next contends that appellate counsel was ineffective for failing to argue that trial counsel was ineffective for not presenting evidence that defendant was the victim of a shooting that occurred four years prior to the shooting incident at issue in this case. Defendant claims that evidence that he had been shot four years earlier would have supported his alternative theory that he had a sincere, but unreasonable belief in the need for self-defense. We must disagree.

When the theory of self-defense is raised, evidence of the victim's violent character may be offered to show that the defendant's knowledge of the victim's aggressive character

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affected defendant's perceptions of and reactions to the victim's behavior, and to support the defendant's version of events where there are conflicting accounts of what happened. *People v. Pineda*, 373 Ill. App. 3d 113, 118, 867 N.E.2d 1267 (2007). Accordingly, the defendant in this case could have supported his claim of self-defense by presenting evidence of other specific acts of violence committed by the victim, if any such acts existed, but he could not support that defense by evidence of acts of violence committed against him by third parties. As a result, trial counsel was not ineffective for failing to elicit evidence that defendant was the victim of a prior shooting. And in turn, appellate counsel was not ineffective for failing to accuse trial counsel of ineffectiveness on this matter.

Defendant finally contends that appellate counsel rendered ineffective assistance by not arguing that trial counsel was ineffective for failing to present defendant's postarrest statement that just prior to the shooting, Ahvicom Norman had warned defendant of Graves' threats to kill him. Defendant maintains that such evidence would have bolstered the credibility of Ahvicom Norman's testimony and would have tended to rebut inferences that Norman had fabricated his testimony regarding this matter.

The State counters that the defendant's postarrest statement

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was inadmissible as a prior consistent statement. A prior consistent statement is an out-of-court statement consistent with the declarant's trial testimony. Evidence that a witness made a prior statement consistent with his trial testimony is generally inadmissible since it serves to unfairly enhance the credibility of the witness. *People v. Terry*, 312 Ill. App. 3d 984, 995, 728 N.E.2d 669 (2000).

However, such a statement is admissible where it is offered to rebut a charge or inference that the witness was motivated to testify falsely or that his testimony is of recent fabrication. *People v. West*, 263 Ill. App. 3d 1041, 1047, 636 N.E.2d 948 (1994); *People v. Antczak*, 251 Ill. App. 3d 709, 716-18, 622 N.E.2d 818 (1993). In order for a prior consistent statement to be admissible it must be shown that the witness made the same statement before the motive to testify falsely came into existence or before the time of the alleged fabrication. *Terry*, 312 Ill. App. 3d at 995; *West*, 263 Ill. App. 3d at 1047.

Assuming *arguendo* that trial counsel was ineffective for failing to present defendant's postarrest statement, defendant has failed to establish that he was prejudiced by such ineffectiveness. A review of the record shows that the trial court did not consider defendant's knowledge of Graves' threat to be determinative as to whether defendant's self-defense claim was

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reasonable.

In its findings, the trial court stated, "[defendant] may have had some warped notion of some sort of preemptive strike based on some information that he had that somebody was about to hurt him." The trial court found, even with defendant's knowledge of Graves' alleged threat, that the defendant did not have even an unreasonable belief in the need to use self-defense.

Under these circumstances, even if trial counsel had introduced defendant's postarrest statement, we cannot say there is a reasonable probability the end result would have been any different. Since the underlying claims of ineffective assistance of counsel are without merit, then it follows that the claims of ineffective assistance of appellate counsel for not raising them are without merit as well. *People v. Easley*, 192 Ill. 2d 307, 329, 736 N.E.2d 975 (2000); *People v. Coleman*, 168 Ill. 2d 509, 523, 660 N.E.2d 919 (1995). In sum, we hold that the trial court did not err in summarily dismissing defendant's postconviction petition claiming ineffective assistance of trial and appellate counsel.

Accordingly, for the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

Affirmed.