

No. 1-09-1085

**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).

SIXTH DIVISION  
MARCH 4, 2011

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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
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 02 CR 11395
	)	
DESHANTA YOUNG,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROBERT E. GORDON delivered the judgment of the court.

Presiding Justice Garcia and Justice Cahill concurred in the judgment.

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**O R D E R**

*HELD:* The summary dismissal of defendant's *pro se* postconviction petition was correct, regardless of the court's stated reasons for its ruling, where defense counsel's advice that defendant waive trial by jury and elect a bench trial was an objectively reasonable strategic decision; dismissal of petition affirmed.

Defendant Deshanta Young appeals from the summary dismissal of his *pro se* postconviction petition. On appeal, defendant contends the trial court erred in summarily dismissing his petition because it contained the gist of a meritorious claim of ineffective assistance of counsel in that his trial counsel denied him his right to trial by jury. Defendant also asserts the trial court erred in misstating the trial evidence in denying his petition. We affirm.

Defendant and four codefendants<sup>1</sup> were charged with four counts of aggravated kidnaping and one count of aggravated unlawful restraint. Defendant was also charged with two counts of unlawful use of weapon by a felon and three counts of aggravated unlawful use of a weapon. Prior to trial, defendant elected orally and in writing to waive his right to trial by jury and be tried by the court.

Dale Bragg, the complainant, testified at trial that he was a drug dealer with access to large amounts of illicit drugs. On April 11, 2002, Bragg arranged a meeting at the home of codefendant Rashon Stokes to consummate a heroin transaction. When Bragg arrived at Stokes' home, codefendants Sedgwick

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<sup>1</sup> Codefendants Cameron Fulwiley, Sedgwick Williams, Rashon Stokes, and Kelwyn Sellers were previously tried in a bench trial before the same judge who presided over defendant's trial; all four were acquitted.

Williams and Kelwyn Sellers placed a gun to Bragg's head. They took the keys to his car, placed him in the car, and demanded money and drugs. When he refused, Williams and Sellers drove him to the residence of codefendant Cameron Fulwiley and Cassandra Johnson. Defendant and Stokes were also present, and the group questioned Bragg about the location of his drugs. After Bragg told them that drugs were buried outside his condominium, the group left to find the drugs, with Fulwiley remaining with Bragg in Fulwiley's home. The group returned to Stokes' home empty-handed and again interrogated Bragg about the location of his drugs, during which time Williams struck Bragg on the head with a gun. Williams, Stokes and defendant left and Sellers and Fulwiley remained in the house with Bragg.

Later, at Bragg's suggestion, Fulwiley and Sellers took Bragg to his condominium where he asked to use a cell phone to secure drugs. In fact, he phoned a Chicago FBI task force for whom he had worked as an informant and left a request to set up a drug deal. Bragg was returned to Fulwiley's home, and Bragg and Fulwiley discussed arranging a drug deal using fake cash. Cassandra Johnson took Bragg's ATM card and attempted to withdraw cash at an ATM machine, but was unable to do so. That night, Bragg remained captive in Fulwiley's home.

On the following morning, without Johnson or Fulwiley's knowledge, Bragg managed to telephone Harvey police and told them

to contact his Chicago FBI contact. Defendant and the other codefendants returned and were told of Bragg's plan to do a drug deal using fake money. Bragg cut up paper from phone book pages and covered the paper with some real money. Then he phoned his FBI contact and, pretending he was phoning a real drug supplier, arranged a location to meet the FBI agents. Fulwiley and Bragg drove to the exchange location, with defendant, Williams, and Stokes following in two other cars. At the specified location, FBI agents stopped Bragg, Fulwiley, and Williams, but defendant and Stokes in a separate car saw the FBI agents and drove away. Defendant and Stokes were arrested the following day.

Johnson agreed to cooperate with law enforcement authorities and gave them a signed handwritten statement detailing the events in which defendant, Williams, and Stokes had kidnaped Bragg in order to rob him. Johnson stated that defendant threatened to "merk" (kill) Bragg when money and drugs were not forthcoming. Defendant had threatened her in the past that if she ever told on him, he would kill her and her children.

At trial, Johnson recanted her written statement, claiming it had been coerced and that Bragg had been a voluntary guest in the Fulwiley home on the two days in question. Johnson admitted that in the statement she said she saw defendant with a gun and that defendant said he was going to "merk" Bragg, but she claimed that was a lie in order to protect Fulwiley.

An assistant State's Attorney testified that at the police station on the night of April 12, 2002, she spoke with Bragg. She also spoke with Cassandra Johnson over a period of six hours during which time Johnson gave a handwritten statement. Johnson's 18-page handwritten statement was admitted in evidence.

For the defense, codefendant Sedgwick Williams testified that Bragg was not a kidnap victim but was a willing participant in a scheme to dupe another drug dealer using fake money.

The trial court found defendant guilty of aggravated kidnaping for ransom, aggravated kidnaping while armed with a firearm, and aggravated unlawful restraint. The trial court noted that it had acquitted the codefendants in an earlier bench trial upon finding that Bragg was not a credible witness and that the same result would obtain in the instant case but for the fact that Cassandra Johnson had not testified at the earlier trial. The trial court found that Johnson's statement to the police corroborated Bragg's testimony and was more credible than her trial testimony.

Defendant filed a 50-page *pro se* post-trial motion in which he raised several claims of ineffective assistance of trial counsel but did not raise a claim relative to his jury waiver. Defendant was sentenced to concurrent prison terms of 20 years on each kidnaping count and 7 years for aggravated unlawful restraint.

On direct appeal, this court affirmed defendant's convictions and sentences for aggravated kidnaping for ransom and aggravated kidnaping with a firearm, but we vacated his conviction and sentence for aggravated unlawful restraint. *People v. Young*, No. 1-04-2540 (2006) (unpublished order under Supreme Court Rule 23).

Subsequently, defendant filed a *pro se* petition for postconviction relief. Among the several issues defendant raised was his claim that he was denied his right to trial by jury when his trial counsel erroneously advised him to take a bench trial. As to that claim, the petition asserted in relevant part:

"Defense attorney John Lyke was ineffective when he erred in making a tactical decision to start trial and advising petitioner Young to Waive his right to a jury trial.

Petitioner had informed defense counsel that he had considered going to trial by jury, because he believed that out of 12 people, at least one would find that petitioner did not commit the crimes that he was charged with. But against petitioner's wishes, defense counsel continued to persuade petitioner

that because of counsel's experience as an attorney and the fact that he knew the trial judge very well, assuming that the judge would not find petitioner guilty, plus the fact that petitioner's co-defendants had been found not guilty in a previous trial by the same judge; that petitioner should reconsider his intentions and take a bench trial. As a result of defense counsel's advice, petitioner allowed counsel to advance his tactical decision to initiate a bench trial."

The petition further alleged that after trial commenced, defendant "realized that defense counsel's tactical decisions were falling apart" when the trial court ruled Cassandra Johnson's prior statement was admissible in evidence. Defendant asserted that the unfavorable ruling undermined his counsel's claim of having a good relationship with the judge. The postconviction petition was supported by defendant's affidavit which, as to the jury waiver claim, stated only that defendant had requested an affidavit from his trial counsel but that counsel had not responded to his request.

The trial court summarily dismissed the *pro se* petition and defendant now appeals the dismissal order.

Defendant's first assignment of error is that the trial court erred in summarily dismissing his petition where it sufficiently alleged the gist of a claim. Defendant contends he was denied his constitutional right to a jury trial due to the ineffective assistance of his trial counsel for promising him that he would be acquitted if he waived his right to trial by jury and elected a bench trial.

We review the circuit court's summary dismissal of defendant's *pro se* postconviction petition *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). A *pro se* postconviction petition may be dismissed summarily as frivolous or patently without merit if the petition has no arguable basis either in law or in fact. *Hodges*, 234 Ill. 2d at 11-12, 16. A petition which lacks an arguable basis either in law or in fact is one based on an indisputably meritless legal theory or a fanciful factual allegation. *Hodges*, 234 Ill. 2d at 16.

A defendant's claim of ineffective assistance of counsel at the first stage of postconviction proceedings is guided by the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), which requires deficient performance by counsel and prejudice to the defendant from the deficient performance. A petition alleging ineffective assistance of counsel may not be

dismissed summarily if it is arguable both that counsel's performance fell below an objective standard of reasonableness and that the defendant was prejudiced. *Hodges*, 234 Ill. 2d at 17. As to the first prong of *Strickland*, a defendant asserting a claim of ineffective assistance of counsel must overcome a strong presumption that the challenged action or inaction of counsel was the product of sound strategy and not of incompetence. *People v. Olinger*, 176 Ill. 2d 326, 356 (1997).

We disagree with defendant's assertion that his petition made a substantial showing of ineffective assistance of counsel. On appeal, defendant asserts his trial counsel made promises that defendant would be acquitted in a bench trial, promises he claims were tantamount to a guarantee of a favorable outcome. He contends that his trial counsel "induced" him to "forfeit his constitutional right to a jury trial based on assurances that counsel was not qualified to make." However, his *pro se* postconviction petition made no allegation that counsel promised or guaranteed an acquittal in return for waiving his right to a jury trial or that counsel's advice was offered in an overbearing or coercive manner or went beyond the suggestion stage. Rather, the petition referred repeatedly to trial counsel's "tactical decision" and stated only that counsel advised and persuaded him to reconsider his previous intention to be tried by a jury. The petition indicated that counsel's recommendation was based upon

his evaluation of the case and his knowledge of the trial judge's previous record, including the judge's acquittal of the codefendants in this case.

As a general rule, matters of trial strategy, including an attorney's recommendation to a defendant in a criminal case to waive a jury trial and choose a bench trial, are immune from claims of ineffective assistance of counsel. *People v. Hobson*, 386 Ill. App. 3d 221, 243 (2004), citing *People v. Pacheco*, 281 Ill. App. 3d 179, 188-89 (1996). Here, the very language of defendant's petition portrayed trial counsel's advice to defendant in terms of strategy and tactical decision-making which the postconviction petition conceded was based on counsel's experience as an attorney, as well as the facts that counsel knew the trial judge very well and the codefendants had been found not guilty in a previous bench trial before the same judge.

We find instructive this court's decision in *Hobson*, 386 Ill. App. 3d at 243: "In light of the particular facts of this case, we cannot dismiss as unreasonable counsel's strategic decision to advise his client to opt for a bench trial with a trial judge whom defense counsel knew as sympathetic, rather than a trial with an unpredictable jury, whom defense counsel knew nothing about." In the instant case, the trial court had acquitted the four codefendants after finding complainant Bragg's uncorroborated trial testimony to lack credibility. Trial

counsel's recommendation that defendant opt for a bench trial was based on this and other objective factors and was a reasonable strategic decision based on counsel's honest assessment of the case. We conclude trial counsel's recommendation that defendant waive trial by jury was a reasonable strategic decision that did not amount to ineffectiveness of counsel, and defendant's claim of ineffective assistance of counsel has no arguable basis either in law or in fact. As defendant has failed to establish the deficient performance prong of *Strickland*, the summary dismissal of defendant's petition was proper and must be affirmed.

Defendant's second issue on appeal is that the trial court erred when, in summarily dismissing defendant's petition, the court misstated the trial evidence by stating it was defendant's girlfriend who gave a statement corroborating the complainant's testimony, when in fact the statement was given by codefendant Fulwiley's girlfriend, Cassandra Johnson.

The alleged factual misstatement came during the trial court's discussion of its reasoning for dismissing the various claims in defendant's petition, including challenges to the sufficiency of the evidence and admissibility of trial evidence, and does not impact our analysis and decision concerning defendant's jury waiver claim. It is well settled that we review the judgment of the trial court, not its reasoning. People v. Rajagopal, 381 Ill. App. 3d 326, 329 (2008). Accordingly, we may

1-09-1085

affirm the trial court's judgment on any basis contained in the record. Beacham v. Walker, 231 Ill. 2d 51, 61 (2008). We have done so based on the inadequacy of the petition itself. The trial court's order dismissing the petition was appropriate and we affirm that order regardless of the trial court's reasoning therefor.

Affirmed.