

No. 1-09-2250

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).

FIFTH DIVISION
May 13, 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.)	Nos. 04 CR 16612
)	04 CR 27894
)	
BILL CONWAY a/k/a BILL CONROY,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Fitzgerald-Smith and Justice Howse
concur in the judgment.

O R D E R

HELD: The trial court did not err in summarily dismissing defendant's *pro se* postconviction petition which was devoid of any legal or factual basis sufficient to raise the gist of a constitutional issue; summary dismissal affirmed.

Defendant Bill Conway, a/k/a Bill Conroy, appeals from the summary dismissal of his *pro se* postconviction petition. On

appeal, he contends the first-stage dismissal of his petition was improper where the petition sufficiently stated constitutional claims of guilty plea coercion and involuntary guilty plea based on misinformation about a charge against him. We affirm.

Defendant was charged in two separate indictments with multiple counts of solicitation of murder, solicitation of murder for hire, and attempted first degree murder. Following a negotiated plea agreement, defendant entered a plea of guilty to one count of attempted first degree murder and three counts of solicitation of murder for hire. Pursuant to the plea agreement, a *nolle prosequi* order was entered on all remaining counts at the State's request, and the court sentenced defendant to three concurrent terms of 20 years in prison for solicitation of murder for hire and a consecutive sentence of 10 years for attempted first degree murder. Defendant took no direct appeal.

Subsequently, defendant filed a *pro se* petition for postconviction relief, alleging a number of claims of denial of his constitutional rights. In a written order, the trial court found the issues raised in the *pro se* postconviction petition were frivolous and patently without merit, and summarily dismissed the petition.

On appeal, defendant contends that the trial court erred in dismissing his postconviction petition because two issues raised therein sufficiently stated the gist of a constitutional claim,

namely, that defendant's guilty plea was involuntary where he was "misinformed about one of the critical elements of the charge against him," and that the "[j]udge's participation in plea negotiation process could be construed as coercive [sic]" as violating Rule 11(e) of the Federal Rules of Criminal Procedure.

The summary dismissal of a postconviction petition is reviewed *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). To gain postconviction relief, a defendant must establish a deprivation of either federal or state constitutional rights. *People v. Sanchez*, 169 Ill. 2d 472, 480 (1996). A *pro se* petition for postconviction relief may be summarily dismissed 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 (2009). The allegations of the petition, taken as true and liberally construed, need only present the gist of a constitutional claim. *Brown*, 236 Ill. 2d at 184. This standard presents a "low threshold," requiring only that the petition plead sufficient facts to assert an arguably constitutional claim. *Brown*, 236 Ill. 2d at 184.

We reject defendant's contention that his petition stated the gist of a constitutional claim as to the issue that his guilty plea was involuntary where he was "misinformed about one of the critical elements of the charge against him." This claim was a mere conclusion that contained no factual basis to indicate

the denial of a constitutional right. Our supreme court has held that a postconviction petitioner need present only a limited amount of detail and is not required to include legal argument or citation to legal authority. *Brown*, 236 Ill. 2d at 184. A *pro se* petitioner is not excused, however, from providing any detail whatever on the alleged constitutional deprivation. *Brown*, 236 Ill. 2d at 184. "Thus, while a *pro se* petition is not expected to set forth a complete and detailed factual recitation, it must set forth some facts which can be corroborated and are objective in nature or contain some explanation as to why those facts are absent." *People v. Delton*, 227 Ill. 2d 247, 254-55 (2008).

In the case at bar, defendant did not identify the "critical element" of which he was allegedly misinformed. Moreover, he failed even to state to which of the charges he was referring. His opening appellate brief admits that his petition was "unclear regarding the nature of the misinformation concerning the elements of the charges." As the very nature of defendant's claims was unascertainable, it did not set forth an adequate basis for advancing the proceedings to the second stage. The nonfactual and nonspecific assertion merely amounting to a conclusion was not sufficient to proceed under the Act. See *People v. Torres*, 228 Ill. 2d 382, 394 (2008).

Defendant's second issue, an allegation of judicial coercion, raised no constitutional claim cognizable under

Illinois law. Both parties on appeal interpret this coercion argument as a claim that the trial judge's conduct coerced defendant's guilty plea during plea negotiations. However, the issue defendant's petition actually raised was that the trial judge's mere presence during plea discussions was error because Rule 11(e) of the Federal Rules of Criminal Procedure bars a federal trial court from participating in plea negotiations. Defendant's argument was correct so far as it stated the rule applicable to federal courts. Fed. R. Crim. P. 11(e); see *U.S. v. Casallas*, 59 F.3d 1173, 1177 (1995). However, there is no such limitation on Illinois state trial courts. Illinois Supreme Court Rule 402(d)(2) (eff. July 1, 1997) permits a trial judge to participate in plea discussions. There is no basis in the law for defendant's claim that the trial court's mere participation in a 402 conference denied him his constitutionally protected rights. Other than the fact that the record indicates there was a 402 conference in which the trial court may have participated in plea discussions, there is no factual basis for his claim. Consequently, defendant failed to state a deprivation of a constitutional claim with respect to that issue.

Finally, both of defendant's claims fail because neither was bolstered by "affidavits, records, or other evidence supporting its allegations," and the petition failed to "state why the same are not attached," as mandated by section 122-2 of the Post-

Conviction Hearing Act. 725 ILCS 5/122-2 (West 2008). The affidavits and exhibits which accompany a petition must identify with reasonable certainty the sources, character and availability of the alleged evidence supporting the petition's allegations. *Delton*, 227 Ill. 2d at 254. Defendant asserts he should be excused from what must be the impossible task of obtaining affidavits from his defense attorney, the prosecutor, and the trial judge. In that event, however, defendant had an obligation to state why no such affidavits were obtained or obtainable. More significantly, defendant did not even attach an affidavit of his own, or any other documentation, in support of his petition. Consequently, his petition could have been dismissed summarily on the basis of noncompliance with section 122-2. *People v. Collins*, 202 Ill. 2d 59, 62 (2002).

For all of the above reasons, we affirm the trial court's summary dismissal of defendant's postconviction petition.

Affirmed.