



1-09-2417

2008)). On appeal, defendants contend that the circuit court erred in dismissing their petitions where they presented the gist of a claim that the State knowingly used perjured testimony of Cassandra Shields to secure their convictions, and they received ineffective assistance of trial counsel where their counsels failed to investigate the proffered testimony of codefendant Ricky Shields. For the following reasons, we reverse and remand for further proceedings.

### I. BACKGROUND

Following a jury trial, defendants Larry Shields and George Shields were found guilty of attempted first degree murder and home invasion. Larry was sentenced to concurrent prison terms of 22 years for the attempted first degree murder count and 15 years for the home invasion count. George was sentenced to concurrent prison terms of 15 years for each count. This court affirmed defendants' convictions and sentences on directed appeal. *People v. Larry Shields and George Shields*, Cons. Nos. 1-06-2555, 1-06-2539 (July 30, 2008) (unpublished order under Supreme Court Rule 23), *appeal denied* 229 Ill. 2d 689 (Nov. 26, 2008). A full recitation of the facts relating to defendants' convictions can be found in their direct appeal.

At trial, Cassandra Shields testified that in October 2004, she lived in an apartment with her boyfriend, Michael Farmer, her daughter Zariah, and her sons, Henry and Terrell. Cassandra's apartment was located on the second floor of a building at 1201 South Western Avenue, in Chicago. Cassandra testified that she has a brother named Ricky Shields and that defendants, Larry and George are her cousins. Cassandra testified that two weeks prior to October 23, 2004, she received a phone call from Michael while she was at work and went home. Cassandra testified that her two sisters, her brother Bernard Price, and her cousin Larry were at her apartment. Cassandra testified that after speaking with her family members about Michael

1-09-2417

and Terrell, Terrell moved out of her apartment.

Cassandra testified that on the evening of October 23, 2004, she was at her apartment with Michael and Henry, who was sleeping in his bedroom. At about 12 or 1 a.m., Michael left the apartment. As Michael walked down the stairs toward the apartment building entrance, he was talking on his cell phone to Cassandra. Michael told Cassandra that her brother was at the building entrance. Cassandra walked down the stairs and Michael returned to the apartment.

Cassandra testified that when she opened the apartment building door, her brother, Ricky grabbed her and held her hands behind her back. Cassandra testified that Larry and George, and another man she did not know, entered the building and proceeded up the stairs toward her apartment. Cassandra was screaming at the men and Ricky continued to hold her until the three men walked up the stairs toward her apartment. Cassandra followed them up the stairs and saw Larry, George, and the unknown individual trying to push open her apartment door. Larry was yelling "open the door."

Cassandra testified that Larry pulled out a gun and fired it through the door, the door was "let loose," and the four men entered her apartment. Cassandra testified that she saw Larry, George, Ricky, and the unknown individual standing in her apartment and yelling at Michael to come out. After Cassandra threatened to call the police the four men left her apartment. Michael then showed Cassandra that he was bleeding from his chest. Shortly thereafter, police officers arrived and Cassandra accompanied Michael to the hospital. Cassandra testified that she told the police officers who responded to her apartment what had happened and "about Larry and George." She also told the detective at the hospital about what Larry and George had done.

On cross-examination, Cassandra acknowledged executing an affidavit, in which she

1-09-2417

stated that she “was afraid plus upset at the time of the incident” and that “truthfully deep down inside I don’t think it was them.” Cassandra also stated in her affidavit, “I would have come forward to this but I was afraid because of what the state’s attorney had told me.” During redirect examination, Cassandra testified that the affidavit that defense counsel asked her about was not the truth and that she did not write it. Cassandra testified that she signed the affidavit because her family talked to her about the case. Cassandra testified that she told the truth in her written statement, to the police officers at her apartment, and the detective at the hospital. Cassandra testified that what happened on the date in question was exactly what she testified to. Cassandra also testified that she had not been threatened by any State’s Attorney or police officers involved in the case.

Michael Farmer presented testimony that was consistent with that of Cassandra about the incident in question. Michael identified Larry and George as two of the individuals he saw in the hallway on the date in question. Michael testified that he had also identified Larry and George in a police line-up. Michael also testified that two weeks prior to the incident, he got into an argument with Cassandra’s son Terrell after Terrell ate food that he was told not to eat. Michael testified that Terrell attempted to hit him with a chair, then Michael hit Terrell.

In his defense, Larry presented testimony from Bernard Price, Cassandra’s brother. Bernard testified that on the night in question, he was with Larry at a nightclub from 10:45 p.m. until 1:50 a.m. Shanika Scott testified for George and stated that he was the father of her children. Shanika testified that on the night in question George was with her at home. Shanika testified that George went to sleep at about midnight and did not leave until he went to work at 6 a.m.

1-09-2417

Following deliberations, the jury returned a verdict of guilty as to both defendants and the circuit court sentenced defendants as previously described. On direct appeal, defendants argued that the circuit court committed reversible error by allowing Cassandra's written statement to be submitted to the jury during deliberations. Defendants also argued that they were denied effective assistance of counsel where counsels failed to object to the circuit court's characterization of evidence, allowed the State to bolster Cassandra's testimony by eliciting prior consistent statements, and failed to object to the State's line of questioning about her identifications of defendants to police officers at the scene and hospital.

On direct appeal, this court affirmed defendants' convictions and sentences. See *People v. Larry Shields and George Shields*, Cons. Nos. 1-06-2555, 1-06-2539 (July 30, 2008). In that order, this court held that defendants failed to show that they were denied the effective assistance of trial counsel. Specifically, defendants had argued that counsels should have objected to the State's line of questioning on redirect examination following the introduction of Cassandra's affidavit. Defendants asserted that Cassandra's statements of identification to the police were not admissible to rebut her affidavit because Cassandra's statements to police occurred after her motive to lie and implicate defendants arose. Defendants argued that Cassandra had motivation to lie after the confrontation concerning her son Terrell, which had occurred two weeks prior to the incident.

In rejecting defendants' argument, this court noted that "prior inconsistent statements are admissible not only to rebut a charge of recent fabrication, but also the inference that a witness is motivated to testify falsely." *People v. Larry Shields and George Shields*, Cons. Nos. 1-06-2555, 1-06-2539, slip op. at 23-24. This court explained:

1-09-2417

“Here, the defense introduced Cassandra’s affidavit, which included a statement indicating that her identification of defendants was incorrect and that ‘I would have come forward to this but I was afraid of what the State’s Attorney had told me.’ The introduction of this affidavit suggested that Cassandra had recanted her written statement and that her written statement and trial testimony were based on conversations with the State’s Attorney’s office. Following the introduction of the affidavit, the State was permitted to question Cassandra regarding her conversations with police officers at her home and at the hospital, and Cassandra indicated that her statements were the same as her trial testimony. We find no error in allowing this trial testimony to rebut the inference that Cassandra was motivated to testify falsely. Accordingly, defendants have failed to show that they were denied the effective assistance of counsel in this case.” *People v. Larry Shields and George Shields*, Cons. Nos. 1-06-2555, 1-06-2539, slip op. at 23-24.

On May 12, 2009, defendants each filed identical *pro se* postconviction petitions with affidavits attached. In their petitions, defendants alleged, *inter alia*, that the State knowingly presented perjured testimony from Cassandra, and that they were denied the effective assistance of counsel where counsels failed to investigate and present testimony from codefendant Ricky Shields. In support of the first contention, defendants attached affidavits from three of Cassandra’s family members, Bernard Price, Shontae Shields, and defendant Larry, all stating that Cassandra admitted that she was threatened by police and the prosecutor to testify consistently with her statements to police and written statement. To support their claim of ineffective assistance of counsel, defendants included an affidavit from codefendant Ricky

1-09-2417

Shields, in which he acknowledged that he plead guilty to home invasion in this case and that he was at the crime scene with three associates, none of which were his cousins, defendants Larry and George. Ricky attested that, “The individuals I went with to Cassandra Shield[’s] address were people looking for Michael Farmer for his past conduct several years prior. This was an old argument that existed between the individuals I went there with and Michael Farmer.” Ricky also stated, “I told [Cassandra] that night it would be best to let these guys take care of their business, which I hoped would be to remove Michael Farmer from her house.” In the affidavit, Ricky further stated, “I wanted to testify at my cousins[’] trial, I mailed letters to their attorney[s], but got no response.”

On July 24, 2009, in a written order, the circuit court dismissed defendants’ *pro se* postconviction petitions as frivolous and patently without merit where their claims were refuted by the record and counsels’ decisions regarding witnesses were a matter of trial strategy. Defendants now appeal.

## II. ANALYSIS

A post-conviction proceeding not involving the death penalty contains three distinct stages. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). At the first stage, the circuit court must, within 90 days of the petition’s filing, independently review the petition, taking the allegations as true, and determine whether “the petition is frivolous or is patently without merit.” *Hodges*, 234 Ill. 2d at 10; 725 ILCS 5/122-2.1(a)(2) (West 2008). “A *pro se* petition seeking postconviction relief under the Act 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 12. Our supreme court in *Hodges* explained that a petition has no basis in

1-09-2417

law when it is based on an “indisputably meritless legal theory,” such as a theory that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16. A petition has no basis in fact if it is based on a “fanciful factual allegation.” *Hodges*, 234 Ill. 2d at 16. “Fanciful factual allegations include those which are fantastic or delusional.” *Hodges*, 234 Ill. 2d at 17.

\_\_\_\_\_A post-conviction petition may also be summarily dismissed as frivolous and patently without merit based on both *res judicata* and waiver. *People v. Blair*, 215 Ill. 2d 427, 442 (2005). Where a petitioner has previously taken a direct appeal from a judgment of conviction, the judgment of the court of review is *res judicata* as to all issues that were actually decided by the court. *People v. Flores*, 153 Ill. 2d 264, 274 (1992). Any other claims that could have been presented to the court of review, if not presented, are waived. *Flores*, 153 Ill. 2d at 274.

If a petition survives the first stage of review, it proceeds to the second stage, at which an indigent defendant is entitled to appointed counsel, the petition may be amended, and the State may answer or move to dismiss the petition. *Hodges*, 234 Ill. 2d at 10-11.

#### A. Allegation that the State Presented Perjured Testimony

Here, defendants first claim that the circuit court erred in summarily dismissing their petitions where they presented an arguable claim that they were denied due process where the State knowingly elicited false testimony from Cassandra.

A review of the record shows that defendants previously raised claims regarding Cassandra’s alleged perjured testimony on direct appeal. On direct appeal, this court rejected defendants’ argument that counsels should have objected to the State’s line of questioning about Cassandra’s statements to police officers. This court noted that defendants introduced

1-09-2417

Cassandra's affidavit, which suggested that Cassandra had recanted her written statement and that her written statement and trial testimony were based on conversations with the State's Attorney's office. Following the introduction of the affidavit, this court held that the State was permitted to question Cassandra regarding her conversations with police officers at her home and at the hospital to rebut defendants' inference that Cassandra testified falsely. Cassandra testified that she identified defendants in her conversations with police officers at her apartment and the hospital. Cassandra also testified that her affidavit was false, that she signed it after speaking with family members, and that her trial testimony was correct. Therefore, defendants' claim is barred by *res judicata*.

#### B. Allegation of Ineffective Assistance of Trial Counsels

Defendants next claim that the circuit court erred in summarily dismissing their petitions where they presented an arguable claim that counsels were ineffective for failing to investigate and call codefendant Ricky Shields as a witness.

Claims of ineffective assistance of trial counsel are evaluated under the familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. More specifically, the defendant must demonstrate that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

1-09-2417

*Strickland*, 466 U.S. at 694. At the first stage of proceedings under the Act, a petition alleging ineffective assistance of counsel may not be summarily dismissed if: “(I) it is arguable that counsel’s performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced.” *Hodges*, 234 Ill. 2d at 17; see also *People v. Petrenko*, 237 Ill. 2d 490, 497 (2010).

### 1. Factual Basis

In the present case, we cannot say that defendants’ petitions failed to set forth sufficient facts to establish a constitutional violation for purposes of invoking the Act. Defendants’ factual allegation that their attorneys failed to investigate and present testimony from codefendant Ricky was not contradicted by the record; nor is it fanciful, fantactic, or delusional. *Hodges*, 234 Ill. 2d at 17. In addition, attached to defendants’ petitions was the signed affidavit of Ricky, which detailed what his testimony would have been and stated that he mailed letters to defendants’ attorneys but received no response. Thus, the affidavit provided corroboration of the allegation in defendants’ petitions that counsels failed to investigate Ricky as a possible witness. See *Hodges*, 234 Ill. 2d at 18 (signed affidavits of three potential witnesses indicating what their testimony would be corroborated defendant’s claim that counsel failed to investigate all possible witnesses). Therefore, we cannot conclude that, with regard to the allegation concerning Ricky, defendants’ petitions lacked an arguable basis in fact.

### 2. Legal Basis

The next question is whether defendants’ legal theory that counsel was ineffective for failing to interview and present testimony from Ricky was itself indisputably meritless. Here,

1-09-2417

defendants' theory of defense was to provide alibi witnesses to testify regarding their whereabouts on the night in question. Ricky's affidavit stated that he would have testified that he was at the crime scene with "three associates, none of which were my cousins Larry and George Shields." While the State notes that codefendant Ricky's testimony would have been subject to credibility issues, Ricky's testimony arguably would have supported defendants' theory of defense. Therefore, it is at least arguable that counsels' failure to interview and present Ricky's testimony "fell below an objective standard of reasonableness" and prejudiced the defense. *Strickland*, 466 U.S. at 687-88. Accordingly, with regard to counsels' failure to investigate and interview Ricky, defendants' legal theory of ineffective assistance was not indisputably meritless. Since defendants' petitions did not lack an arguable basis either in law or fact, the petitions should not have been summarily dismissed as frivolous and patently without merit.

### III. CONCLUSION

For the above reasons, we reverse the circuit court's summary dismissal of defendants' petitions for postconviction relief as frivolous and patently without merit. The cause is remanded to the circuit court for second-stage postconviction proceedings.

Reversed and remanded for further proceedings.