

No. 1-09-3185

**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).

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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. 04 CR 6486
	)	
ANGEL NEGRON,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Karnezis and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant filed a postconviction petition alleging that trial counsel was constitutionally ineffective for failing to properly lay a foundation to impeach the victims' testimony with prior inconsistent statements. Defendant failed to set forth a claim of arguable merit because he did not provide adequate support, and this court affirmed the judgment of the circuit court summarily dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 2 Defendant Angel Negron appeals from the summary dismissal of his *pro se* petition filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)). He contends his petition stated a claim of arguable merit that trial counsel was constitutionally ineffective for failing to elicit certain evidence showing he was not the perpetrator of the crime of sexual abuse.

Defendant also challenges certain fines and fees. We affirm.

¶ 3 Defendant is currently serving a term of 107 years' imprisonment, imposed after a jury found him guilty of the aggravated criminal sexual assault and abuse of G.R., age 7. Trial evidence showed that G.R. and her sister K.R., age 6, lived in the same building that defendant maintained and his wife Ruth managed. Both G.R. and K.R. testified that defendant sexually abused them, then showed them guns and stated that if they told anyone, he would kill their parents. G.R. testified that defendant sexually abused her on four different occasions and K.R. on three different occasions, although K.R. only testified to one of them. G.R. testified that defendant put his hand inside her pants and touched her vagina; he placed his hand on her vagina over her clothes; he placed her on his bed, removed her clothing, then attempted to have sexual intercourse with her; and he kissed her on the mouth. Rebecca Barrera, mother of G.R. and K.R., learned of defendant's actions, then notified the police, who eventually recovered pellet guns and a toy replica gun from defendant's apartment. G.R. and K.R. were taken to the hospital. The treating physician testified that the physical exam of G.R. showed evidence of physical trauma consistent with the sexual abuse G.R. had described to the doctor; G.R. stated that a man had touched her vagina and anus with his hand and inserted his finger and penis into her vagina. K.R. also reported sexual abuse to the treating physician, including touching of her vagina and buttocks, but a physical examination did not reveal any abnormalities.

¶ 4 Barrera testified that she confronted defendant's wife Ruth about defendant's acts; in response, Ruth became angry and threatened to evict the family.

¶ 5 The State also introduced evidence showing defendant's propensity to commit sex acts against minor children. R.R. testified that she was a neighbor of defendant's in 1986 when she was age 7. Defendant forced her into his bedroom, showed her pornographic books and movies, then lay her on the bed, disrobed himself and her, and touched his penis against her vagina. His

act apparently was foiled only by the entry of his daughter into the room. Defendant told R.R. that if she told her mother, he would kill her mother and brothers. R.R. eventually testified against defendant in court.

¶ 6 The defense theory posited that the Barrera family fabricated the sexual abuse stories to avoid eviction. William Lucas, the building owner, testified that he had received complaints that the Barrera children were being disruptive, and he told Ruth that if the Barreras did not control their children, the family would be evicted. The Barrera family, however, was not evicted. Ruth testified that she relayed the eviction warning to the Barreras the day defendant was arrested.

¶ 7 The jury found defendant guilty of aggravated criminal sexual assault and abuse against G.R, but returned a verdict of not guilty on all counts relating to K.R. The court sentenced defendant to a total of 100 years for the two counts of aggravated criminal sexual assault and a total of 7 years for the two counts of aggravated criminal sexual abuse, to be served consecutively, for a total of 107 years' imprisonment.

¶ 8 Defendant filed a direct appeal. He argued that the State failed to prove him guilty beyond a reasonable doubt of one count of aggravated criminal sexual assault; the court erred in submitting R.R.'s testimony; he was denied a fair trial when the court failed to provide a limiting instruction regarding R.R.'s testimony; he was denied a fair trial by the State's improper closing argument; his due process rights were violated because the court failed to instruct the jury that it could consider the children's ages in evaluating their credibility; and the court failed to give him proper presentencing custody credit. This court affirmed defendant's convictions. *People v. Negron*, No. 1-06-2621 (2008) (unpublished order under Supreme Court Rule 23).

¶ 9 Defendant thereafter filed this *pro se* postconviction petition. Defendant claimed he was actually innocent of the crime and asserted, *inter alia*, that trial counsel was constitutionally ineffective for failing to investigate the Barrera family's motive to falsely accuse him when faced

with eviction. He asserted, in turn, that appellate counsel was constitutionally ineffective for failing to raise trial counsel's ineffectiveness. In support of his claims, defendant attached an unsigned letter, dated May 18, 2006, before trial, purporting to be from Lucas and detailing his recollections of the incident leading to defendant's arrest. Therein, Lucas stated that other tenants had complained about the Barrera children running and playing in the building, so he ordered Ruth to threaten eviction if the Barreras did not supervise their children. Lucas stated that the next day Ruth spoke to the family, and "was very forceful." Defendant was arrested for sexual abuse shortly thereafter. Lucas stated that he "immediately knew that the allegations" resulted from his threat of eviction to the tenants. Lucas visited the family to relay that he would not evict them so that they would "retract their false charges." There, with the older brother as his interpreter, he spoke with the two girls about the incidents of abuse. Lucas wrote that "[w]ith every question I asked them, they contradicted themselves." Lucas further stated that after the family moved out, he received a call from someone on behalf of Barrera asking that he return the security deposit to her, not her husband, and informing him that she had "kicked her husband out" for abusing the kids.

¶ 10 The trial court summarily dismissed defendant's postconviction petition as frivolous and patently without merit. Defendant appealed.

¶ 11 We review the first-stage summary dismissal of a postconviction petition *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

¶ 12 The Act provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution, the Illinois Constitution, or both. 725 ILCS 5/122-1 (West 2008); *Hodges*, 234 Ill. 2d at 9. A *pro se* postconviction petition may be summarily dismissed as frivolous and patently without merit if it has no arguable basis in law or fact, *i.e.* if it is based on an

indisputably meritless legal theory or a fanciful factual allegation. *Hodges*, 234 Ill. 2d at 11-12, 16-17.

¶ 13 Defendant contends his petition is sufficient to survive summary dismissal under the Act because he stated a claim with arguable merit that trial counsel was ineffective for failing to elicit evidence that G.R. and K.R. "contradicted themselves" and that their father had abused them.

¶ 14 The State responds that defendant's claim cannot be considered because his petition lacks sufficient corroboration under the Act. The State argues that defendant failed to attach any affidavits and the only document he points to is an unsigned and unsworn letter purportedly drafted prior to trial by Lucas.

¶ 15 The Act requires that a defendant verify by notarized affidavit the contents of the petition. 725 ILCS 5/122-1(b) (West 2008); *People v. Carr*, 407 Ill. App. 3d 513, 515-16 (2011). In addition, the petition must be accompanied by affidavits, records, or other evidence supporting its allegations, or state why such documentation is not attached. See 725 ILCS 5/122-2 (West 2008). Failure to notarize the affidavit for the petition or to attach supporting affidavits, records, or other evidence, or to explain their absence, can be fatal to a petition. *People v. Delton*, 227 Ill. 2d 247, 255 (2008); *Carr*, 407 Ill. App. 3d at 515-16.

¶ 16 Although neither party raises the issue, we observe that defendant's petition suffers from a more fundamental defect in that defendant himself failed to file a proper affidavit verifying the contents of his petition. That is, although defendant signed the affidavit attesting to the truth of the allegations in his petition, the affidavit was not notarized. As stated, to be valid, an affidavit must be notarized. *Carr*, 407 Ill. App. 3d at 515-16. Because it was not in this case, defendant is not entitled to any relief under the Act. See *Carr*, 407 Ill. App. 3d at 516.

¶ 17 Even assuming defendant had filed a notarized affidavit with his petition, defendant's petition still does not satisfy the requirements of the Act. Lucas' letter, which defendant asserts is

the basis for his ineffective assistance of counsel claim, does not bear a handwritten signature and is unsworn. There is no affidavit by Lucas attesting that he did indeed write the letter or that it accurately reflects his recollections. There is no apparent reason why defendant could not have obtained an affidavit from Lucas, where Lucas testified on defendant's behalf at trial. In such a case, we cannot take the statements in the letter as true. See *People v. Collins*, 202 Ill. 2d 59, 67 (2002). The letter is therefore insufficient to satisfy the supporting documentation requirement under the Act. See *Delton*, 227 Ill. 2d at 255.

¶ 18 Defendant argues that the contents of the letter appear in the trial transcripts, so that he still may assert his ineffective assistance of counsel claim. Nothing in the transcript corroborates Lucas' statement in the letter that, according to Barrera, her husband was abusing the children. As we have found Lucas' letter, which lacks both signature and notarization, insufficient and as no other evidence corroborates the allegation that Barrera's husband abused the children, we cannot consider that allegation further.

¶ 19 Defendant, however, insists that there is evidence in the trial transcripts showing the girls made inconsistent statements. Defendant, for example, points to the direct examination of Lucas at trial, wherein defense counsel attempted to ask Lucas about his interaction with the Barrera family following defendant's arrest. In response to the State's objection, counsel stated Lucas would testify that he had asked the girls questions regarding the incident, but their responses were inconsistent. Counsel argued this was relevant to show the charges against defendant were not true. The trial court sustained the objection for lack of foundation, and counsel did not renew his questioning in the matter.

¶ 20 Defendant now argues, from this, we can conclude that counsel knew about the letter and, further, that counsel was ineffective for failing to lay a proper foundation for the impeachment by asking G.R. and K.R. whether they had spoken to Lucas and provided inconsistent statements.

As the State notes, this claim is wholly separate from the claim raised in defendant's postconviction petition, itself, that counsel was ineffective for failing to investigate the family motive for falsely accusing him; therefore, it cannot be considered for the first time on appeal. See *People v. Cummings*, 375 Ill. App. 3d 513, 517 (2007).

¶ 21 Even if we were to liberally construe defendant's petition, so that the contents of the unsworn letter could be considered a part of his ineffective assistance of counsel claim, we would still find the claim meritless. That is, to the extent the trial evidence corroborates statements in the letter – by showing that Lucas visited the family, asked the girls questions, and received inconsistent answers regarding the sexual abuse – we still do not have an affidavit from Lucas identifying how he would have testified or how the girls' statements were inconsistent. The remaining evidence defendant points to is insufficient support for the conclusion that counsel was ineffective. Based on the foregoing, defendant's petition was properly dismissed as frivolous and patently without merit at the first stage of proceedings.

¶ 22 Defendant next contends that he was improperly assessed a \$105 monetary penalty under section 22-105 of the Code of Civil Procedure (735 ILCS 5/22-105 (West 2008)) for the frivolous filing of his petition. Defendant, however, has withdrawn this argument in light of *People v. Alcozer*, 241 Ill. 2d 248, 258 (2011), which held that a petition summarily dismissed at the first stage of proceedings may be subject to the penalty under section 22-105. We therefore need not consider defendant's argument further.

¶ 23 Based on the foregoing, we affirm the judgment of the Circuit Court of Cook County.

¶ 24 Affirmed.