

2011 IL App (2d) 091128-U  
No. 2-09-1128  
Order filed December 21, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lee County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-80
	)	
JOVANI TORRES,	)	Honorable
	)	Ronald M. Jacobson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

**ORDER**

*Held:* The trial court properly summarily dismissed defendant's postconviction petition because the petition was frivolous. Defendant failed to state a claim of unfitness to plead guilty; although defendant alleged that he had been receiving mental health treatment including medication, he did not indicate that he could not understand the proceedings, and the record showed that he could. We affirmed the trial court's first-stage dismissal of defendant's postconviction petition.

¶ 1 In July 2009, defendant, Jovani Torres, filed a petition seeking relief pursuant to the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2008)), alleging that he stated a claim that he was unfit when he pleaded guilty to aggravated battery (720 ILCS 5/12-4(b)(6) (West

2006)). The trial court found defendant's petition frivolous and dismissed it. Defendant now appeals the first-stage dismissal of his postconviction petition. We affirm.

¶ 2 On May 22, 2008, defendant pleaded guilty to aggravated battery in connection with an incident in which defendant, who was incarcerated, punched another inmate. Defendant responded to questions from the trial court and answered affirmatively that he understood the type of crime he was charged with, the possible penalties, that he was waiving his right to a trial, and that he understood various other considerations. Defendant listened to the factual basis and did not disagree with it. Nothing on the face of the record indicated that defendant was unable to communicate with the court or his counsel or that he did not understand the proceedings. Defendant also signed a form, stating that his plea was voluntary. The trial court accepted the plea and moved to sentencing.

¶ 3 In mitigation, defendant's counsel stated that defendant suffered from post-traumatic stress syndrome, had been receiving treatment, and recognized that he had a problem and was trying to cope with it. The following colloquy occurred:

¶ 4 "THE DEFENDANT: In the military I was diagnosed with \*\*\* posttraumatic stress syndrome, number one—

THE COURT: You need to slow down.

THE DEFENDANT: Judge, I was bi-polar one disorder and PTS. I take medication for it. I was trying to go through treatment, however when I went to Pontiac after this event occurred I was seeing a Doctor Smith. You can also verify from him in Cook County. He is a self mentor doctor there and for other inmates. We were in a group, posttraumatic stress anger problems. I've been in that group for a year before I had to leave it. Within that group at a time in maximum joint Pontiac I did not even receive a minor ticket. Now since I've been back to Cook County I even have an incident with an Inmate Ryan. I was hit in the

face, permanent scar on my nose but I did not hit back. Lieutenant Diaz can even verify. He was amazed I didn't hit back as well because that's not my usual profile. I'm trying to change and within a year and a half I've not even received a minor ticket."

¶ 5 The trial court thanked defendant for his statement and sentenced him to four years and six months of incarceration. Defendant did not take a direct appeal.

¶ 6 On July 22, 2009, defendant filed a *pro se* postconviction petition, alleging that he was denied due process because he was a mental patient in the psychiatric unit of the prison at the time of the incident. In another portion of the petition, defendant stated that he was taking psychotropic medications. Defendant provided no other specific facts to support an allegation of unfitness.

¶ 7 Defendant provided two documents, both captioned "Affidavit," the first, stating that he did not file an appeal in his case because he was receiving "anti-psychotic psychotropic (*sic*) mind boggling drugs," making it difficult for him to focus and concentrate on place, time, and surroundings. The second document attested to the truth of the petition.

¶ 8 On October 19, 2009, the trial court summarily dismissed the petition, finding that it was frivolous and patently without merit. Defendant appeals.

¶ 9 Defendant contends that the trial court erred by dismissing his petition, because he presented an arguable claim that there was a *bona fide* doubt about his fitness at the time of the guilty plea.

¶ 10 The Act provides a method by which persons under a criminal sentence can assert that their convictions were the result of a substantial denial of their rights under the United States or the Illinois Constitution or both. 725 ILCS 5/122-1 *et seq.* (West 2008); *People v. Ligon*, 239 Ill. 2d 94, 103 (2010) (citing *People v. Petrenko*, 237 Ill. 2d 490, 495-96 (2010)). A postconviction proceeding is a collateral attack on the prior conviction or sentence that does not relitigate a defendant's innocence or guilt. *Ligon*, 239 Ill. 2d at 103 (citing *People v. Evans*, 186 Ill. 2d 83, 89 (1999)).

¶ 11 Proceedings under the Act are commenced by the filing of a petition in the circuit court in which the original proceeding took place. *People v. Hansen*, 2011 IL App (2d) 081226, ¶ 18 (2011) (citing *People v. Jones*, 213 Ill. 2d 498, 503 (2004)). “Except in cases where the death penalty has been imposed, the Act establishes a three-stage process for adjudicating a postconviction petition.” *People v. Carballido*, 2011 IL App (2d) 090340, ¶ 37 (citing *People v. Jones*, 213 Ill. 2d 498, 503 (2004)). “At the first stage, the trial court must review the petition within 90 days of its filing to determine whether it is either frivolous or patently without merit.” *Id.* (citing 725 ILCS 5/122-2.1(a)(2) (West 2008)). To survive summary dismissal, the petition must present only the gist of a constitutional claim. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); *Hansen*, 2011 IL App (2d) 081226, at ¶ 18 (citing *Jones*, 211 Ill. 2d at 144). A petition that has no arguable basis “either in law or in fact” constitutes a petition that is frivolous or patently without merit. *Hodges*, 234 Ill. 2d at 11-12. We review *de novo* the trial court’s first-stage summary dismissal of defendant’s postconviction petition. See *Hodges*, 234 Ill. 2d at 9.

¶ 12 “A petition has no basis in law when it is based on an ‘indisputably meritless legal theory,’ meaning that the legal theory is ‘completely contradicted by the record.’” *Carballido*, 2011 IL App (2d) 090340, ¶ 37 (quoting *Hodges*, 234 Ill. 2d at 16). “A petition has no basis in fact when it is based on ‘fanciful factual allegation[s],’ meaning that the factual allegations are ‘fantastic or delusional.’” *Id.* (quoting *Hodges*, 234 Ill. 2d at 17). “If the court does not dismiss the petition as frivolous or patently without merit, then the petition advances to the second stage.” *Id.*

¶ 13 Although only a limited amount of detail need be presented in a *pro se* petition, the petition must clearly set forth how the petitioner’s constitutional rights were violated. *Hodges*, 234 Ill. 2d at 9; see 725 ILCS 5/122-2 (West 2008). “[A] ‘limited amount of detail’ does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional

deprivation. Such a position would contravene the language of the Act that requires some factual documentation which supports the allegations to be attached to the petition or the absence of such documentation to be explained.” *People v. Delton*, 227 Ill. 2d 247, 254 (2008) (citing 725 ILCS 5/122-2 (West 2004)). The petition’s allegations must be capable of objective or independent corroboration, and the affidavits and exhibits that accompany the petition must identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the allegations. *Id.* “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.” *Id.* at 254-55.

¶ 14 A defendant “is fit to plead guilty, stand trial, or be sentenced if he is able to understand the nature and purpose of the proceedings against him or to assist in his defense.” *People v. Itani*, 383 Ill. App. 3d 954, 970 (2008). “If a *bona fide* doubt of the defendant’s fitness is raised, ‘the court shall order a determination of the issue before proceeding further.’ ” *People v. Lucas*, 388 Ill. App. 3d 721, 726 (2009) (quoting 725 ILCS 5/104-11(a) (West 2006)). The defendant bears the burden of proving that there were facts in existence that raised a real, substantial, and legitimate doubt as to his mental capacity to meaningfully participate in his defense and cooperate with counsel. See *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). Factors that are relevant for the trial court to consider in assessing the existence of a *bona fide* doubt of the defendant’s fitness include (1) the rationality of the defendant’s behavior and demeanor during court appearances and (2) any prior medical opinions on the issue of the defendant’s fitness. *Id.* “In general, limited intellectual ability—without more—does not render a defendant unfit.” *Itani*, 383 Ill. App. 3d at 970. Additionally, a defendant may be competent even though his or her mind is otherwise unsound. *Id.* The taking of psychotropic medication also does not create a *bona fide* doubt as to a defendant’s

fitness. See *People v. Jamison*, 197 Ill. 2d 135, 153 (2001). “Moreover, the mere existence of a mental disturbance or an instance of psychiatric treatment is not sufficient to create a *bona fide* doubt of a defendant’s fitness.” *Itani*, 383 Ill. App. 3d at 970.

¶ 15 Here, Defendant provided only the conclusory allegation that he was receiving mental health treatment at the time of the incident and was taking medication, along with an allegation that he did not appeal because of the effects of that medication. He did not present any allegations that he was unable to understand the guilty plea proceedings. The record shows otherwise. See *People v. Deloney*, 341 Ill. App. 3d 621, 626 (2003) (holding that a trial court may summarily dismiss a postconviction petition if its allegations are contradicted by the record). At the guilty plea hearing, defendant stated his understanding of the trial court’s admonitions and he listened to and stipulated to a factual basis establishing his guilt. He must be held to the assurance. See *People v. Robinson*, 157 Ill. App. 3d 622, 629 (1987) (stating that if a guilty plea is to have any binding effect, the trial court’s extensive and exhaustive admonitions and the defendant’s acknowledgment must be held to sustain an assertion of involuntariness). Moreover, his comments did not raise any indication that he was unable to comprehend the proceedings and there was nothing at that time to raise a *bona fide* doubt about his fitness to plead guilty. Although defendant later presented evidence about mental difficulties, he did so in mitigation to establish that he was doing well and was not experiencing his previous problems with anger. Thus, based on the conclusory allegations, which as pertinent here, are contradicted by the record, the trial court properly found that the petition was frivolous and patently without merit. Accordingly, we hold that the trial court’s first-stage dismissal of defendant’s postconviction petition was proper.

¶ 16 We affirm the judgment of the circuit court of Lee County.

¶ 17 Affirmed.

