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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 03—CF—1350
)	
)	
SHAWN A. BARMORE,)	Honorable
)	Steven G. Vecchio,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The trial court erred in summarily dismissing defendant’s postconviction petition where defendant stated the gist of a violation of the rule set forth in Brady v. Maryland, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963).

Defendant, Shawn A. Barmore, was convicted of first-degree murder (720 ILCS 5/9—1(a)(1) (West 2002)). He was sentenced to 45 years’ imprisonment. Defendant appealed, and we affirmed his conviction. See *People v. Barmore*, No. 2—06—0072 (Ill. App. March 19, 2008). Defendant then filed a petition pursuant to the Postconviction Hearing Act (Act) ((see 725 ILCS 5/122—1 et

seq. (West 2008)). The trial court dismissed the petition during the first stage of postconviction proceedings. See *People v. Brown*, 236 Ill. 2d 175, 184 (2010). Defendant now appeals this ruling by the trial court. For the reasons that follow, we reverse and remand for further proceedings.

Because this case comes to us following the summary dismissal of a postconviction petition, our review is *de novo*. *People v. Burns*, 405 Ill. App. 3d 40, ___, 933 N.E.2d 1208, 1211 (2010). To survive dismissal, a petition need only set forth the gist of a constitutional claim. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). The gist standard is well-recognized as being a low one. *E.g.*, *People v. Edwards*, 197 Ill. 2d 239, 244 (2001); *People v. Hoekstra*, 371 Ill. App. 3d 720, 722 (2007). A trial court may dismiss a postconviction petition where it is frivolous and patently without merit. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). A petition is frivolous or patently without merit only if it has “no arguable basis either in law or in fact.” *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). Factual allegations must be taken as true unless they are affirmatively rebutted by the record. *People v. v Gerow*, 388 Ill. App. 3d 524, 526 (2009). A petition stands or falls in its entirety. *People v. Johnson*, 377 Ill. App. 3d 854, 858 (2007). That is, if any one claim alleged in the petition is not frivolous or patently without merit, the entire petition survives. *People v. Rivera*, 198 Ill. 2d 364, 371 (2001)

Before this court, defendant raises the following four issues. First, he contends he received ineffective assistance of counsel during his direct appeal. Second, he alleges a *Brady* violation. See *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963). Third, he asserts that one of the State’s witnesses perjured himself and the State failed to correct the perjury. Fourth, he argues that his right to remain silent was violated. As we find defendant’s second argument well taken, we need not address his other arguments. See *Rivera*, 198 Ill. 2d at 371. When we encountered this

case on direct appeal, we set forth the facts in great detail. See *People v. Barmore*, No. 2—06—0072 (Ill. App. March 19, 2008). We will not repeat them here, and instead consider the facts as they are relevant to defendant’s second argument. We now turn to the merits of defendant’s appeal.

Defendant argues that he asserted the gist of a *Brady* violation. See Brady, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194. Defendant contends that his brother and cousin had conversations with Phillip Dixon, a witness for the State, in which Dixon stated that he committed perjury in order to receive a deal from the State. A *Brady* violation occurs when the State fails to disclose, upon request, material evidence that is favorable to the accused. *People v. Cheers*, 389 Ill. App. 3d 1016, 1028-29 (2009). The rule applies to impeachment evidence. *People v. Sharrod*, 271 Ill. App. 3d 684, 688 (1995).

The State asserts that defendant waived this claim by not raising it in the postconviction petition that initiated this action. We disagree. It is well established that a postconviction petition need only contain a limited amount of detail. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). Legal argument and citation to authority is not required. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). The allegations of the petition must be liberally construed. *Brown*, 236 Ill. 2d at 184. A petitioner need only present a “claim that is arguably constitutional.” *Hodges*, 234 Ill. 2d at 9. Moreover, the petition “need not set forth the claim in its entirety.” *People v. Edwards*, 197 Ill. 2d 239, 244 (2001).

Here, claimant has alleged the following:

“Petitioner’s right to a fair and unbiased trial was violated when the Rockford detectives threatened Phillip Dixon to lie on the stand against petitioner and say that he passed some (notes) that he received from Shawn Barmore, to eyewitness Eddie Torrance. Petitioner

contends that this new evidence from his cousin proves that he never passed any notes when in Joshua Jamerson's affidavit Phillip Dixon tells him that he only testified against petitioner because the Rockford detectives threatened to charge him with first degree murder.” (Emphasis in original.)

Keeping in mind the low standards that we are required to apply here as set forth in the previous paragraph, it is clear that defendant's allegations sufficiently allege a *Brady* violation. These allegations amount to an assertion that Dixon's testimony was procured by a promise to refrain from charging him with first-degree murder. Further, the fact that defendant characterizes this evidence as new indicates that it had not been disclosed to him by the State. This constitutes the gist of a *Brady* violation (whether these allegations ultimately prove to be true is not a matter before this court at this time). Furthermore, that the allegations do not expressly assert that a request for such information was made is immaterial, as a petition is sufficient even if it only sets forth part of a claim (*Edwards*, 197 Ill. 2d at 244).

The State also contends that evidence regarding Dixon receiving a deal for his testimony is not newly discovered. Generally, “[p]ost-judgment relief is limited to matters relating to evidence that did not appear in the record of the trial court's original proceedings and that was discovered after trial was completed.” *People v. Burrows*, 172 Ill. 2d 169, 187 (1996). In another portion of his petition and the supporting affidavit, defendant avers that his attorney refused to call his brother to testify regarding “what Phillip Dixon told him in July 2005, about how he only made up the statement against Petitioner to get out of jail.” However, the allegations (again supported by affidavit) regarding the potential *Brady* violation involve a conversation occurring between defendant's cousin and Dixon on November 10, 2005. Unlike the July conversation that simply

references getting out of jail, the November conversation concerns avoiding a murder charge. Thus, it is clear that two different conversations occurred. Construing the petition liberally as we must, it is inferable defendant's instructions to his attorney to call his brother were not based upon the same evidence that he now relies on to support his claim of a *Brady* violation. Further, that the latter conversation involved avoiding a murder charge instead of simply getting out of jail is arguably more impeaching to Dixon's credibility.

The balance of the State's arguments concern the weight of the evidence. For example, the State takes issue with the affidavits defendant has submitted in support of his petition, calling them "very convenient." The State further notes that Dixon "has never come forward and made any statements to the police, prosecutors, or signed any affidavits saying he made up the story." Such matters are not pertinent to the first stage of postconviction proceedings, where we must accept defendant's allegations as true unless they are affirmatively rebutted by the record, which in this case, they are not. *Gerow*, 388 Ill. App. 3d at 526.

Accordingly, we conclude that the allegations set forth by defendant adequately allege a *Brady* violation under the Act (720 ILCS 5/9—1(a)(1) (West 2002)). We therefore reverse the judgement of the circuit court and remand for further proceedings. As defendant has stated the gist of at least one constitutional claim, the entire petition may proceed to the second stage of postconviction proceedings.

Reversed and remanded.