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2011 IL App (3) 090914-U

Order filed July 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit Will County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-09-0914 Circuit No. 05-CF-13
DOUGLAS J. PARINI,)	Honorable Daniel J. Rozak
Defendant-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by summarily dismissing defendant's petition for postconviction relief because defendant's claims were frivolous and patently without merit. We affirm the trial court's summary dismissal of defendant's postconviction petition.
- ¶ 2 Pursuant to a fully negotiated plea agreement, defendant plead guilty to one count of first degree murder on September 5, 2008. The trial court sentenced defendant to 20 years

imprisonment in the Department of Corrections. On September 15, 2009, defendant filed a *pro se* petition for postconviction relief claiming ineffective assistance of counsel. The trial court summarily dismissed the petition on October 20, 2009, finding defendant's petition to be frivolous and patently without merit. We affirm the trial court's summary dismissal.

¶ 3

FACTS

¶ 4 On January 20, 2005, a Will County grand jury issued a bill of indictment charging defendant with three counts of first degree murder alleging that defendant shot his mother, Florence B. Parini, with a .38 caliber revolver on December 31, 2004, thereby causing her death. On March 9, 2005, defense counsel filed a motion for fitness evaluation which the trial court granted. On July 20, 2005, the trial court conducted a fitness hearing. The parties stipulated to the contents of Dr. Randi Zoot's report and documents. In this report, Dr. Zoot stated that defendant insisted the shooting was an accident and that his counsel "would try to show that." Following the hearing, the trial court found defendant fit to stand trial.

¶ 5 On August 10, 2005, defense counsel filed a motion for sanity evaluation by Dr. Zoot to evaluate defendant's sanity at the time of the offense. The court granted the motion on August 24, 2005. The record on appeal contains the report prepared by Dr. Zoot dated October 4, 2005. According to the report, defendant told Dr. Zoot that he took his father's gun because it was New Year's Eve and was going to shoot the gun into the air that night. His mother saw him and thought that he had alcohol. According to defendant, his mother pushed him, and when he fell back, the "gun went off." He said that after he realized his mother was shot, defendant panicked. He took the car and \$100 for food and gas, but later the police found him. Defendant insisted the shooting was an accident.

¶ 6 On March 27, 2006, the State filed a motion to demonstrate trigger pull. In the motion, the State claimed that a “central fact in this trial will be the trigger strength and recoil of the .38 caliber revolver which killed the victim.” The State requested the court allow the State to take the jurors to a firing range and allow each juror to fire the murder weapon at least twice while loaded with the same ammunition used by defendant.

¶ 7 On October 6, 2006, defense counsel filed a motion to suppress statements and a motion to quash arrest and suppress evidence. The trial court began a hearing on defendant’s motion to suppress statements and motion to quash arrest and suppress evidence on October 19, 2006.

Martin D. Shifflet, a Will County sheriff’s deputy, testified that he located the victim in this case on the bedroom floor of her residence with “at least one bullet wound in her.” At the residence, he met with Doug Parini, Sr. who told Shifflet that he suspected defendant committed the shooting because defendant had an anger management problem.

¶ 8 Deputy Brian O’Leary testified that he located defendant on the east side of Joliet on the day of the shooting. O’Leary testified that he stopped a motor vehicle driven by defendant during the afternoon of December 31, 2004. Defendant told O’Leary that the gun was in the trunk under a mat. O’Leary opened the trunk and saw a woman’s purse in plain sight but did not see a gun. He located a revolver under the mat of the trunk in the tire compartment area. At the conclusion of the hearing, the trial court denied defendant’s motion to suppress statements and motion to quash arrest on December 7, 2006.

¶ 9 On June 21, 2007, defense counsel filed a motion to appoint forensic psychiatrist. In the motion, defense counsel indicated that counsel had spoken to Dr. Matthew Markos about providing expert testimony regarding defendant's mental and cognitive functioning relevant to

the case. Defense counsel requested that the court appoint Dr. Markos in the case. On July 2, 2007, defense counsel indicated to the court that he was meeting with the prosecutors and “putting together a mitigation package.” However, if negotiations were not successful, then defense counsel needed testimony from a psychiatrist. The court granted defendant's motion to appoint Markos to examine defendant.

¶ 10 On April 21, 2008, defense counsel indicated to the court that negotiations with the State were in their “final stage.” That same day, the trial court ordered Dr. Zoot to again evaluate defendant’s fitness to stand trial.

¶ 11 On September 5, 2008, the State filed an information setting forth one count of first degree murder which did not indicate the use of a firearm, but instead alleged that defendant struck the victim, Florence B. Parini, with a metallic projectile, thereby causing her death. The State dismissed the previously issued bill of indictment.

¶ 12 On that same day, the parties appeared before the court. The court indicated that it had reviewed Dr. Zoot’s report. In the report, Dr. Zoot found that defendant was taking psychotropic medication, that the medication did not interfere with defendant’s ability to plead guilty, and that defendant remained fit to stand trial. The court found defendant fit to stand trial, and the parties then advised the court that they had reached a negotiated plea.

¶ 13 The prosecutor presented a factual basis to the court which indicated that on December 31, 2004, deputies responded to a residence at 25446 Cottage Road where they found Florence Parini in the master bedroom with “mortal wounds that she received from a metallic projectile.” Deputies spoke to Douglas Parini, Sr., who told the police that he believed defendant caused the wounds. Thereafter, deputies located defendant at another location in the family vehicle, and

defendant admitted that he caused the wounds to Florence Parini.

¶ 14 Defendant said that the attorneys answered his questions about the plea and that despite his medical conditions, defendant was able to communicate with his attorneys and understood his plea. Defendant told the court that he was satisfied with his attorney. The trial court accepted defendant's plea and the terms of the plea negotiations and sentenced defendant to 20 years imprisonment for the offense of first degree murder.

¶ 15 On September 15, 2009, defendant filed a *pro se* postconviction petition. In the form petition, defendant stated that his constitutional rights were violated because:

“Court-appointed counsel was ineffective because he failed to investigate evidence and defense strategy of motive or intent or accidental causes. The court-appointed counsel failed to request a second independent psychiatric – fitness examination other than Dr. Zoot. The court-appointed counsel failure to adequately investigate defense strategy or plea – guilty but mentally ill. And [*sic*] not guilty by reason of insanity. Petitioner was suffering mental and physical disabilities during plea.”

¶ 16 In a section listed as “Statement of Claim,” defendant stated that he suffered from physical and mental disabilities during his plea and that he was taking prescription medication during the plea. Defendant also stated that he did not understand the court proceedings and that his fitness examinations and hearings were improper and inadequate. Finally, defendant claimed that his trial counsel and the court failed to request or allow an independent investigation into the question of insanity, guilty but mentally ill, and motive, intent, or death by accidental causes.

Defendant attached an affidavit to the petition which stated that all of the facts contained in defendant's petition were true and correct.

¶ 17 On October 20, 2009, the trial court entered an order which stated that it reviewed defendant's postconviction petition, the court file, and all relevant documents, and then the court set out in great detail its written findings. The court found that defense counsel filed numerous motions indicating that defense counsel was actively and diligently representing defendant. The court concluded that a defense based on the accidental nature of the shooting would have been a "rather difficult argument to make" because the victim was shot twice with a revolver. The court noted that the State filed a motion to demonstrate the trigger pull to allow the jurors to fire the revolver so they could see "first hand" the difficulty in pulling the trigger twice.

¶ 18 Based on these detailed findings, the court concluded that the voluntary versus involuntary nature of the shooting was brought before the court and that defense counsel "did everything that petitioner [defendant] now contends they did not do." Therefore, according to the court, defendant's petition was "frivolous and patently without merit and fail[ed] to raise a sufficient constitutional question upon which relief can be granted." The trial court summarily dismissed defendant's petition.

¶ 19 On November 12, 2009, defendant filed a notice of appeal.

¶ 20 ANALYSIS

¶ 21 On appeal, defendant claims that the trial court erred in summarily dismissing his *pro se* postconviction petition because defendant stated the gist of a constitutional claim that he received ineffective assistance of counsel since appointed counsel failed to investigate a possible defense that the shooting was an accident in light of defendant's physical and mental disabilities.

The State responds that the trial court correctly dismissed defendant's postconviction petition as frivolous and patently without merit because defendant's claim is contradicted by the record which shows that defense counsel considered and investigated such a defense. Alternatively, the State responds that defendant failed to state the gist of a constitutional claim because even if defense counsel did not investigate an accidental shooting defense, defense counsel was not ineffective for failing to do so because the record does not support such a defense. Therefore, the trial court properly dismissed defendant's petition.

¶ 22 Article 122 of the Code of Criminal Procedure contains the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq* (West 2008)) which provides that a petition must "clearly set forth the respects in which petitioner's constitutional rights were violated." 725 ILCS 5/122-2 (West 2008). In cases of *pro se* petitioners, the Illinois Supreme Court has "acknowledged that only the 'gist' of a constitutional claim need be asserted in order to survive dismissal under section 122-2.1 and to require the appointment of counsel under the Act." *People v. Coleman*, 183 Ill. 2d 366, 381 n.2 (1998) (quoting *People v. Porter*, 122 Ill. 2d 64, 84 (1988)).

¶ 23 Where a trial court dismisses a petition as frivolous and patently without merit, the question on review is "whether defendant's petition had no arguable basis either in law or in fact, *i.e.*, whether it was based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). The appropriate standard of review when considering a summary dismissal of a postconviction petition is that of *de novo* review. *People v. Delton*, 227 Ill. 2d 247, 255 (2008); *People v. Coleman*, 183 Ill. 2d at 388-89.

¶ 24 Although defendant raised numerous issues in his *pro se* postconviction petition filed with the trial, defendant, on appeal, only challenges the trial court's summary dismissal based on

the claim that defense counsel was ineffective for failing to investigate a defense that defendant accidentally shot his mother. A review of the record shows that a claim of accidental shooting was made known to defense counsel early in the proceedings by defendant. In the fitness report prepared by Dr. Zoot on May 18, 2005, Zoot indicated that defendant insisted the shooting was an accident. However, defendant went on to say that defense counsel “would try to show that.”

¶ 25 Later, in Dr. Zoot’s October 4, 2005, psychological evaluation, which considered defendant’s mental state and sanity at the time of the offense, defendant told Dr. Zoot that he retrieved the gun from his parents’ bedroom. According to defendant, when his mother pushed him, he fell back, and the “gun went off.”

¶ 26 The record also indicates that the State was aware of the accidental shooting defense as evidenced by the State’s motion to demonstrate trigger pull filed on March 27, 2006. In the motion, the State claimed that the “central fact in this trial will be the trigger strength and recoil of the .38 caliber revolver which killed the victim.” Although the motion was never ruled upon because the parties reached a negotiated plea, it is clear from this motion that the issue of whether the revolver “went off” twice, accidentally, was a defense seriously considered by defense counsel before the plea agreement.

¶ 27 Defendant’s statements in the fitness report dated June 11, 2008, indicated that defendant and defense counsel thoroughly discussed defendant’s options at trial versus a plea. At the time of defendant’s plea, defendant advised the court that he was satisfied with defense counsel’s representation. After carefully reviewing the record, we conclude that the record contradicts defendant’s assertion that defense counsel failed to consider a defense of accidental shooting in light of defendant’s physical and mental health issues.

¶ 28 Further, as the State argues, such a defense was meritless. It is undisputed that defendant shot his mother twice with a revolver. It is also undisputed that instead of providing his mother with aid or calling for emergency help, defendant took her purse, cash, and the revolver, and then fled the scene in a motor vehicle after hiding the revolver under a mat in the trunk. Accordingly, we also conclude that defendant's allegation failed to make a substantial showing that defendant's constitutional rights were violated and that the trial court properly dismissed defendant's petition for postconviction relief. See *People v. Hodges*, 234 Ill. 2d 1 (2009); *People v. Coleman*, 183 Ill. 2d 366 (1998).

¶ 29

CONCLUSION

¶ 30 The judgment of the circuit court of Will County is affirmed.

¶ 31 Affirmed.