

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).

2011 IL App (4th) 100580-U

Filed 12/15/11

NO. 4-10-0580

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JOANIS M. BRADLEY,)	No. 07CF1458
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* Summary dismissal of defendant's *pro se* postconviction petition was not improper where defendant failed to state the gist of a claim of ineffective assistance of counsel.
- ¶ 2 A jury convicted defendant, Joanis M. Bradley, of the murder of Christopher Napier. 720 ILCS 5/9-1(a)(2) (West 2006). Defendant was subject to a sentencing enhancement for his personal discharge of a firearm causing death. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2006). He was sentenced to a 75-year prison term. A direct appeal based on an abuse of discretion in sentencing was unsuccessful. *People v. Bradley*, No. 4-08-0427 (July 30, 2009) (unpublished order under Supreme Court Rule 23).
- ¶ 3 Defendant filed a *pro se* postconviction petition alleging, in part, ineffective assistance of trial counsel for failing to request a second degree murder instruction based on self-defense. The trial court summarily dismissed the petition as frivolous and patently without

merit.

¶ 4

I. BACKGROUND

¶ 5 On August 23, 2007, defendant, according to Tyrone Leviston, told Leviston he intended to rob Napier and showed Leviston the gun he was going to use. Defendant told another witness he wanted to rob Napier of marijuana. On August 24, 2007, defendant went to Napier's apartment. He and Napier talked in the kitchen, then went outside. Napier returned to the apartment, grabbed a small paring knife, mentioned a gun, and said something to the effect of "I'm going to get him" or "I'm going to settle this." A black male, later identified as defendant, fired shots killing Napier. Various witnesses testified there were two to six gunshots. Two casings were found at the scene and one was found in defendant's car.

¶ 6 No evidence showed Napier displayed the knife or gestured aggressively. Napier and defendant were two to three feet apart when shots were fired. Napier died of a gunshot wound to the chest. There was no physical evidence of close-range firing. A test for gunshot residue on defendant was negative. No one at the scene saw the knife other than Napier's girlfriend, who took the knife after Napier was shot, and put it back in the apartment.

¶ 7 There was evidence Robert Bell was with defendant a short time before the shooting and came into possession of the handgun used to shoot Napier, and he later sold or gave the gun away. Bell initially lied to the police about having the gun. Bell was the same size and general description as defendant, though slimmer, and was the witness who testified defendant tried to recruit him to help rob Napier.

¶ 8 At a pretrial conference, the trial court inquired about the possibility of a self-defense issue. Trial counsel stated they would not assert self defense or alibi defenses. Instead,

the strategy would be to require the State to prove its case beyond a reasonable doubt. This strategy was announced in open court while defendant was present, and counsel stated "we've settled on a trial strategy." Counsel asserted the visitor to Napier's apartment and the shooter may have been two different people. At trial, the defense pursued that theory. Defendant chose not to testify. During closing argument, defense counsel highlighted numerous inconsistencies in the witness statements, painted Bell as a liar who had no explanation for his whereabouts when the murder occurred, noted the inconclusive or negative gunshot residue test on her client and the absence of evidence of close-range firing even though Napier was bare chested. No instruction on second degree murder was offered. Defendant was convicted and sentenced as noted above.

¶ 9 After an unsuccessful appeal, defendant filed a *pro se* postconviction petition containing five claims of ineffective assistance of counsel, prosecutorial misconduct, a due-process contention regarding identification, and in improper double enhancement at sentencing. The trial court summarily dismissed the petition. This appeal centers on defendant's assertion he stated the gist of a constitutional claim in that defense counsel failed to seek a second degree murder instruction where there was some evidence defendant acted with an unreasonable belief of self-defense.

¶ 10 II. ANALYSIS

¶ 11 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-7) (West 2008) provides a means for a defendant to challenge his conviction based on a violation of his constitutional rights. The Act provides for a three-stage process. At the first stage, the defendant need only present the gist of a claim for relief which is meritorious considered in light

of the trial court proceedings. *People v. Dredge*, 148 Ill. App. 3d 911, 913, 500 N.E.2d 445, 446 (1986).

¶ 12 Here the trial court determined defendant failed to state the gist of a constitutional claim and summarily dismissed the petition. Thus, defendant's petition did not survive to the second stage where he would have been appointed counsel and the matter docketed for further consideration with input from the State by an answer or a motion to dismiss. The question presented is whether the petition should have progressed to the second stage rather than being summarily dismissed. We review *de novo* the court's dismissal of the petition. *People v. Coleman*, 183 Ill. 2d 366, 388, 701 N.E.2d 1063, 1075 (1998).

¶ 13 In *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009), the trial court stated a petition may be summarily dismissed as "frivolous or patently without merit only if the petition has no arguable basis in either law or fact." This is not a high standard. One court has suggested it is a liberal standard with a view toward allowing "borderline cases to proceed to stage two." *People v. Carballido*, 2011 Ill. App. (2d) 090340, ¶38. This is not a borderline case, and it has no basis in law or fact.

¶ 14 We evaluate an ineffective-assistance-of-counsel claim under the leading case of *Strickland v. Washington*, 446 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984), asking whether it is arguable counsel's performance fell below an objective standard of reasonableness and it is arguable defendant was prejudiced. The trial court concluded trial counsel's performance was reasonable and defendant was not prejudiced. We reach the same conclusion.

¶ 15 Defendant cannot prevail on a claim of ineffective assistance of counsel when the claim arises from matters of trial counsel's judgment or trial strategy. *People v. Clark*, 207 Ill.

App. 3d 439, 450, 565 N.E.2d 1373, 1380 (1991). The decision to aggressively argue the State could not prove its case and avoid the possibility of a verdict on a lesser charge was a reasonable trial strategy. The evidence of self-defense was less than slight. No one other than the victim's sister and girlfriend ever saw the small paring knife and Napier made no aggressive gestures. Instead of asserting a defense that would not have earned a second degree murder instruction, defense counsel chose to hold the State to its burden of proof and vigorously point out inconsistencies in the State's evidence and the possibility of a shooter other than defendant. This was reasonable considering Bell's evasive and deceptive statements to police, his association with defendant before and after the murder, his possession of the murder weapon, and the similarities between his and defendant's description.

¶ 16 The result was not what defendant and his counsel hoped for, but the trial strategy was reasonable and defendant was not prejudiced. The trial court found "defendant's trial attorney did an excellent job when one considers the evidence presented." We agree. Neither the law or the facts would have supported a second degree murder instruction.

¶ 17 The trial court's summary dismissal of defendant's postconviction petition was not error, and we affirm the judgment. As part of our judgment, we grant the State its statutory assessment of \$50 against defendant as costs of this appeal.

¶ 18 Affirmed.