

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).

NO. 4-09-0642

Order filed 3/2/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
SEYON R. HAYWOOD,)	No. 06CF288
Defendant-Appellant.)	
)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court. Justices Turner and Appleton concurred in the judgment.

ORDER

Held: The circuit court did not err in summarily dismissing defendant's *pro se* postconviction petition where the petition lacked an arguable basis in both law and fact.

Defendant, Seyon R. Haywood, appeals the trial court's summary dismissal of his *pro se* postconviction petition. He contends he raised an ineffective-assistance-of-counsel claim that was sufficient to survive the first-stage of postconviction proceedings. We affirm.

In August 2006, following a bench trial, the trial court found defendant guilty of armed robbery (720 ILCS 5/18-2(a) (West 2004)); home invasion, causing injury (720 ILCS 5/12-11(a)(2) (West 2004)); and home invasion, using a firearm (720 ILCS 5/12-11(a)(3) (West 2004)). It sentenced him to concurrent prison terms of 10, 10, and 21 years, respectively. Evidence at

trial showed defendant entered the home of John Gonzalez, threatened Gonzalez with a gun, and stole money. On direct appeal, this court vacated defendant's conviction and sentence for home invasion, causing injury but otherwise affirmed his convictions and sentences. *People v. Haywood*, No. 4-07-0162 (2008) (unpublished order under Supreme Court Rule 23).

On May 14, 2009, defendant filed a *pro se* postconviction petition. Relevant to this appeal, he argued his trial counsel was ineffective for failing to investigate or call witnesses to corroborate his story. Defendant named two specific witnesses, Debbie Reed and Steven McGuire, whom he alleged were Gonzalez's neighbors and would have testified that they saw defendant and Gonzalez at their home, defendant never had a weapon, defendant never spoke of committing armed robbery or home invasion, and Gonzalez invited defendant into Gonzalez's home for the purpose of selling defendant marijuana. Defendant did not attach affidavits to his petition that were related to his claim. Instead, he alleged he tried to obtain Reed and McGuire's affidavits but was unable because he was "incarcerated and indigent, and unable to locate [their] current address without assistance from the court."

On August 10, 2009, the circuit court entered an order, dismissing defendant's postconviction petition. It determined his claims were frivolous and patently without merit.

This appeal followed.

On appeal, defendant argues the circuit court erred by summarily dismissing his *pro se* postconviction petition. He contends his claim that his trial counsel was ineffective for failing to investigate or call witnesses who would have corroborated his version of events was sufficient to withstand the first stage of postconviction proceedings.

"A circuit court may summarily dismiss a postconviction petition if it determines that the petition is 'frivolous or is patently without merit.'" *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1202 (2010), quoting 725 ILCS 5/122-2.1(a)(2) (West 2006). The first-stage dismissal of a postconviction petition is subject to de novo review. *People v. Morris*, 236 Ill. 2d 345, 354, 925 N.E.2d 1069, 1075 (2010).

There is a low threshold for survival at the first stage of proceedings because most petitions are drafted by defendants with little legal knowledge or training. *People v. Hodges*, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009). A court may summarily dismiss a *pro se* defendant's petition only if it "has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 11-12, 912 N.E.2d at 1209. "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212.

However, recognition of a low threshold at the first stage of postconviction proceedings "does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional violation." *Hodges*, 234 Ill. 2d at 10, 912 N.E.2d at 1208. Specifically, section 122-2 of the Postconviction Hearing Act (Act) (725 ILCS 5/122-2 (West 2008)) requires that "[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." "[T]he purpose of section 122-2 is to establish that a petition's allegations are capable of 'objective or independent corroboration.' [Citations.]" *People v. Delton*, 227 Ill. 2d 247, 254, 882 N.E.2d 516, 520 (2008). The failure to comply with section 122-2 is fatal to a postconviction petition and justifies its summary dismissal. *Delton*, 227 Ill. 2d at 255, 882 N.E.2d at 520.

Here, defendant alleged his trial counsel was ineffective for failing to investigate or call two witnesses, Reed and McGuire, whom he alleged would have corroborated his version of events. He failed to attach affidavits to support his allegations and alleged only that he tried to obtain their affidavits but was unable because he was "incarcerated and indigent, and unable to locate [their] current address without assistance from the court."

Defendant's explanation for the lack of affidavits or

other supporting evidence is insufficient to comply with section 122-2 of the Act. His explanation was conclusory and unsupported by specific factual allegations. He provided no detail on what steps, if any, he actually took to obtain Reed and McGuire's affidavits. Moreover, defendant's failure to attach his proposed witnesses' affidavits to his petition is not excused by his imprisonment. As the State points out, the Act only applies to those individuals who are "imprisoned in the penitentiary" (725 ILCS 5/122-1 (West 2008)) and permitting the mere fact of imprisonment to excuse the attachment of supporting materials to a petition would lead to an absurd result.

Defendant's factual allegations were unsupported and he provided no sufficient explanation for that lack of support. As a result, his *pro se* petition did not have an arguable basis in fact.

Additionally, defendant's petition lacks an arguable basis in law.

"At the first stage of proceedings under the Act, a petition alleging ineffective assistance of counsel may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Petrenk-*

o, 237 Ill. 2d at 497, 931 N.E.2d at 1203.

Briefly stated, evidence at defendant's trial showed defendant and Gonzalez agreed to make a drug transaction and defendant entered Gonzalez's home. Defendant testified it was Gonzalez who offered to sell defendant drugs while Gonzalez testified he was the purchaser and defendant was the seller. The State's evidence showed, once inside the home, defendant threatened Gonzalez and Gonzalez's infant son with a gun, fought with and injured Gonzalez, discharged a gun during the fight, and stole money. Defendant testified it was Gonzalez who threatened him with a gun and he denied stealing any money. The State further presented evidence that, upon fleeing Gonzalez's home, defendant jumped into a vehicle uninvited. The vehicle's occupants observed defendant counting "a bunch of money" and stated he directed them where to drive. Defendant described the encounter as consensual and stated the vehicle's occupants agreed to give him a ride in exchange for money.

In his petition, defendant alleged Reed and McGuire were Gonzalez's neighbors and would testify that (1) they saw defendant and Gonzalez at their home, (2) defendant never had a weapon, (3) defendant never spoke of committing armed robbery or home invasion, and (4) Gonzalez invited defendant into Gonzalez's home for the purpose of selling defendant marijuana. Even taking

defendant's allegations as true, they do not arguably show counsel's performance was deficient or that defendant suffered prejudice.

First, testimony from Reed and McGuire that they were neighbors and saw defendant and Gonzalez at their home was consistent with Gonzalez's testimony as well as defendant's. Second, evidence that Reed and McGuire never saw defendant with a gun or heard him talk about committing the offenses at issue only shows their lack of knowledge about the crimes. Such testimony would not support defendant's version of events any more than it would support Gonzalez's version. Finally, although testimony that it was Gonzalez rather than defendant who was offering to sell drugs would support defendant's testimony, the greater weight of the evidence, as detailed by the trial court and in this court's previous decision, by far supported Gonzalez's version of events. Defendant has not shown an arguably deficient performance by counsel or that he arguably suffered prejudice.

Defendant's postconviction petition lacked an arguable basis in both law and fact. The circuit court did not err in summarily dismissing his *pro se* petition.

For the reasons stated, we affirm the circuit court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

Affirmed.

