

No. 1-10-0386

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 03 CR 11599
	)	
ALFREDO NATAL,	)	Honorable
	)	Joseph M. Clapps,
Defendant-Appellant.	)	Judge Presiding.
	)	

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JUSTICE STERBA delivered the judgment of the court.  
Presiding Justice Salone and Justice Steele concurred in the judgment.

**ORDER**

*Held:* The trial court properly dismissed defendant's *pro se* postconviction petition at the first stage where his allegations that he was not given *Miranda* warnings prior to his interrogation and that his trial counsel was ineffective for failing to file a motion to suppress and call certain witnesses failed to include any objective facts that could be corroborated.

¶ 1 Defendant Alfredo Natal was charged with first degree murder in the shooting death of Sukhdav Dave. Following a bench trial, defendant was found guilty of first degree murder but

mentally ill and sentenced to 45 years in prison. On direct appeal, this court affirmed his conviction. (*People v. Natal*, No. 1-06-3521 (2008) (unpublished order under Supreme Court Rule 23)). On September 2, 2009, defendant filed a postconviction petition *pro se*, raising four claims, including three related to ineffective assistance of counsel. The trial court dismissed his petition as frivolous and patently without merit, and defendant appeals on the grounds that his petition stated a claim arguable in fact and law that he received ineffective assistance of trial counsel where his attorney: (1) failed to interview and present testimony from witnesses who were familiar with his symptoms of mental illness; and (2) failed to file a motion to suppress his statements to the police. Further, defendant argues that he stated a claim that police failed to advise him of his *Miranda* rights before commencing their interrogation. For the reasons that follow, we affirm the judgment of the trial court.

¶ 2

#### BACKGROUND

¶ 3 At approximately 5:30 a.m. on April 24, 2003, defendant shot and killed Sukhdav Dave, a clerk at a Dunkin' Donuts store on Lawrence and Milwaukee Avenue in Chicago, Illinois. The facts of this case were set forth in detail on direct appeal, and we repeat only those germane to the claims defendant raises in his postconviction petition.

¶ 4 Trial on the charge of first degree murder commenced on August 9, 2006, with defendant pleading not guilty by reason of insanity. At trial, Detective Demosthenes Balodimas testified that he was assigned to investigate the homicide that occurred at Dunkin' Donuts on April 24. After interviewing witnesses, he was able to have a composite sketch of defendant drawn and broadcast to the media. The release of the composite sketch resulted in tips to the police of

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defendant's home and work addresses; however, Detective Balodimas did not find defendant at either of those locations on April 24. Detective Balodimas then initiated 24-hour surveillance of defendant's home, and on April 26, two days after the murder, defendant was apprehended walking into his house.

¶ 5 Defendant was taken to the police station, where he was interviewed by Detective Balodimas and his partner. Prior to commencing questioning, the detectives advised defendant of his *Miranda* rights, and defendant stated he understood the rights and agreed to talk to the detectives. Initially, defendant told the detectives that he would regularly stop at the Dunkin' Donuts in question before proceeding to work in the morning, but he did not know the victim. He worked for the Chicago Transit Authority and part-time as a security guard. The detectives then asked defendant if he was in Dunkin' Donuts at 5:30 a.m. on April 24, to which defendant replied that he did not mean to kill the victim, and he should have killed himself. Defendant then stated that he and the victim were good friends. After shooting Dave, the morning passed in a blur for defendant. He remembered going to work, and then leaving to go to Union Station. When he watched the news in the train terminal, he saw reports of the murder at Dunkin' Donuts, which made him flash back to Dave's killing. Defendant then purchased a train ticket to New York City, but decided to get off the train in Pittsburgh after experiencing recurring flashbacks to Dave's death. He told the police that he left Pittsburgh to return to Chicago because he knew he did something wrong.

¶ 6 At the conclusion of this interview, Detective Balodimas called the felony review unit. Shortly thereafter, assistant state's attorney David Weiner arrived at the police station to

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interview defendant. Detective Balodimas was present for the interview and observed ASA Weiner read defendant his rights after which defendant agreed to speak with him. The interview that followed revealed the same information that defendant had previously provided to Detective Balodimas.

¶ 7 Later that evening, Detective Balodimas and his partner questioned defendant for a second time about certain events preceding the incident. Defendant told them "if I tell you the whole truth, I'd really be fu\*\*ed," before stating "Dave was my friend and I will tell you everything." During the second interview, defendant told the detectives that he had not been to the Dunkin' Donuts in question for one month prior to the incident. He believed the victim had been spiking his coffee because "it just didn't taste right." Around Christmastime, defendant became interested in a female patron of the Dunkin' Donuts and gave the victim \$5 with instructions to buy coffee and tell the female patron it was from defendant. Shortly after this exchange occurred, the female called defendant to thank him for the coffee. Defendant then repeated this transaction around Valentine's Day, but this time did not receive a call in thanks from the female. When he ran into the female sometime later, she said she never received a coffee. Defendant informed the detectives that this made him angry because he realized the victim must have kept the \$5.

¶ 8 Defendant then began to recount the night prior to the murder. He informed the detectives that after being unable to sleep, at approximately 5:20 a.m., he took his handgun and went to Dunkin' Donuts, where he shot the victim. He then began to exit the store by way of the rear door when he heard the victim say something. Defendant turned back and shot the victim

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two more times. He then walked home, where he cleaned his gun and deposited his clothes and cleaning supplies in a white plastic bag which he later discarded in a dumpster on his way to work. Detective Balodimas testified that defendant never made him aware that he was in need of a doctor, on medication, or hearing voices.

¶ 9 At the conclusion of the interview, Detective Balodimas informed ASA Weiner that defendant had added to his statement, whereupon ASA Weiner conducted a second interview and took defendant's videotaped statement.

¶ 10 ASA Weiner also testified to his interviews with defendant, in which defendant provided the same information he had previously given to Detective Balodimas. ASA Weiner testified that before both the first and second interviews, he read defendant his *Miranda* rights, and defendant waived those rights and agreed to speak to ASA Weiner. At the conclusion of the second interview, ASA Weiner gave defendant several options for memorializing his statement. Defendant elected to have his statement videotaped. This videotaped statement was played to the court.

¶ 11 The court also heard testimony from several doctors regarding defendant's mental state at the time of the offense. Dr. Erick Neu, a staff psychologist for the Circuit Court of Cook County at Forensic Clinical Services, testified for the defense. Dr. Neu reviewed police reports of the offense, defendant's videotaped statement, and defendant's mental health records. Dr. Neu also conducted three clinical interviews with defendant in person. From this investigation, Dr. Neu learned that defendant had previously been an inpatient at a psychiatric hospital in 1979 as a result of his paranoia. Specifically, at that time, defendant believed people were after him and

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that his mother was poisoning his coffee. Defendant then went without mental health treatment until he was first evaluated upon arriving at the jail in April 2003. At that time, the receiving psychologist noted that defendant had toilet paper stuck in his ears because he was hearing insect sounds. She diagnosed him with depression and bipolar disorder. Dr. Neu testified that the 1979 hospitalization may have been a manic episode, and the evidence of prior mental health problems made it more likely that defendant's current symptoms were not feigned. Further, when Dr. Neu gave defendant a personality test, he did not find any evidence of malingering, which is the intentional exaggeration of a mental illness for the purpose of a secondary gain.

¶ 12 During the clinical interviews, defendant told Dr. Neu that three or four days before the murder, he spilled degreaser at work and believed he had swallowed some of it. Defendant then began to experience what Dr. Neu characterized as unusual behaviors and symptoms. For example, after being a non-smoker for several years, defendant began to smoke. Further, defendant was unable to sleep for three nights prior to the murder and instead played music and paced in his apartment. He saw walls of fire in his apartment and was afraid to go into his bedroom for fear that someone was there. Defendant believed that the degreaser was responsible for these symptoms, and as a means of treating himself, he began to purchase and consume baby formula and baby food. Defendant also felt that people were watching him, and so he wore a hat to work, which he pulled down over his face. Dr. Neu was able to corroborate some of these behaviors, including the playing of loud music at night, through an article by the Chicago Sun Times in which defendant's neighbors told a reporter that loud, pounding music was coming from defendant's apartment at night in the month preceding the murder.

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¶ 13 Dr. Neu also questioned defendant regarding his statement to the police. Defendant told Dr. Neu that he did not actually believe the victim had been spiking his coffee, but only made that statement because the police were urging him to provide more information. Defendant thought of the victim as a friend and believed his behavior was caused by the chemicals at work. Based on the information he obtained from defendant and the records he reviewed, Dr. Neu diagnosed defendant with bipolar type one disorder and testified that he was in a mixed manic and depressed phase at the time of the murder. However, he could not say to a reasonable degree of scientific and psychological certainty that defendant was unable to appreciate the criminality of his actions because of "certain aspects" of defendant's post-offense behavior.

¶ 14 Dr. Dawna Gutzmann, a psychiatrist with Forensic Clinical Services at the Circuit Court of Cook County, also testified on behalf of defendant. She reviewed the same material as Dr. Neu and also conducted a clinical interview with defendant. Ultimately, she agreed with Dr. Neu that defendant suffered from bipolar disorder and there was no evidence of malingering; however, she was of the opinion that at the time of the killing, defendant did indeed lack the substantial capacity to appreciate the criminality of the act.

¶ 15 Finally, Dr. Stafford Henry, a board certified physician in general psychiatry, testified for the State as a rebuttal witness. Again, he reviewed the same materials as Drs. Gutzmann and Neu, and also conducted a clinical interview with defendant. Dr. Henry diagnosed defendant with a mood disorder not otherwise specified with psychotic features and did not find any evidence of malingering. He testified that his opinion, to a reasonable degree of medical and psychiatric certainty, was that defendant was legally sane at the time of the killing. This opinion

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was based in part on the goal-oriented activities defendant undertook after the murder to conceal his involvement, including cleaning his gun, changing his clothes, and leaving the jurisdiction.

¶ 16 After hearing closing arguments, the trial court found defendant guilty of first degree murder but mentally ill and further found that defendant personally discharged the weapon that was used to commit the murder. The trial court sentenced defendant to 45 years in the Illinois Department of Corrections.

¶ 17 On direct appeal, defendant argued the trial court erred when it rejected his affirmative defense of insanity, and this court affirmed defendant's conviction. (*People v. Natal*, No. 1-06-3521 (2008) (unpublished order under Supreme Court Rule 23)).

¶ 18 Defendant timely filed the instant postconviction petition *pro se* on September 2, 2009, alleging that he was interrogated prior to being *Mirandized* and that he received ineffective assistant of counsel, who allegedly (1) advised him not to testify; (2) failed to call witnesses to corroborate his behavior prior to the killing; and (3) failed to move to suppress his confession. Specifically, with regard to the witnesses trial counsel allegedly failed to investigate, defendant pled that his doctor could confirm that his face was turning red prior to the incident; that his neighbor could testify he was usually a quiet tenant; and that his co-worker could state that he was behaving irrationally at work and had recently taken up smoking. The trial court summarily dismissed defendant's petition as frivolous and patently without merit in a written ruling. Defendant timely filed this appeal.

¶ 19 ANALYSIS

¶ 20 The Post-Conviction Hearing Act (Act) allows a defendant who is imprisoned in a

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penitentiary to challenge his conviction or sentence for violations of his federal or state constitutional rights. 725 ILCS 5/122-1 (West 2010); see also *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). A defendant electing to proceed under the Act must first file a petition, verified by affidavit, in the circuit court in which the original proceeding occurred. 725 ILCS 5/122-1(b) (West 2010). Because a postconviction proceeding is a collateral attack on the conviction, the petition must be limited to constitutional issues that have not been, nor could have been, adjudicated on direct appeal. *People v. Pitsonbarger*, 205 Ill. 2d 444, 456 (2002). Moreover, issues that were raised and decided on direct appeal are barred from consideration by the doctrine of *res judicata*. *People v. Towns*, 182 Ill. 2d 491, 502-03 (1998).

¶ 21 The Act establishes a three-stage process for adjudicating a postconviction petition in non-capital cases. 725 ILCS 5/122-1. At the first stage, the circuit court may dismiss a petition only if it is frivolous or patently without merit. *People v. Harris*, 224 Ill. 2d 115, 125-26 (2007). A frivolous petition is one that is based on an "indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Stated differently, a petition must have an arguable basis either in law or fact in order to survive summary dismissal. *Id.* This presents a pleading question in the sense that all well-pled facts not positively rebutted by the trial record must be liberally construed and taken as true, and the court must refrain from addressing substantive questions or making credibility determinations. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). If the petition survives dismissal at this initial stage, it advances to the second stage, where counsel may be appointed to an indigent defendant and the State may move to dismiss the petition. *Harris*, 224 Ill. 2d at 126. The defendant must make a substantial

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showing of a constitutional violation in order to proceed to an evidentiary hearing, which is the third and final stage of the postconviction process. *Id.*, citing 725 ILCS 5/122-6 (West 2004).

¶ 22 In the case *sub judice*, only the first stage is at issue. Our review of the trial court's first-stage summary dismissal is *de novo*. *People v. Davis*, 403 Ill. App. 3d 461, 464 (2010).

¶ 23 Defendant's initial argument on appeal is that he did not receive effective assistance of trial counsel where his attorney failed to interview or call as witnesses defendant's neighbors, co-workers and doctor to corroborate his self-reported symptoms of mental illness. Before turning to the merits of this claim, we first consider the State's arguments regarding its procedural deficiencies. The State correctly points out that defendant did not support his petition with affidavits from witnesses, as required by section 122-2 of the Act. 725 ILCS 5/122-2 (West 2010). However, section 122-2 goes on to state that the absence of affidavits, records or other evidence may be excused if the petition states why the same is not attached. *Id.* In the instant case, defendant pled in his petition that he attempted to obtain affidavits from these witnesses, but his indigence and incarceration left him unable to locate the witnesses' current addresses. At this stage, we must accept this well-pled claim as true. See *Coleman*, 183 Ill. 2d at 380.

¶ 24 We find more troubling defendant's failure to provide any detail as to the identity of the individuals who should have been called or the contents of their testimony. To begin, defendant's failure to state the names of the potential witnesses falls short even of the minimal requirement that a petition must provide a "limited amount of detail." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996) (petition must state the "gist" of a constitutional claim). The State aptly notes that a "limited amount of detail" does not excuse a *pro se* petitioner from providing any factual detail at

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all regarding the constitutional deprivation. *People v. Delton*, 227 Ill. 2d 247, 254 (2008).

Rather, the petition must set forth "some facts which can be corroborated and are objective in nature or contain some explanation as to why these facts are absent." *Id.*

¶ 25 No explanation is offered here as to why defendant was unable to provide the names of these potential witnesses. Nor do we agree with defendant's contention on appeal that the witnesses were identified with sufficient specificity to limit them to a small number of people. 'Co-workers,' 'neighbors' and 'doctors' are broad descriptors, and could encompass hundreds of individuals, particularly when we consider that defendant worked two jobs and lived in a multi-unit dwelling. Without the names of these generically identified witnesses, defendant's claims are wholly incapable of corroboration.

¶ 26 Additionally, the testimony which these witnesses could allegedly have provided is also lacking in detail. For example, defendant notes his unnamed coworker could testify generally to the fact that he was "very irrational" at work, and that an unidentified neighbor could testify that he was a quiet tenant. Moreover, defendant does not allege any of the witnesses would testify that they were never contacted by trial counsel. See *People v. Jones*, 399 Ill. App. 3d 341, 369 (2010) (finding significant that neither witness averred they had not been interviewed by trial counsel in holding that there was no factual basis for the defendant's claim that trial counsel erred in failing to present testimony of two alibi witnesses). We conclude that these pleading deficiencies support dismissal of this claim at the first stage of postconviction review. See *Delton*, 227 Ill. 2d at 255.

¶ 27 Even assuming *arguendo* that this claim met the pleading requirements, it also fails on its

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merits. The two-pronged test to establish ineffective assistance of counsel sets a high standard. *People v. Baines*, 399 Ill. App. 3d 881, 887 (2010). Defendant must demonstrate that his representation was so unprofessional as to fall below an objective standard of reasonableness and that this deficient performance resulted in prejudice to defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). When reviewing the summary dismissal of a postconviction petition alleging ineffective assistance, we must determine whether it is arguable that counsel's performance fell below an objective standard of reasonableness and whether it is arguable that defendant was prejudiced by this failure. *Hodges*, 234 Ill. 2d at 17.

¶ 28 Defendant maintains that although he did not allege he made his attorney aware of the existence of these nameless witnesses, his attorney nonetheless had the affirmative obligation to investigate anyone who could corroborate his symptoms of mental illness where the dispositive issue at trial was defendant's sanity. Certainly, attorneys have a duty to explore "readily available" sources of evidence that may benefit their clients. *People v. Morris*, 335 Ill. App. 3d 70, 79 (2002); see also *People v. Pecoraro*, 175 Ill. 2d 294, 324 (1997) (counsel has a duty to make reasonable investigations). However, the reasonableness of counsel's decision to investigate is evaluated with a "heavy measure of deference." *People v. Orange*, 168 Ill. 2d 138, 149 (1995). Accordingly, whether a failure to investigate amounts to incompetence depends upon the value of the evidence and the closeness of the case. *People v. Dillard*, 204 Ill. App. 3d 7, 10 (1990).

¶ 29 Here, the value of the evidence corroborating defendant's symptoms of mental illness was negligible in light of the fact that every expert agreed defendant was mentally ill. Significantly,

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each expert also explicitly testified that they did not believe defendant was malingering, or feigning or exaggerating his symptoms for the purpose of some secondary gain. The only issue on which the experts disagreed was whether defendant was able to appreciate the criminality of his actions. Their differing opinions were based on their interpretations of defendant's behavior during and after the offense, not the symptoms that had presented themselves weeks and months before.

¶ 30 As such, this case is distinguishable from *Morris*, 335 Ill. App. 3d at 70, and *People v. Montgomery*, 327 Ill. App. 3d 180 (2001), cited by defendant. In *Morris*, the defense was premised on the defendant's alibi, and defense counsel failed to investigate witnesses who would corroborate that alibi. *Morris*, 335 Ill. App. 3d at 79-80. We held that this conduct was not objectively reasonable in the context of a second-stage postconviction petition. *Id.* at 83. Similarly, in *Montgomery*, where the case turned on the cause of death, we held that medical evidence that the victim died of a seizure, as opposed to strangulation by the defendant, was undeniably relevant and the failure of counsel to investigate the same could amount to ineffective assistance for purposes of first-stage postconviction proceedings. *Montgomery*, 327 Ill. App. 3d at 185-86. Here, in contrast, the case turned not on whether defendant was merely mentally ill, but whether he was legally insane; that is, whether he had the substantial capacity to appreciate the criminality of his actions. See *People v. Houseworth*, 388 Ill. App. 3d 37, 42 (2008) (citing 720 ILCS 5/6-2(a) (West 2004)). Expert testimony revealed that resolution of this issue was based on defendant's behavior during and after the shooting; thus, evidence corroborating defendant's unusual behavior in the days and weeks prior to the offense would not have been

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relevant under these circumstances.

¶ 31 Furthermore, defendant has not established that he was arguably prejudiced by counsel's lack of investigation. Prejudice exists only when there is a reasonable probability that but for defense counsel's errors, the outcome of the trial would have been different. *People v. Manning*, 214 Ill. 2d 319, 326 (2011). The record conclusively establishes that the finding of defendant's guilt did not turn on the trial court's disbelief of defendant's uncorroborated symptoms of mental illness, because the court explicitly found that defendant was mentally ill. Therefore, there is no legal basis for defendant's claim of ineffective assistance based on a failure to investigate unnamed witnesses who would allegedly corroborate his symptoms of mental illness.

¶ 32 Next, defendant alleges that his *Miranda* rights were violated "when he was interrogated prior to being place [sic] under arrest and prior to being Mirandized." Initially, the State maintains this argument has been forfeited due to the failure to raise it on direct appeal.

However, as there was no evidence introduced at trial that defendant did not receive *Miranda* warnings, the claim relies on matters outside of the record and thus could not have been raised on direct appeal. See *People v. Harris*, 206 Ill. 2d 1, 13 (2002) ("where facts relating to the claim do not appear on the face of the original appellate record," forfeiture rule relaxed).

¶ 33 Nevertheless, this conclusory allegation suffers from the same infirmities as defendant's previous claim. Again, there is no factual detail at all about the circumstances of defendant's interrogation or arrest. While defendant need not go into extensive detail regarding the events precipitating his confession, he must plead "sufficient facts to assert an arguably constitutional claim." *People v. Brown*, 236 Ill. 2d 175, 184 (2010); see also *Delton*, 227 Ill. 2d at 254. Such

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facts could include the time he was arrested and by whom, the questions he was asked prior to being Mirandized, his response to those questions, or when he was ultimately read his rights. Instead, defendant's petition provides no detail at all regarding the scope or the substance of what he conclusorily characterizes as an interrogation, nor does it include any supporting documentation or an explanation for its absence as required by section 122-2.<sup>1</sup> 725 ILCS 5/122-2. Certainly this information would all be within defendant's knowledge, making the failure to include it all the more puzzling. In any event, the absence of this information results in a failure to state even the gist of a constitutional claim and justifies summary dismissal. *Collins*, 202 Ill. 2d at 66.

¶ 34 Finally, defendant advances a second ineffective assistance claim on the basis that his trial counsel failed to file a motion to suppress his statement. In his *pro se* petition, defendant did not say on what basis this motion should have been filed, but on appeal, defendant maintains the alleged failure to read defendant his *Miranda* rights supported suppression of his statement. For purposes of addressing this argument, we will assume that defendant's allegation that he was not informed of his *Miranda* rights was properly pled. Regardless, this claim fails because nowhere does defendant allege that he informed his attorney that he had not been read his *Miranda* rights. We have held that it falls to the defendant to inform his trial attorney of the

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<sup>1</sup> On appeal, defendant repeatedly characterizes his sworn verification as an affidavit; however, our supreme court has drawn a distinction between the affidavit verifying the allegations of the postconviction petition that is mandated by section 122-1 of the Act, and the "affidavits, records, or other evidence" compelled by section 122-2. *People v. Collins*, 202 Ill. 2d 59, 66-67 (2002); see 725 ILCS 5/122-1(b). It is these latter supporting documents that are missing here.

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circumstances surrounding his arrest. *People v. Douglas*, 2011 IL App (1st) 093188, ¶ 26 (fact that defendant allegedly invoked his right to counsel upon his arrest did not lend itself to discovery by attorney so as to support ineffective assistance claim).

¶ 35 Importantly, there is nothing in the record to suggest that trial counsel should have suspected defendant was unaware of his *Miranda* rights when he elected to speak to police officers. To the contrary, both Detective Balodimas and ASA Weiner testified that they read defendant his rights prior to questioning him, and the videotaped confession shows that rights were read before defendant repeated his statement. Ultimately, in the absence of an allegation that defendant's attorney was aware that defendant was not read his *Miranda* rights, there can be no arguable claim of ineffective assistance of counsel for failing to file a motion to suppress defendant's confession on this basis. See *Delton*, 227 Ill. 2d at 256 (first-stage ineffective assistance claim properly dismissed where there was no evidence attorney knew of the defendant's prior allegations of police harassment so as to give rise to a duty to investigate the same).

¶ 36

#### CONCLUSION

¶ 37 For the reasons stated, we affirm the judgment of the circuit court.

¶ 38 Affirmed.