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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. 02 CR 13163
	)	
MICHAEL WORDLOW,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Steele and Sterba concurred in the judgment.

**ORDER**

- ¶ 1 *HELD:* The trial court erred in summarily dismissing defendant's *pro se* postconviction petition when it had an arguable basis in law and fact.
- ¶ 2 Michael Wordlow, the defendant, appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). He contends the trial court erred in dismissing his petition because his claims – that he was denied effective assistance of counsel when trial counsel withdrew a motion to suppress and prevented him from exercising his right to testify at trial – had arguable bases in law and fact. We reverse and remand.

¶ 3 Defendant's arrest and prosecution arose out of the April 21, 2002, shooting death of Donald Bedford.

¶ 4 Prior to trial, the defense filed a motion to suppress statements. However, at a subsequent hearing on the motion, defense counsel indicated that "after consultation" with defendant, the defense would be withdrawing the motion. Counsel then requested the court's permission to inquire on the record, stated that he had discussed the withdrawal of the motion with defendant, and asked defendant whether it was defendant's wish, after consulting with counsel, to withdraw the motion. Defendant answered in the affirmative. The matter then proceeded to a jury trial. At trial, the State established through, *inter alia*, defendant's inculpatory videotaped statement and the testimony of several witnesses, that defendant fatally shot the victim after an argument. Although the defense argued that defendant had acted in self-defense after the argument escalated, the jury ultimately convicted defendant of first degree murder. He was subsequently sentenced to 85 years in prison, which consisted of 60 years for the offense plus an additional 25 years because he personally discharged a firearm during the course of the offense.

¶ 5 Defendant then appealed alleging, *inter alia*, that the trial court instructed the jury improperly, and that he was denied effective assistance of counsel by defense counsel's failure to object to the introduction of certain grand jury testimony. This court affirmed defendant's conviction. *People v. Wordlow*, No. 1-05-1780 (2009) (unpublished order under Supreme Court Rule 23).

¶ 6 In April 2010, defendant filed a *pro se* postconviction petition alleging, *inter alia*, that he was denied effective assistance of trial counsel when counsel withdrew a motion to suppress defendant's coerced statement and prevented him from testifying at trial.

¶ 7 Specifically, defendant alleged that when he told counsel that the statements he had given were coerced and made under threatening circumstances, counsel told him not to worry and filed a

motion to suppress. However, when defendant spoke to counsel on April 14, 2003, counsel told defendant that the State had agreed not to introduce defendant's videotaped statement at trial if defendant agreed to withdraw the motion to suppress. Counsel then explained that there were conflicting "issues" as to whether the statement was given voluntarily. Defendant also alleged that when he told counsel that he wished to testify, counsel said that defendant could not speak directly to the trial court, that testifying would not help his case, and that if he were to testify the State could use defendant's confession against him. The circuit court summarily dismissed the petition as frivolous and patently without merit.

¶ 8 On appeal, defendant contends that the circuit court erred by summarily dismissing his *pro se* petition because he was denied effective assistance of counsel when trial counsel withdrew the motion to suppress and refused to allow defendant to testify.

¶ 9 The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. 725 ILCS 5/122-1 (West 2010). At the first stage of a postconviction proceeding, a defendant files a petition and the circuit court determines whether it is frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 2010); *People v. Coleman*, 183 Ill. 2d 366, 379 (1998). "Unless positively rebutted by the record, all well-pled facts [in the petition] are taken as true" at this stage. *People v. Montgomery*, 327 Ill. App. 3d 180, 183-84 (2001).

¶ 10 A petition should be summarily dismissed as frivolous or patently without merit only when it has no arguable basis in either fact or law. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). Our supreme court has held that a petition lacks an arguable basis in fact or law when it is based on "an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. Fanciful factual allegations are those which are "fantastic or delusional" and an example of an indisputably meritless legal theory is one that is completely contradicted by the record. *Hodges*, 234

Ill. 2d at 16-17. This court reviews the summary dismissal of a postconviction petition *de novo*. *Coleman*, 183 Ill. 2d at 388-89.

¶ 11 To succeed on an ineffective assistance of counsel claim, a defendant must demonstrate that counsel's representation was both objectively unreasonable and that it prejudiced the defendant. *Hodges*, 234 Ill. 2d at 17, citing *Strickland v. Washington*, 466 U.S. 668 (1984). A postconviction petition alleging ineffective assistance of counsel may not be dismissed at the first stage of the proceedings "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." *Hodges*, 234 Ill. 2d at 17.

¶ 12 Defendant first contends that his claim that counsel rendered ineffective assistance by failing to pursue the motion to suppress constituted ineffective assistance had an arguable basis in law and fact. Specifically, defendant argues that when he told counsel that his videotaped statement had been obtained through coercion and under threatening circumstances counsel told him not to worry because the statement would be suppressed. However, he later agreed to the withdrawal of the motion to suppress based upon counsel's statement that the State had agreed not to introduce the statement at trial if defendant agreed to withdraw the motion.

¶ 13 The State responds that the decision to withdraw the motion to suppress was a strategic decision made by counsel and that a "reasonable inference" may be made that counsel knew that there was no evidence to support defendant's claim of coercion because defendant indicated, in the videotaped statement, that he had given the statement freely and voluntarily.

¶ 14 However, the ultimate question of whether the motion to suppress would have succeeded is premature. The only question before this court in the instant appeal is whether defendant's *pro se* postconviction petition has an arguable basis in fact and law. See *Hodges*, 234 Ill. 2d at 11-12. If it does, then this cause must be remanded for further proceedings under the Act.

¶ 15 The decision whether to file a motion to suppress is traditionally considered a matter of trial strategy that should be left to defense counsel's "discretionary judgment." *People v. Mabry*, 398 Ill. App. 3d 745, 751 (2010). Consequently, a defendant must overcome the presumption that counsel's decision not to file a motion to suppress was sound trial strategy (*People v. Manning*, 241 Ill. 2d 319, 327 (2011)), and establish prejudice, that is, show a reasonable probability that the motion to suppress would have been granted and the outcome of the trial would have been different absent the evidence sought to be suppressed. *People v. Bew*, 228 Ill. 2d 122, 128-29 (2008).

¶ 16 In the instant case, defendant's allegations cannot be characterized as fantastic or delusional when he admits that he agreed to the withdrawal of the motion to suppress before the trial court, but asserts that he was motivated by a prior conversation with defense counsel during which counsel told him that the State had agreed not to introduce the videotape if the motion was withdrawn. See *Hodges*, 234 Ill. 2d at 17. Similarly, defendant's legal theory that counsel was ineffective when he failed to pursue the motion to suppress is not indisputably meritless because it is not contradicted by the record. See *Hodges*, 234 Ill. 2d at 16. At trial, the defense theory of the case was that defendant shot the victim in self-defense after an argument escalated. However, in the videotaped statement, defendant indicated not only that he shot the victim but that he and his friends had decided to beat the victim before walking over to the victim. Because this admission in the videotaped statement could have caused the jury to discount the defense theory of self-defense, it is at least arguable that counsel's failure to pursue the motion to suppress after defendant indicated that the statement was made under coercive and threatening circumstances fell below an objective standard of reasonableness and prejudiced defendant. See *Hodges*, 234 Ill. 2d at 17; see also *People v. Tate*, 305 Ill. App. 3d 607, 612 (1999) (remanding for further proceedings under the Act and rejecting the State's contention that counsel's decision must be considered sound trial strategy because the record did not reflect whether counsel's action was based upon a "professionally reasonable tactical

decision," or, as the defendant argued, counsel's incompetence). As defendant's *pro se* petition for postconviction relief did not lack an arguable basis in either law or fact, the trial court erred when it summarily dismissed the petition as frivolous and patently without merit. See *Hodges*, 234 Ill. 2d at 16-17.

¶ 17 Because partial summary dismissals are not permitted under the Act (*People v. Rivera*, 198 Ill. 2d 364, 371 (2001)), this court need not address defendant's claim that he was denied effective assistance of counsel by counsel's refusal to permit him to testify at trial.

¶ 18 Accordingly, we reverse the dismissal and remand this case for second stage proceedings under the Act without expressing an opinion as to whether defendant will ultimately prevail on his ineffective assistance claim. See *Hodges*, 234 Ill. 2d at 22.

¶ 19 The judgment of the circuit court of Cook County is reversed.

¶ 20 Reversed and remanded.