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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 02 CR 17327
)	
SAMUEL QUINN,)	Honorable
)	Diane Gordon Cannon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* Any misstatement of the standard for considering postconviction petitions by the trial court was irrelevant in light of this court's *de novo* review. Defendant's postconviction petition did not state an arguable claim for prosecutorial misconduct or ineffective assistance of counsel where his claim that the outcome of a pretrial motion to exclude evidence of a witness' mental illness would have been different was positively rebutted by the record.
- ¶ 2 Defendant Samuel Quinn appeals from the order of the trial court denying him leave to file his initial postconviction petition and finding it frivolous and patently without merit. On appeal, defendant contends that: 1) his petition for postconviction relief must be advanced to the second stage regardless of its merits because the trial court improperly applied the standard applicable to successive postconviction petitions to his initial petition; and 2) alternatively, if considered on its merits his petition stated arguable claims of prosecutorial misconduct and

ineffective assistance of counsel arising from the State's misrepresentation of a witness' mental health background during a pretrial motion to limit defendant's use of her mental health history during cross-examination. We affirm.

¶ 3 The accounts of defendant's sexual assaults of the victim C.J. and a second victim in a separate case, T.G., who testified as a propensity witness, are set forth adequately in our disposition of defendant's direct appeal. Only a summary recitation of those facts is necessary for an understanding of this appeal. According to the State's theory of the case, defendant was a rapist who took advantage of women in vulnerable situations after promising to ensure their safety. In the case at bar, defendant offered to escort C.J. up the stairs in her high rise housing project after telling her that the elevators were out of order. Defendant sexually assaulted C.J. in the stairwell. DNA evidence linked defendant to a sex act performed on C.J. To rebut defendant's anticipated consent defense and establish his propensity as a sex offender the State presented the testimony of T.G., who testified that she was assaulted after finding herself stranded in the city with no money and accepting defendant's offer to let her sleep on his couch. Defendant's theory of the case was that both alleged victims were drug addicts who prostituted themselves for small amounts of money or drugs and willingly engaged in sexual encounters with him.

¶ 4 Prior to trial, the State presented, among other motions, a motion to preclude defendant from cross-examining C.J. and T.G. about their mental health histories. The motion indicated that T.G., who alleged defendant assaulted her on August 23, 2001, had been previously hospitalized as follows:

"1/25/00-2/2000 Depression;

4/20/00-4/20/00 Depression;

10/16/00-10/16/00 Depression;

1-10-2468

10/24/01-10/24/01 Anxiety and Mood Disorder N.O.S.;

4/23/02-6/10/02 Mood Disorder N.O.S.;

4/17/03-5/2/03 BiPolar Disorder;

4/8/04-4/16/04 Depression/BiPolar Disorder."

After hearing argument from the parties, the trial court held that although defendant could cross-examine T.G. regarding her use of illegal drugs or her use of psychotropic medications at the time of the alleged assault or during her testimony, defendant had failed to establish that her mental health history was, of itself, relevant. The trial court granted the State's motion.

¶ 5 The matter proceeded to trial. C.J. testified that defendant sexually assaulted her at knifepoint in the stairwell of a housing project. C.J. was taken to a hospital emergency room where a "rape kit" was prepared. The parties stipulated that DNA evidence collected as part of the rape kit matched defendant's DNA profile.

¶ 6 T.G. testified that she came to Chicago from Milwaukee with some friends to buy cannabis. When they ran out of money, the friends suggested that T.G. prostitute herself. She did not want to, and separated from her friends. She spent several days sleeping on a park bench and then met a man named Red. Red made arrangements for T.G. to sleep at various apartments in the housing projects. On August 22, 2001, T.G. spent the night on defendant's couch while he slept in his bed. The next morning, defendant demanded oral sex. When T.G. refused, he beat her with a handgun and a baseball bat. T.G. lost consciousness and when she awoke defendant's penis was in her vagina. T.G. eventually escaped and ran to a neighbor's apartment for help.

¶ 7 Defendant testified that he supported himself, in part, through the sale of cocaine. Defendant testified that C.J. performed various sex acts with him in exchange for cocaine and \$4.75. Defendant testified that he met T.G. when she and a man purchased drugs from him. Later, he saw the man in an alley beating T.G. He took T.G. into his apartment where they had

consensual intercourse. The next day, T.G. agreed to perform sex acts on defendant's customers in exchange for money. She did, and later had consensual intercourse with defendant a second time. Defendant left the apartment to buy more drugs and when he returned T.G. had gone to a neighbor's apartment. The neighbor told defendant T.G. did not want to "turn dates" anymore, and he never saw her again. He admitted that T.G. had black eyes but testified that her injuries were the result of the earlier beating.

¶ 8 The jury found defendant guilty of criminal sexual assault, and the trial court sentenced defendant to natural life in prison.

¶ 9 On direct appeal, defendant contended that: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred in allowing the other crimes evidence; (3) the State intentionally misrepresented T.G.'s race in its motion to allow other crimes evidence; and (4) he was denied the effective assistance of counsel. This court rejected defendant's contentions of error and affirmed his conviction and sentence. *People v. Quinn*, No. 1-06-1513 (2008) (unpublished order under Supreme Court Rule 23).

¶ 10 On May 12, 2010, defendant filed a postconviction petition alleging, *inter alia*, the State "through carelessness or design" misrepresented T.G.'s mental health history in it's motion to preclude defendant from cross-examining T.G. about her mental health. As stated above, T.G. was not the victim in the instant case, rather her testimony was admitted as evidence showing propensity. In support of his petition, defendant attached a copy of the medical record prepared by the emergency room physician the evening of August 23, 2001. The report listed the "chief complaint" as sexual assault but under past medical history indicated "Bipolar." The report also listed the following under Diagnoses:

1. Status Post Assault,
2. Non-concussive head injury,

3. Status post alleged sexual assault,
4. Bipolar Disorder"

On July 14, 2010, the trial court rejected defendant's claims ruling: "The Court has reviewed this petition. Leave to file is respectfully denied. It's patently frivolous and without merit."

Defendant timely appealed.

¶ 11 The Post-Conviction Hearing Act provides for a method for prisoners to assert that the trial at which they were convicted was conducted in a manner that resulted in a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). An initial postconviction proceeding has three stages. *Id.* at 10. At the first stage, the trial court must determine, within 90 days, whether the petition is frivolous or patently without merit. *Id.* If the petition is frivolous or patently without merit, the trial court may dismiss the petition. *Id.* If the trial court fails to act within 90 days, the petition automatically advances to the second stage of proceedings, where counsel is appointed for the petitioner and the State may respond to the petition. See *People v. Inman*, 407 Ill. App. 3d 1156, 1163 (2011), citing *People v. Harris*, 224 Ill. 2d 115, 129 (2007). We review the dismissal of a postconviction petition without an evidentiary hearing *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1988); see also *Hodges*, 234 Ill. 2d at 9.

¶ 12 Defendant relies on two cases, *Inman* and *People v. Carter*, 383 Ill App. 3d 795 (2008) and contends that his petition should, regardless of its merits, be advanced to the second stage of proceedings because that trial court failed to dismiss it as frivolous or patently without merit within 90 days. Defendant argues that because the trial court stated that "leave to file is denied" it is apparent that the trial court applied an inappropriate standard applicable to successive postconviction proceedings. The State argues that because the trial court stated that the petition

was "frivolous and patently without merit," it is apparent that the trial court applied the correct legal standard despite incorrectly stating the effect of its holding.

¶ 13 In *Inman* and *Carter*, the reviewing courts held that when a trial court improperly treats an initial postconviction petition as a successive petition, the appropriate remedy is to remand the petition for second-stage proceedings. See *Inman*, 407 Ill. App. 3d at 1163; *Carter*, 383 Ill. App. 3d at 798. However, we do not find these cases controlling. In both *Inman* and *Carter* it was clear that the trial court had improperly characterized the postconviction petition. Here, we cannot say that such an improper mischaracterization is evident. Instead, the trial court's terse disposition is merely ambiguous, and both parties can point to language in the one sentence written order to support their positions. When, as here, it is impossible to determine whether the trial court applied the correct standard, it is appropriate to rely on our *de novo* review to determine ourselves whether the substantive merits of the postconviction petition require further proceedings. See *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010) ("We review the trial court's judgment, not the reasons cited, and we may affirm on any basis supported by the record if the judgment is correct.") Accordingly, we shall proceed to examine the merits of defendant's contention of error to determine whether the petition was frivolous or patently without merit. See *Hodges*, 234 Ill. 2d at 9.

¶ 14 Defendant contends that the State misrepresented T.G.'s mental health history during the motion to preclude cross-examination regarding the issue and that doing so "was certainly prejudicial." Defendant alternatively argues that the evidence of T.G.'s diagnosis at the time of the offense was easily discoverable and that the failure to discover the alleged misrepresentation and bring it to the trial court's attention constituted ineffective assistance of counsel. The State responds by arguing that there is not, in fact, any evidence that T.G. was "diagnosed" with a mental illness on the night of her alleged assault. The State argues that the emergency room

physician who examined T.G. was neither qualified to, nor intended to, diagnose T.G.'s mental health. Rather, the State argues, the physician merely noted the diagnosis from T.G.'s self-reported medical history.

¶ 15 Here, we find that it is unnecessary to make the factual determination that the State seeks from us, *i.e.*, that the State's statements about T.G.'s mental health were not false, because, even if we assume that the State made the false statement, defendant has not established that he was prejudiced as a result. Defendant was required to plead prejudice under either theory of relief. Our supreme court has held that in cases of the knowing use of perjured testimony, the conviction must be overturned " 'if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.' " *People v. Lucas*, 203 Ill. 2d 410, 422 (2002), quoting *People v. Coleman*, 183 Ill. 2d 366, 392 (1988). Likewise, the familiar *Strickland v. Washington*, 466 U.S. 668 (1984) standard requires that a defendant establish in addition to deficient performance by his attorney, a reasonable probability that the outcome of the proceedings would have been different. See *People v Albanese*, 104 Ill. 2d 504, 526 (1984) (adopting the *Strickland* standard). Although under *Hodges*, defendant was required to demonstrate only that it was *arguable* that he was prejudiced to plead either claim, we find that he failed to set forth even that "gist" of a claim of prejudice. See *Hodges*, 234 Ill. 2d at 17.

¶ 16 First, we note that defendant's claim of prejudice is highly attenuated. Defendant does not allege that false testimony was presented to the jury, or even that false testimony was presented during the hearing on the State's motion. Instead, defendant argues only that the State made a misstatement of the facts during the motion. Even if we assume that the State's statement was false, a fact which the State strongly contests, we are still presented with nothing more than speculation that the outcome of the trial would have been different. Defendant argues that if the trial court had heard that the emergency room physician had made a diagnosis of bipolar

disorder, that it would have allowed this diagnosis to be presented to the jury, and that the jury would have rejected T.G.'s claim of sexual assault, and the jury would therefore have likewise rejected C.J.'s claim of sexual assault, which was the only claim relevant to defendant's guilt in this proceeding.

¶ 17 Defendant presents us with nothing but speculation to suggest that the trial court would have ruled differently on the motion to preclude cross-examination. The record affirmatively rebuts this conclusion. The trial court was presented with numerous instances of T.G.'s hospitalization for mental health issues, both before and after the alleged assault. Nevertheless, the trial court held that the only cross-examination it would allow was an inquiry into the use of illegal drugs or legal psychotropic medication at the time of the incident or the time of T.G.'s testimony. Defendant has given us no reason to believe that the trial court would have found the mere fact that T.G. had been diagnosed with bipolar disorder to be relevant. The onus is on the party seeking to introduce evidence of a mental illness on cross-examination to establish relevancy. *People v. Helton*, 153 Ill. App. 3d 726, 733 (1987). We do not find that it is even arguable that the trial court's reasonable limitation on cross-examination would have been changed if one additional mental health diagnosis for T.G. had been made know to it.

¶ 18 Moreover, even if the trial court had changed its ruling and admitted evidence that T.G. had been diagnosed with bipolar disorder during cross-examination, we do not find that it is arguable that the outcome of the trial would have been different. First, defendant has supported his claim only with generalized accounts from internet medical literature regarding the "mood swings" caused by bipolar disorder. He has presented no evidence of any sort, not even his own lay observations of T.G.'s behavior, to indicate that she suffered any mood swings at, or around, the time of the assault. Furthermore, we must recognize that the most relevant testimony came not from T.G., but from C.J. the victim in the assault with which defendant was charged. As we

determined in defendant's direct appeal, the evidence was not closely balanced. See *Quinn*, No. 1-06-1513 order at 17. There was no question that defendant and C.J. engaged in sexual intercourse. The DNA evidence established the sexual encounter. Although defendant testified that the sex was consensual and in exchange for drugs, C.J. told her sister that she had been raped immediately after the encounter. C.J. repeated this claim to the police and emergency room personnel following the attack. C.J. did not waver from her allegation of sexual assault during trial. Accordingly, we do not believe that, if the trial court had expanded the scope of the cross-examination of T.G. into an area of questionable relevance, the outcome of the trial would have been different.

¶ 19 Because defendant did not allege sufficient facts to establish that his proposed cross-examination of T.G. would have been relevant, or, if relevant, would have changed the jury's verdict, he cannot show that he was prejudiced by the alleged error. Accordingly, both his claim of prosecutorial misconduct and his claim of ineffective assistance of counsel fail for lack of support in the postconviction petition. The judgment of the circuit court of Cook County is affirmed.

¶ 20 Affirmed.