FIRST DIVISION
June 25, 2012

No. 1-10-2798

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. 98 CR 3289
	)	
PATRICK CARTER,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held*: Summary dismissal of defendant's post-conviction petition, where the claim of arguable merit contended on appeal was not raised in the petition, is affirmed.

¶ 2 Following a 2002 jury trial, defendant, Patrick Carter, was convicted of first degree murder and armed robbery, and was sentenced to consecutive prison terms of 38 and 18 years. Defendant now appeals from the summary dismissal of his *pro se* post-conviction petition. On appeal defendant contends he stated a claim of arguable merit that counsel rendered ineffective assistance by not raising, on direct appeal, an arguably meritorious claim that trial counsel had been ineffective for not requesting a separate verdict form for felony murder, which resulted in the consecutive sentences for murder and armed robbery. The State responds that defendant's petition does not raise such a claim. We affirm the summary dismissal.

¶ 3 The evidence at trial showed that, in January 1998, defendant shot to death taxi driver,

Edward Bahar, while committing a robbery planned with codefendants, Mario Stroud, Jermaine Shelton, Brian McClain and Maurice King. Mr. McClain and Mr. King each pled guilty to armed robbery and conspiracy to commit murder, and agreed to testify against defendant in exchange for a 10-year prison sentence. Mr. McClain and Mr. King testified that on January 20, 1998, defendant called from a phone booth for a taxi to come to 15635 South Dobson Avenue, Dolton, Illinois. Mr. King drove the group to that location. When the taxi arrived, defendant approached it, demanded money from Mr. Bahar, then shot him five times and took his wallet. Mr. McClain and Mr. King testified only to seeing defendant fire the shots, and not to hearing them being fired. When Mr. McClain, Mr. King, Mr. Shelton and Mr. Stroud approached the taxi, Mr. Stroud removed a cigar box from Mr. Bahar's taxi, which contained some money. The money from Mr. Bahar's box was later divided up among the group at defendant's home.

¶ 4 In addition to the testimony of Mr. McClain and Mr. King, police found in the snow several sets of footprints at the scene, including two sets leading from the crime scene to defendant's home. One set of footprints was made by a pair of "Lugz" boots, which were found in defendant's bedroom. Mr. Stroud's fingerprints, but not defendant's, were found inside the taxi. Following his arrest, defendant gave two statements and, based on the information given in those statements, Mr. Bahar's wallet was found hidden in defendant's home.

¶ 5 In his first statement, defendant implicated Mr. McClain and Mr. Stroud and not himself, in the shooting of Mr. Bahar. In his second statement, defendant admitted he approached the taxi and pointed a gun at Mr. Bahar, however, he claimed the gun discharged four or five times because someone jostled him. Defendant also claimed Mr. McClain fired a gun three times. Forensic testing showed, however, that the single spent bullet found in the taxi, and the four bullets from Mr. Bahar's body, had been fired from the same gun.

¶ 6 On direct appeal, defendant contended: (1) his motions to quash his arrest and to suppress his statements were erroneously denied; (2) there was insufficient evidence to convict; (3) the State

introduced gang evidence in violation of an order *in limine*; (4) the State misstated the evidence in closing arguments; and (5) his sentence was excessive. This court affirmed the convictions and the sentences on direct appeal. *People v. Carter*, No. 1-02-3517 (2005) (unpublished order under Supreme Court Rule 23).

¶ 7 In his *pro se* post-conviction petition filed on April 26, 2010, defendant raised several issues, including claims of ineffectiveness of trial and appellate counsel. Included in his petition was the following allegation:

> "Petition Claim His Sentencing Shall Run currently because when he was charge with a first degree murder and arm robbery it all happen in one accident. The law allow one sentence here because both offenses resulted from the same conduct, so the court was in error in giving him two consecutive sentences, People ex rel. Stark v. Frye, 39 Ill. 2d 119, 233 N.E.2d 412 (1968)."

Furthermore, defendant sought certain forms of relief, including a request that his sentences "run concurrently that is required by law," that his sentences be reduced, and "further relief for the sixth amendment violation of effective assistance of appellate counsel." On May 28, 2010, the court summarily dismissed defendant's *pro se* petition, and this appeal followed.

¶ 8 In this appeal, defendant contends the summary dismissal of his post-conviction petition was erroneous, as he stated a claim of arguable merit. Defendant argues that although the petition "might have been more artful" when "liberally construed," the above discussed allegations of the petition raised an issue that appellate counsel was ineffective for not raising an arguably meritorious claim that trial counsel had been ineffective for not requesting a separate verdict form for felony murder, which resulted in the consecutive sentences for murder and armed robbery. The State responds that the petition did not raise such a claim.

¶ 9 Under section 122-2.1 of the Post-Conviction Hearing Act (Act), the trial court may examine the trial record and any action by this court in evaluating a post-conviction petition within 90 days

of its filing, and must summarily dismiss the petition if it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2010) Section 122-2 of the Act requires that a petition must "clearly set forth the respects in which petitioner's constitutional rights were violated." 725 ILCS 5/122-2 (West 2010). At the first stage of a summary-dismissal, a *pro se* petition need only present a limited amount of detail, with enough facts to make a claim that is "arguably constitutional for purposes of invoking the Act." *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). While formal legal arguments or citations to legal authority are not required in a *pro se* petition, neither is such a petition expected to set forth a complete and detailed factual recitation. A *pro se* petition must set forth some facts that can be corroborated and are objective in nature, or contain some explanation as to why those facts are absent. *Id*. at 10.

¶ 10 Section 122-3 of the Act provides that any claims not raised in the original or in an amended post-conviction petition, are waived. 725 ILCS 5/122-3 (West 2010). Unlike our supreme court with its supervisory authority under our constitution, this court "is not free" to excuse waiver caused by a defendant's failure to include an issue or claim in his post-conviction petition. *People v. Jones*, 213 Ill. 2d 498, 508 (2004). It is this court's duty to adhere to the Act's waiver requirement. See, e.g., *People v. Dorsey*, 404 Ill. App. 3d 829, 838 (2010).

¶ 11 Here, the separate claims or allegations in defendant's petition–that counsel was ineffective and that his sentencing should not have been consecutive–bear no resemblance to the claim now raised on appeal. The various claims cannot plausibly be blended together into the single claim raised herein. Moreover, defendant's petition lacks even a shadow of the factual allegation at the heart of the instant contention: that trial counsel failed to request separate verdict forms for the different theories of first degree murder. We, therefore, find no error in the summary dismissal of defendant's petition.

¶ 12 Accordingly, the judgment of the circuit court is affirmed.

¶ 13 Affirmed.