

No. 1-10-3192

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).

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. 01 CR 30585
)	
DECORY FRANKLIN,)	Honorable
)	Thomas V. Gainer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* Summary dismissal of defendant's *pro se* post-conviction petition affirmed over his claim of ineffective assistance of trial counsel.

¶ 2 Defendant Decory Franklin 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 that the circuit court erred in dismissing his petition where he set forth a cognizable claim of ineffective assistance of trial counsel.

¶ 3 Following a 2004 jury trial, defendant was sentenced to 50 years' imprisonment for the attempted first degree murder of Chicago police officer Albert Nelson. The evidence adduced at trial showed that defendant shot at Officer Nelson while being pursued into an apartment building at 6733 South Eberhart Avenue, in Chicago. This court affirmed that judgment on direct appeal over, *inter alia*, defendant's multiple contentions of ineffective assistance of trial counsel. *People v. Franklin*, No. 1-05-1213 (2007) (unpublished order under Supreme Court Rule 23).

¶ 4 On May 3, 2010, defendant filed a *pro se* petition for post-conviction relief alleging, in pertinent part, that trial counsel was ineffective because he alerted her to five witnesses who were present at the scene of the crime, and she failed to call them at trial. In closing, he listed the names of five individuals whose affidavits he claimed he could not obtain due to his incarceration, indigence, and inability to locate their current addresses. On July 23, 2010, the circuit court summarily dismissed defendant's post-conviction petition as frivolous and patently without merit. This appeal follows.

¶ 5 The Act provides a mechanism by which a criminal defendant may assert that his conviction was the result of a substantial denial of his constitutional rights. *People v. Delton*, 227 Ill. 2d 247, 253 (2008). At the first stage of proceedings, defendant need only set forth the "gist" of a constitutional claim (*Delton*, 227 Ill. 2d at 254); however, the circuit court must dismiss the petition if it finds that the petition is frivolous or patently without merit (725 ILCS 5/122-2.1(a)(2) (West 2010)), *i.e.*, it has no arguable basis either in law or in fact (*People v. Hodges*, 234 Ill. 2d 1, 16 (2009)). We review the summary dismissal of a post-conviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388 (1998).

¶ 6 Defendant maintains that he set forth a claim of ineffective assistance of trial counsel warranting further proceedings under the Act. To establish a claim of ineffective assistance of

counsel, defendant must first show that counsel's performance was deficient, *i.e.*, it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Secondly, defendant must show that counsel's deficient performance resulted in prejudice to the defense, *i.e.*, a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687, 694. Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel. *People v. Flores*, 153 Ill. 2d 264, 283 (1992).

¶ 7 In this court, defendant maintains that his petition contained "well-supported claims that trial counsel was ineffective for failing to call additional witnesses who would undermine the credibility of the SOS officers who testified against [him]." He also claims that remanding the cause for second-stage proceedings would "allow [him] to develop his claim in the context of the notorious SOS scandal." The State responds that defendant's petition was properly dismissed because it was not verified by affidavit, failed to comply with the minimum pleading or evidentiary requirements of the Act, and did not state a cognizable claim of ineffective assistance of trial counsel.

¶ 8 Notwithstanding defendant's alleged non-compliance with the verification (725 ILCS 5/122-1(b) (West 2010); *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 34) and evidentiary (725 ILCS 5/122-2 (West 2010); *People v. Collins*, 202 Ill. 2d 59, 66 (2002)) requirements of the Act, we find that his post-conviction petition was subject to summary dismissal for failing to set forth a sufficient claim of ineffective assistance of trial counsel. *Hodges*, 234 Ill. 2d at 17. Although a *pro se* petitioner is not expected to set forth a complete and detailed factual recitation, he must set forth some objective facts which can be corroborated or provide some explanation as to why those facts are absent. *Delton*, 227 Ill. 2d at 254-55. Here, defendant merely alleged that trial counsel was ineffective for failing to call five witnesses. In his closing

paragraph, defendant listed the names of five individuals from whom he could not procure affidavits, but did not specify whether these five individuals are the same five witnesses referred to in his claim, and, most significantly, he failed to provide any information as to who they are, and to what they would have testified. Broad, conclusory allegations of ineffective assistance of counsel are not allowed under the Act (*Delton*, 227 Ill. 2d at 258), and those presented by defendant in this case fail to give rise to the gist of a constitutional claim (*People v. Miller*, 393 Ill. App. 3d 629, 640 (2009)).

¶ 9 Defendant's appellate assertion that a remand for second-stage proceedings would "allow [him] to develop his claim in the context of the notorious SOS scandal" is improper because he raised no such claim in his petition. Our review is limited to claims raised in the post-conviction petition filed in the circuit court; defendant may not raise an issue for the first time on appeal. *People v. Petrenko*, 237 Ill. 2d 490, 502 (2010). We thus find that defendant has forfeited this contention which was not raised in his original petition. *People v. Jones*, 211 Ill. 2d 140, 149 (2004). In sum, we find that defendant's claims have no arguable basis either in law or in fact (*Hodges*, 234 Ill. 2d at 16); and, accordingly, affirm the summary dismissal of his *pro se* petition for post-conviction relief.

¶ 10 Affirmed.