

No. 1-11-0299

**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).

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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. 04 CR 8865
	)	
SHEROME GRIFFIN,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

- ¶ 1 *Held:* Trial court did not err in summarily dismissing defendant's post-conviction petition alleging ineffective assistance of appellate counsel for not raising a claim of ineffective assistance of trial counsel where trial counsel did not request separate verdict forms for each of the theories of first degree murder. Requesting separate verdict forms is a matter of trial strategy, and there was no prejudice where we found on direct appeal that the trial evidence supported all three theories including intentional murder.
- ¶ 2 Following a 2005 jury trial, defendant Sherome Griffin was convicted of first degree murder, armed robbery, two counts of aggravated kidnaping, and unlawful use of a weapon by a felon (UUWF) and was ultimately sentenced to consecutive prison terms of 22 years for murder

and 6 years each for armed robbery and the two aggravated kidnaping counts, with a concurrent 2 years for UUWF, for a total of 40 years' imprisonment. We affirmed his convictions on direct appeal. *People v. Griffin*, 375 Ill. App. 3d 564 (2007). Defendant now appeals from the summary dismissal of his 2010 *pro se* post-conviction petition. He contends that he has an arguably meritorious claim of ineffective assistance of appellate counsel for not raising a claim that trial counsel was ineffective where separate verdict forms for each of the theories of first degree murder were not requested, rendering it difficult to determine whether the murder conviction was for felony murder based on armed robbery. For the reasons that follow, we affirm.

¶ 3 The evidence at trial was that, on February 17, 2002, defendant and Andre Griffin, Sherrod Guy and Antonio Young forced known drug dealer Walter Gills, Sr., (Gills) and his infant son Walter Gills, Jr., into Gills's own van at gunpoint, tied up Gills, and repeatedly struck him while demanding money and drugs. They went to Gills's home and the home of his mother, where they stole various items. Defendant fatally shot Gills when he attempted to escape, but his son was found unharmed in the van. The fingerprints of defendant and Guy were found on the doors of Gills's van. Anthony Thomas, a friend of defendant, testified that defendant and the co-offenders sold him some of the stolen goods, which he later resold, and that defendant described the crimes to him. Thomas later wore a hidden listening device provided by the police while engaging defendant in further conversation regarding the offenses. Defendant was arrested and then gave a videotaped statement confessing his involvement in the offenses. In his account to Thomas and in his statement, defendant admitted that he personally shot Gills.

¶ 4 Defendant testified that Guy and Young committed the aforementioned offenses without his involvement or knowledge, though he indeed helped them sell stolen goods to Thomas. He

attributed his statements to Thomas as efforts to impress him with information he gleaned from Guy and Young, while he attributed his post-arrest statement to police coercion.

¶ 5 Defendant was charged with, and the jury was instructed on, first degree murder under all three theories: intentional, strong probability, and felony murder. Without objection, the jury was provided general verdict forms on first degree murder; that is, guilty or not guilty, with no distinction between the three theories. Following deliberations, the jury found defendant guilty of first degree murder, armed robbery, the aggravated kidnaping of Gills and his son, and UUWF but also found that he did not personally discharge a weapon that proximately caused death.

¶ 6 Defendant was sentenced to concurrent prison terms of 42 years for murder, 25 years each for armed robbery and the two aggravated kidnaping counts, and 7 years for UUWF.

¶ 7 On direct appeal, appellate counsel contended that: (1) inadmissible prior consistent statements made by Thomas were improperly introduced and used to bolster his testimony, and (2) defendant's armed robbery conviction should be vacated because it was the predicate for his murder conviction on a felony-murder basis. Regarding the latter contention, we found that the trial evidence supported all three theories so that "the most serious first degree murder charge, intentional murder, was the proper basis for sentencing. [Citation.] Consequently, although armed robbery is a lesser-included offense of felony murder, it is not a lesser-included offense of intentional murder." *Griffin*, 375 Ill. App. 3d at 571-72. We also stated the we were:

"not persuaded by defendant's argument that, because a verdict was returned finding that he did not personally discharge the firearm causing the victim's death, the jury necessarily found him guilty of felony murder and not intentional or knowing murder. It is not this court's function to enter the minds of the jurors. Moreover, the jury's verdict is entitled to great deference and we find that the

supreme court's firmly established rule that a defendant cannot 'challenge convictions on the sole basis that they are legally inconsistent with acquittals on other charges' similarly applies to this claim." *Id.* at 572, quoting *People v. Jones*, 207 Ill. 2d 122, 134 (2003).

We therefore affirmed all of defendant's convictions. The State in turn contended that the trial court erred in imposing concurrent sentences. We agreed, vacating the concurrent sentences and remanding for resentencing with consecutive sentences.

¶ 8 On remand, defendant was resentenced; however, on review we modified the sentence and remanded for resentencing. *People v. Griffin*, No. 1-08-1098 (2010) (unpublished order under Supreme Court Rule 23). On remand in June 2010, defendant was resentenced to consecutive prison terms of 22 years for murder and 6 years each for armed robbery and the two kidnappings, with a concurrent 2 years in prison for UUWF.

¶ 9 In December 2010, defendant filed the instant *pro se* post-conviction petition alleging in relevant part that appellate counsel was ineffective for not contending that trial counsel was ineffective. In this claim, defendant referred to the accountability and statement issues, but also to appellate counsel informing him in a letter that a certain ineffectiveness issue should be raised in a post-conviction petition rather than on direct appeal. Attached to the petition were copies of letters from appellate counsel to defendant, one of which stated that counsel:

"did not believe an ineffective assistance of counsel claim stemming from the failure to request separate jury forms was a meritorious issue for appeal given the appellate court's refusal to question matters of trial strategy. Because multiple jury forms allow the jury multiple ways to find a defendant guilty, it would be

difficult to second guess an attorney who chooses not to ask for them. However, this does not preclude you from raising the issue on your own in a post-conviction petition if you disagree with my opinion."

¶ 10 On January 3, 2011, the trial court summarily dismissed the petition, finding that the jury had to be instructed on accountability because there were co-defendants rendering defendant's claim that he was prejudiced by accountability instructions meritless. This appeal timely followed.

¶ 11 On appeal, defendant contends that the summary dismissal of his petition was erroneous because he stated an arguably meritorious claim that appellate counsel rendered ineffective assistance by not contending on direct appeal that trial counsel was ineffective for not requesting separate verdict forms for each of the theories of first degree murder. In the absence of such separate forms, he contends, it cannot be determined whether his murder conviction was for felony murder based on armed robbery, which if so, would require the vacatur of his conviction and sentence for armed robbery.

¶ 12 Under section 122-2.1 of the Post-Conviction Hearing Act (725 ILCS 5/122-2.1 (West 2010)), the trial court has 90 days after the filing of the post-conviction petition to review it, and must summarily dismiss the petition if it is frivolous or patently without merit. A *pro se* petition is frivolous or patently without merit only if it has no arguable basis in law or fact; that is, if it is based on an indisputably meritless legal theory, such as one completely contradicted by the record, or a fanciful factual allegation, such as one that is fantastic or delusional. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). On a claim of ineffective assistance of counsel, whether trial or appellate, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced him; in other words, that counsel's performance was objectively

unreasonable under prevailing professional norms and that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's errors. *Id.* at 496-97. A petition alleging ineffective assistance of counsel may not be summarily dismissed if: (1) it is arguable that counsel's performance fell below an objective standard of reasonableness and (2) it is arguable that the defendant was prejudiced. *Id.* at 497. The summary dismissal of a post-conviction petition is reviewed *de novo*. *Id.* at 496.

¶ 13 Here, as a threshold matter, we find that defendant's petition raised the claim at issue, albeit not clearly and unambiguously. In his claim of ineffective assistance of appellate counsel, defendant complains, in part, that appellate counsel refused to raise a claim of ineffective assistance of trial counsel, but suggested that defendant raise the claim in a post-conviction petition. One of the letters attached to the petition describes such a claim, which is the separate murder verdicts claim that is now at issue. The basic framework of the instant contention appears in the petition, but because defendant could have stated this claim directly rather than by reference, we do not fault the veteran trial judge for not expressly addressing the claim in his summary dismissal.

¶ 14 That said, however, we conclude that defendant's underlying ineffective assistance claim has no arguable basis in law as it is completely contradicted by the record. Thus, appellate counsel's performance did not arguably fall below the objective standard of reasonableness, nor was defendant arguably prejudiced by the absence of this particular claim on direct appeal. In sum, the summary dismissal of the instant petition was proper.

¶ 15 First and foremost, defendant has not overcome the presumption that trial counsel was engaging in reasonable trial strategy. Generally, trial counsel's decision to accept general verdict forms rather than specific verdict forms is a matter of trial strategy and will be considered objectively reasonable as the law does not require counsel to request separate verdict forms.

*People v. Calhoun*, 404 Ill. App. 3d 362, 383 (2010). "Defense counsel's decision to proceed with a general verdict form could have been premised on the fear that giving the jury special verdict forms would make it easier for them to find defendant guilty of murder under the theory of felony murder, since \*\*\* such a special verdict form would permit the jury to focus on felony murder separately from the intentional and knowing murder theories." *Id.* at 384. We also find that defendant has not shown prejudice from the general verdict forms where we found on direct appeal that the trial evidence supported all three theories of murder and specifically rejected an argument that the verdict on fatal personal discharge of a firearm supported a finding of felony murder over one of intentional murder.

¶ 16 Accordingly, the judgment of the trial court is affirmed.

¶ 17 Affirmed.