

2012 IL App (2d) 100536-U  
No. 2-10-0536  
Order filed February 3, 2012

**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  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 03-CF-3197
	)	
CHRISTOPHER A. ROBINSON,	)	Honorable
	)	Steven G. Vecchio,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Bowman and Burke concurred in the judgment.

**ORDER**

*Held:* The trial court erred in dismissing the defendant's *pro se* postconviction petition at the first stage because the defendant's petition was not frivolous or patently without merit. The case is reversed and remanded for second-stage postconviction proceedings.

¶1 The defendant, Christopher Robinson, appeals the trial court's first-stage dismissal of his *pro se* postconviction petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). In his postconviction petition, the defendant alleged, among other things, that trial counsel was ineffective for failing to pursue a motion to suppress on the basis that defendant's

confession was not voluntary. The trial court dismissed the petition as frivolous and patently without merit. We reverse and remand for additional proceedings.

¶ 2

## I. BACKGROUND

¶ 3 The facts of this case are adequately set forth in this court's order on the defendant's direct appeal (*People v. Robinson*, No. 2-07-0691 (Apr. 20, 2009) (unpublished order under Supreme Court Rule 23)). Consequently, our background discussion is focused on those facts relevant to defendant's *pro se* postconviction petition, particularly those facts relevant to defendant's claim that trial counsel was ineffective for failing to support his motion to suppress on the basis that the defendant's diminished mental capacity rendered his confession involuntary.

¶ 4 On December 12, 2006, a jury found the defendant guilty of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2003)). The defendant was subsequently sentenced to 50 years' imprisonment. The evidence at trial showed that the victim, Shontrelle Graham, was murdered in a drive-by shooting on October 25, 2003.

¶ 5 On October 27, 2003, the murder investigation led the police to the defendant's home. The defendant agreed to go to the police station with the detectives. At the police station, the defendant was advised of his *Miranda* rights. That evening, the defendant denied any involvement with the murder. The police told the defendant that they believed he was lying and that they were going to bring charges against him. The defendant then admitted that he was in the car during the shooting and that he knew the location of the murder weapon. The detectives took the defendant back to the house where he was originally found and seized a gun from the basement. In the early morning on October 28, 2003, the defendant signed a written statement indicating that he was in the back seat of the car during the shooting but was not otherwise involved in the murder. The defendant was then

arrested on an obstruction of justice charge and remained in custody. On October 30, 2003, the defendant was arraigned on the obstruction charge.

¶ 6 On the evening of October 30, 2003, the defendant confessed to shooting the victim and signed a written statement to that effect. On that day, Detective Mark Jimenez and another officer interviewed the defendant. After the defendant waived his rights and agreed to speak with the officers, Detective Jimenez told the defendant that an inmate at the county jail was bragging that a fourteen year-old, Marcus Jamison, had admitted to a murder that the fourteen year-old had not committed. Detective Jimenez told the defendant that he had spoken with Jamison and asked him why he was taking the blame for the murder when other people had indicated that the defendant was the shooter. Detective Jimenez also told the defendant that Jamison had stated that the defendant was the shooter but because all his friends were blaming him for the murder, he just went along with it. Detective Jimenez testified that the defendant then confessed to being the shooter. The defendant had his head on his chest as they talked. The defendant told Detective Jimenez that he remembered shooting twice. A written statement of the confession was prepared, which the defendant reviewed and signed.

¶ 7 The defendant filed a pretrial motion to suppress his confession. The basis of the motion was that his detention was illegal and that, because he had been arrested for obstruction of justice, a sixth amendment right to counsel was created and carried over to the murder investigation and his confession. No evidence was offered by the defense to support a finding that the defendant's confession was involuntary because he had mental health issues. The trial court denied the motion to suppress. The trial court found that although the defendant originally went to the police station voluntarily, probable cause was established soon thereafter based on the discovery of an outstanding

California warrant for the defendant for armed robbery. The trial court also found that although the defendant's sixth amendment right to counsel attached to the defendant's obstruction of justice charge, it did not attach to the murder offense because the two were not "inextricably intertwined or extremely closely related."

¶ 8 At trial, Jason Banks testified that he witnessed the shooting and that the defendant was the shooter. Banks acknowledged a prior adjudication as a juvenile delinquent based on aggravated battery and an adult conviction for armed robbery. The defendant's confession was introduced and read to the jury. The sole defense witness, Scottie Clemons, testified that he witnessed the shooting along with Banks. Clemons testified that his cousin "Marcus" was the shooter. Clemons acknowledged being adjudicated a delinquent minor for criminal damage to government property, aggravated battery, intimidation and mob action. He also acknowledged that he had more recently been convicted of possession of a controlled substance with the intent to deliver.

¶ 9 Following closing arguments, the jury returned a verdict finding the defendant guilty of first degree murder. Following the denial of his motion for a new trial, a sentencing hearing commenced. At sentencing, the defendant testified that he had learning disabilities, was diagnosed with attention deficit disorder, and had, at one point, been hospitalized and prescribed medication for depression. The defendant testified that, although he was in the car, he did not shoot the victim. Letters from the defendant's mother, which were admitted at sentencing, indicated that the defendant had a learning disability and that he likely did not know what he was signing when he signed his confession. A letter from his grandmother indicated that the defendant suffered from depression and had been on medication in the past. At the conclusion of the hearing, the trial court noted, in mitigation, that the defendant was abused, had a learning disability and attention deficit disorder, and

“perhaps a mental health disorder.” The trial court imposed a 50-year term of imprisonment. Thereafter, the defendant appealed.

¶ 10 On appeal, the defendant argued only that he was denied a fair trial by improper comments made by the prosecutor during rebuttal closing argument. This court affirmed the defendant’s conviction. *Robinson*, No. 2-07-0691 at 17.

¶ 11 On February 1, 2010, the defendant filed a *pro se* postconviction petition. In his petition, the defendant raised essentially seven arguments regarding ways in which his trial counsel and appellate counsel were ineffective. One of the allegations was that “trial counsel was ineffective for failing to present readily available evidence of [the defendant’s] diminished mental capacity at the time of questioning in a motion to suppress confession” and that this ineffectiveness resulted in substantial prejudice to the defendant. In a properly notarized affidavit attached to his petition, the defendant alleged that prior to and after the hearing on his pre-trial motion to suppress he told his trial counsel that he was (1) diagnosed with attention deficit disorder and a learning disability; (2) hospitalized for mental health problems and prescribed medication therefore; (3) beaten as a child with extension cords by his mother and grandmother, and with closed fists by his father; (4) a victim of generational abuse; and (5) suffering from a conditioned response known as “learned helplessness.” In his petition, the defendant argued that trial counsel could have raised the foregoing facts as a basis to grant his motion to suppress because these facts show that he was not able to voluntarily waive his right to remain silent and that his confession was coerced due to his lack of sophistication. On April 21, 2010, the trial court summarily dismissed the defendant’s petition as frivolous and patently without merit. The defendant filed a timely notice of appeal.

¶ 12

## II. ANALYSIS

¶ 13 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)) establishes a three-stage process for adjudicating a postconviction petition. *People v. Jones*, 213 Ill. 2d 498, 503 (2004). At the first stage, the trial court reviews the petition within 90 days of its filing to determine whether it is either frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2008). “A post-conviction petition is considered frivolous or patently without merit only if the allegations, taken as true and liberally construed, fail to present” the “gist” of a claim of a constitutional violation. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The trial court makes this determination solely on the basis of the petition, the affidavit(s) attached to it, and the record, and if it finds that the petition is frivolous or patently without merit it must dismiss the petition in a written order. *Id.* That is what the trial court here did.

¶ 14 Because most petitions at the first stage are drafted by defendants with little legal knowledge, the threshold for survival is low. *People v. Torres*, 228 Ill. 2d 382, 394 (2008). “But nonfactual and nonspecific assertions that merely amount to conclusions are not sufficient to require a hearing under the Act.” *Id.* Although only a limited amount of detail need be presented in a *pro se* petition, the petition must clearly set forth how the petitioner’s constitutional rights were violated. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); see also 725 ILCS 5/122-2 (West 2008).

¶ 15 A *pro se* postconviction petition is frivolous or patently without merit when it has “no arguable basis either in law or in fact.” *Hodges*, 234 Ill.2d at 16. “A petition has no basis in law when it is based on an ‘indisputably meritless legal theory,’ meaning that the legal theory is ‘completely contradicted by the record.’ ” *People v. Carballido*, 2011 IL App (2d) 090340, ¶ 37 (2011) (quoting *Hodges*, 234 Ill. 2d at 16). “A petition has no basis in fact when it is based on ‘fanciful factual allegation[s],’ meaning that the factual allegations are ‘fantastic or delusional.’ ”

*Id.* (quoting *Hodges*, 234 Ill. 2d at 17). A petition not dismissed as frivolous or patently without merit advances to the second stage. *Id.* at ¶ 37. A trial court’s first-stage dismissal is reviewed *de novo*. *Id.*

¶ 16 A defendant has a constitutional right to effective assistance of counsel. *People v. Taylor*, 237 Ill. 2d 356, 374 (2010). We review claims of ineffective assistance according to the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (adopted by the Illinois Supreme Court in *People v. Albanese*, 104 Ill. 2d 504, 525-26 (1984)), which requires the defendant to show that: “(1) as determined by prevailing professional norms, counsel’s performance fell below an objective standard of reasonableness; and (2) the defendant was prejudiced by counsel’s deficient performance.” *Carballido*, 2011 IL App (2d) 090340 at ¶ 34. Under this standard, “[a]t the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed 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.

¶ 17 In *Carballido*, this court applied the *Strickland* test for ineffective assistance to a defendant’s postconviction claim that his trial attorney failed to pursue a motion to suppress his statements to the police. In his petition, the defendant, Juan Carballido, alleged that based on factors such as his age, fatigue, and police interference with parental contact, his statements to the police were not voluntary and that his trial counsel should have filed a motion to suppress. *Carballido*, 2011 IL App (2d) 090340 at ¶ 40. In finding Carballido’s postconviction petition frivolous and patently without merit, the trial court noted that Carballido never asked to speak with his father and that nothing in the record indicated that Carballido was immature or unduly susceptible to coercion. *Id.*

¶ 18 On appeal, this court held that the trial court erred in dismissing Carballido's postconviction petition at the first-stage because Carballido had raised the "gist" of a claim that his counsel was objectively unreasonable for failing to pursue a motion to suppress based on the totality of the circumstances. *Id.* at ¶ 41. This court noted that "[i]n determining whether a defendant's statements were voluntarily made, a court must look to the totality of the circumstances." *Id.* Relevant circumstances include "the defendant's age, education, background, experience, mental capacity, and intelligence, as well as the defendant's physical and emotional condition at the time of questioning, the duration of the questioning, and the police treatment of the defendant." *Id.*

¶ 19 The *Carballido* court noted that trial counsel was aware of Carballido's age, his likely fatigue, and the police prevention of parental contact. This court further noted that trial counsel had notice to explore other factors such as: "(1) defendant's intelligence and the tandem issue of whether he truly understood his constitutional rights; (2) defendant's maturity and the tandem issue of whether he was unduly susceptible to coercion; and (3) whether the police treated defendant in a coercive manner." *Id.* at ¶ 42. The reviewing court noted that the trial court erred in making factual findings at the first stage (*Id.* at ¶ 40), because at the first-stage the defendant's factual assertions must be taken as true if not positively rebutted by the record (*Id.* at ¶ 42). Finally, the court noted that taking Carballido's factual allegations as true, the motion to suppress had a high probability of success and, if granted, a reasonable probability of changing the outcome of the case. *Id.* at ¶ 44.

¶ 20 In the present case, the defendant argues that his confession was involuntary due to his alleged diminished mental capacity. The allegations in the defendant's postconviction petition are that he told trial counsel of his numerous mental health issues, including a learning disability, hospitalization for mental health problems, recent cessation of prescribed psychiatric medication,

severe child abuse, and his condition known as learned helplessness. At this stage of postconviction proceedings, these allegations must be taken as true if not positively rebutted by the record. The record does include a November 3, 2003, bond sheet indicating that the defendant had no mental problems and was not on medication. However, the defendant's testimony at the sentencing hearing and letters from family members submitted at sentencing corroborate that the defendant has a learning disability, attention deficit disorder, and depression. Accordingly, the defendant's allegations are not positively rebutted by the record and we cannot conclude that the defendant's petition lacked an arguable basis in fact.

¶ 21 Furthermore, we cannot conclude that the defendant's petition presented an indisputably meritless legal theory. First, it is at least arguable that trial counsel's failure fell below an objective standard of reasonableness. We acknowledge that the ground on which to base a motion to suppress is generally a matter of trial strategy. *Id.* at ¶ 44, citing *People v. Mabry*, 398 Ill. App. 3d 745, 752-53 (2010) (trial counsel not ineffective where, following investigation, counsel selected only what he believed to be the most reasonable grounds upon which to base a motion to suppress, rather than including every single ground suggested by the defendant). However, the grounds upon which trial counsel based the motion to suppress in this case were not legally viable. Trial counsel argued that the defendant's confession should be suppressed because the defendant was illegally detained and because his sixth amendment right to counsel had attached. The trial court correctly determined that neither of these assertions were true and denied the motion to suppress. In addition, the defendant's alleged learning disability and other mental health issues are generally reasonable grounds on which to base a motion to suppress. See, e.g., *People v. Bernasco*, 138 Ill. 2d 349, 368 (1990) (confession involuntary because of defendant's subnormal intelligence). Accordingly, the failure to base to the

motion to suppress on the defendant's alleged diminished mental capacity arguably fell below an objective standard of reasonableness.

¶22 Second, it is also arguable that trial counsel's failure prejudiced the defendant. The defendant was prejudiced if his motion to suppress based on diminished mental capacity arguably would have been granted and that, absent his confession, the outcome of the trial arguably would have changed. It is arguable that the motion to suppress would have been granted. See *Carballido*, 2011 IL App (2d) 090340 at ¶41 (defendant's intelligence, mental capacity, and physical and emotional condition at time of questioning are relevant in determining whether a defendant's statements are voluntary). The outcome of the trial arguably would have changed because the evidence against the defendant was not overwhelming. One eyewitness testified that the defendant was the shooter while another eyewitness testified that someone other than the defendant was the shooter. Both witnesses had credibility problems. It is arguable, therefore, that the defendant's confession had some effect on the jury's verdict. Accordingly, because the defendant's postconviction petition did not lack an arguable basis either in law or in fact, it should not have been dismissed as frivolous and patently without merit.

¶23 The State argues that the defendant's petition failed to state a constitutional violation because the defendant never alleged that his mental conditions impaired his ability to understand his rights and provide a voluntary statement. However, *pro se* petitions must be given a liberal construction and read with a lenient eye. *Hodges*, 234 Ill. 2d at 21. Here, the defendant stated in his postconviction petition that trial counsel was ineffective in failing to argue that, based on his diminished mental capacity, the defendant "could not intelligently waive his right to remain silent or that [he] was coerced because of his lack of sophistication." The defendant further stated that this

fell below an objective standard of reasonableness because such a challenge to the voluntariness of a confession was commonplace. Giving these allegations a liberal construction, the defendant has sufficiently pleaded that his confession was involuntary based on his diminished mental capacity.

¶ 24 The State next argues that the defendant's petition was properly dismissed because the legal theory was indisputably meritless as it was contradicted by the record. The State argues that the record shows that the defendant was read and waived his *Miranda* rights on two occasions, officers testified that the defendant was alert, fit, and responsive during questioning, and a November 3, 2003, bond sheet indicated that the defendant had no mental problems and was not on any medication. However, weighing the evidence and making a determination as to whether the defendant's confession was voluntary is improper at this stage. *Carballido*, 2011 IL App (2d) 090340 at ¶ 40. Rather, at this stage, we must take the defendant's allegations as true unless positively rebutted by the record. A proper reliance on the record at stage one would be if the record showed that the defendant had not informed trial counsel of his mental health issues or that he did not suffer from the alleged mental health issues. We acknowledge the November 3, 2003, bond hearing sheet which indicated that the defendant had never been treated for mental health issues. Nonetheless, the evidence presented at the sentencing hearing indicated that the defendant's alleged mental health issues do in fact, to some extent, exist. Relative to mitigating factors at sentencing, the trial court noted the presence of abuse, a learning disability, and attention deficit disorder. Accordingly, despite the State's assertion to the contrary, the defendant's legal theory is not contradicted by the record.

¶ 25

### III. CONCLUSION

¶ 26 For the reasons stated, we reverse the trial court's first-stage dismissal of the defendant's postconviction petition and remand for further proceedings consistent with the Act and this order.

¶ 27 Reversed and remanded.