

NOTICE
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2012 IL App (4th) 110364-U

Filed 1/25/12

NO. 4-11-0364

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Ford County
DAVID A. HARI,)	No. 02CF14
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Where the postconviction defendant failed to attach an affidavit from a witness he claimed was not called by counsel at trial, the trial court did not err in summarily dismissing his postconviction petition.

¶ 2 In April 2007, a jury found defendant, David A. Hari, guilty of first degree murder and attempt (first degree murder). In June 2007, the trial court sentenced defendant to 48 years' imprisonment on the murder count and imposed a consecutive 25-year term on the attempt count. This court affirmed his convictions and sentences. In June 2010, defendant filed a *pro se* postconviction petition, which the trial court dismissed as frivolous and patently without merit.

¶ 3 On appeal, defendant argues the trial court erred in summarily dismissing his postconviction petition. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2002, the State charged defendant by information (later amended in September 2002) with the offense of first degree murder (720 ILCS 5/9-1(a)(1) (West 2002)), alleging he, without lawful justification and with the intent to kill or do great bodily harm to Jeff Thomas, shot Thomas, causing his death. The State also charged defendant with attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2002)), alleging he, with the intent to commit first degree murder, performed a substantial step toward the commission of that offense in that without lawful justification and with the intent to kill Lisa Hari, shot her with a .22-caliber weapon. Defendant pleaded not guilty.

¶ 6 In November 2002, a jury found defendant guilty on both counts. In January 2003, the trial court sentenced defendant to 48 years in prison on the murder count and a consecutive term of 25 years on the attempt (first degree murder) count.

¶ 7 Defendant appealed, arguing, *inter alia*, the trial court erred in refusing to instruct the jury on his defense of involuntary Zoloft intoxication. This court found the trial court did commit error in failing to instruct the jury but the evidence of defendant's guilt was so clear and convincing that any error was harmless beyond a reasonable doubt. *People v. Hari*, 355 Ill. App. 3d 449, 460, 822 N.E.2d 889, 900 (2005).

¶ 8 The Illinois Supreme Court granted defendant's petition for leave to appeal. *People v. Hari*, 214 Ill. 2d 541, 830 N.E.2d 5 (2005). The court agreed the trial court erred in failing to instruct the jury on involuntary intoxication. *People v. Hari*, 218 Ill. 2d 275, 295, 843 N.E.2d 349, 361 (2006). However, the court found the error was not harmless. *Hari*, 218 Ill. 2d at 296, 843 N.E.2d at 361. Thus, the court reversed the judgments of this court and the trial court and remanded for a new trial. *Hari*, 218 Ill. 2d at 302, 843 N.E.2d at 365.

¶ 9 In February 2007, defendant disclosed Dr. Robert Mitrone and Keith Altman as controlled expert witnesses pursuant to Illinois Supreme Court Rule 213(f)(3) (Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2007)). Defendant stated Altman would "testify regarding the use drug companies manage adverse event reports and that the Adverse Event Database maintained by the FDA [(Food and Drug Administration)] contains regarding the relationship between SSRI's [(selective serotonin reuptake inhibitors)] (of which class Zoloft is a member) and suicidal, homicidal and violent behaviors." Defendant also stated Altman would "testify that the information contained in the Adverse Event Database is not inconsistent with Defendant's affirmative defense of involuntary intoxication by Zoloft."

¶ 10 In March 2007, the State filed a motion *in limine* to bar Altman from testifying. The State argued Altman was a data analyst, not a physician, psychiatrist, or pharmacologist, and his testimony would not assist the jury in understanding the evidence.

¶ 11 At a hearing on the motion *in limine*, the State indicated it was unable to ascertain the exact nature of Altman's proposed testimony. Moreover, the State argued a hearing pursuant to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), would be required if Altman intended to testify that Zoloft and/or Tylenol P.M. caused behavioral disturbances such as violent or homicidal behavior.

¶ 12 Defense counsel stated Altman "has developed a knowledge about the proper reporting and the dissemination of adverse events to the FDA database." Altman's "interpretation of the data is his special expertise, and it is intended to show the prevalence of the, of the incidents of, for example, suicide, homicide, violent behavior, skin rash, in this case that is not an intended effect of the drug."

¶ 13 When the trial court asked what Altman's opinion would be, defense counsel stated it would show the "adverse effects reported by [defendant,] which are part of the information reported to Dr. Mitrione and form the basis of his opinion, are entirely consistent with those reported by those complaining to the FDA database." The court concluded Altman could not testify without an offer of proof to show he would offer expert testimony.

¶ 14 In April 2007, defendant filed a motion *in limine* to bar the State from calling Dr. Douglas Jacobs as an expert witness or to limit his testimony solely to the issue of involuntary intoxication. At the hearing on the motion, defense counsel argued Jacobs' opinion would fall into the same category as that offered by Altman, and if Altman's testimony was irrelevant then so too was Jacobs'.

¶ 15 The trial court stated Dr. Jacobs' testimony dealt with testimony from Dr. Mitrione. Since Mitrione had not supplied defendant with scientific materials upon which he based his opinion, the court found it could not rule on the motion *in limine*. The court stated Jacobs could testify and evidence would come in unless rendered irrelevant by material from Mitrione.

¶ 16 Thereafter, defendant filed a disclosure setting forth the medical literature and sources relied upon by Dr. Mitrione in forming his opinion. At the hearing prior to *voir dire*, defense counsel renewed his motion to bar Dr. Jacobs' testimony as to his "review of subclinical trials, of journal articles, of statistical calculations and abstracts, to assert the proposition that there is no causal connection in the literature between Zoloft and violence." When the trial court asked what Altman's opinion would be, defense counsel stated Altman would, based on the statistics in the FDA adverse reaction database, testify the kind of behaviors exhibited by

defendant in this case "occur in the larger population who is taking this drug."

¶ 17 The trial court stated it was unclear as to why Altman's testimony had any nexus with this case. The court denied the motion *in limine* with respect to Dr. Jacobs, but it required the State to inform counsel and the court the areas of inquiry for Jacobs prior to any rebuttal.

¶ 18 At the April 2007 jury trial, Doug Livingston testified he lived across the street from Lisa Hari. On February 10, 2002, he "heard a couple of gun shots." He then "heard somebody moaning." Shortly thereafter, he saw Jeff Thomas, who was dressed in his Navy uniform, lying in the middle of the road with blood around his body. Livingston then entered the Hari residence and saw "blood everywhere." He found Lisa was not "very coherent" and had been wounded.

¶ 19 Villa Grove police officer Travis Brown testified he worked for the Paxton police department in 2001 and 2002. On February 10, 2002, Brown received a dispatch of a shooting around 6 p.m. Upon arrival, Brown observed a male subject lying in the middle of the road. Officer Brown then entered the residence and found Lisa "covered in blood." He tried to talk with her but described her as being "very incoherent."

¶ 20 Former Roberts police chief Randy Kinzinger testified he became aware defendant was a suspect in the shootings and waited across the street from defendant's mother's house. At approximately 9 p.m., defendant arrived driving a white vehicle. Kinzinger approached defendant, ordered him to the ground, and arrested him. Kinzinger stated he never heard defendant complain about stomach or abdominal pains or saw him shaking or trembling. Kinzinger did not observe defendant being irrational, delusional, or paranoid. Also, defendant did not slur his words, stagger, or appear to be under the influence.

¶ 21 Lisa Hari testified she and defendant had two boys, Zack and Kyle. In late 2001, Lisa and defendant began having marital difficulties. Lisa then became romantically involved with Jeff Thomas. Lisa filed for divorce on January 10, 2002, and Jeff filed for divorce from his wife. Two days later, Lisa and defendant had an argument that turned into a physical altercation. Lisa eventually called the police. The next day, defendant moved out of the house and took his guns. Jeff Thomas then moved in with Lisa. They changed the locks and gave keys to Zack, Lisa's parents, and Lisa's neighbor Doreen Hendricks. After defendant moved out, Lisa became aware that some photos were missing. She later learned defendant showed the pictures to Julie Thomas, Jeff's wife.

¶ 22 On February 10, 2002, Lisa had a telephone conversation with defendant concerning the boys' church activity that evening. She returned home at approximately 4:30 p.m. She received a call from Jeff, and he stated he would arrive at the house around 6 p.m. Lisa then returned a call from her brother but heard a noise in the basement "that sounded like a gun being cocked." While still on the phone, Lisa went downstairs to investigate and saw defendant with a gun "coming out of the laundry room." She told her brother, "oh, my God, he is here." Defendant started shooting, and Lisa ran up the stairs. She next remembered waking up in the hospital with gunshot wounds to her head, arm, and hip.

¶ 23 Doreen Hendricks testified she lived next door to the Haris' house. In January 2002, defendant moved out of the house and Lisa had the locks changed. Lisa gave a spare key to Hendricks, which Hendricks kept on the television in the living room. Later, Zack needed to get inside Lisa's house to retrieve his homework, and Hendricks gave him the spare key. After that incident and before the shooting, defendant visited with Hendricks. He left. Upon returning,

he apologized to Hendricks and opened his hand, revealing the spare key.

¶ 24 Zack Hari, defendant's 17-year old son, testified defendant drove him and his brother to church in the afternoon of February 10, 2002. At the church, defendant gave him a hug that "was tighter than usual," and he left. Zack stated defendant did not complain of stomach or abdominal pains or appear irrational, paranoid, restless, or agitated.

¶ 25 Shane Hall testified he and his brother were walking near a bridge near Roberts when they found an empty gun case on March 7, 2002. Less than two weeks later, they returned to the bridge and noticed a gun in the water. Illinois State Police sergeant William Newman testified he retrieved the .22-caliber Remington pump-action rifle from the Halls. He also collected eight .22-caliber long-rifle shells.

¶ 26 Tracy Parker testified he had a long criminal history and resided in the federal penitentiary. He stated he had been convicted of burglary, possession of a firearm by a felon, conspiracy to escape, and attempted escape. In September and October 2002, Parker was held in the Ford County correctional center as a federal prisoner. During his stay, Parker shared a cell with defendant. Defendant talked about getting a divorce and moving out of his home. When defendant was supposed to go into the house to remove his personal items, he found photographs of Lisa wearing lingerie and blowing kisses. Defendant took one of his guns and put it in a utility room so he could use it later.

¶ 27 On the night of the shooting, defendant entered Lisa's house with a key he copied, retrieved the rifle, and waited for Lisa and Jeff to return. Upon seeing Lisa inside, defendant confronted Jeff outside and threatened to kill him if he did not return the pictures. Defendant then shot Jeff in the head, went back inside, and shot his wife in the head too.

¶ 28 Dr. Violet Hnilica, a forensic pathologist, testified she performed an autopsy on Jeff Thomas. She described four gunshot wounds in the back shoulder, the left buttock, the lumbar vertebrae, and the left arm. She opined the cause of death was multiple gunshot wounds and the bullet to the back shoulder was the fatal wound because it perforated the carotid artery.

¶ 29 David Hari testified in his own defense. He stated he found out Lisa was having an affair with Jeff Thomas on Christmas Day 2001. He was "devastated," started having trouble sleeping, and began losing weight. Between January and February 2002, defendant felt depressed and consulted Dr. David Hagan, who prescribed 25-milligram starter pack of the antidepressant Zoloft. Dr. Hagan warned him of the possible side effects of drowsiness, sleeplessness, and nausea. Defendant had been taking Tylenol PM to help him sleep, but Dr. Hagan did not warn him about any interactions with Zoloft. Defendant started taking the Zoloft but indicated it did not seem to help.

¶ 30 On February 10, 2002, defendant felt exhausted with stomach cramps. He went over to Lisa's house to retrieve a gun that he forgot in the basement. He remembered "very little" of how he entered the house. He retrieved the gun from behind the water heater in the laundry room in the basement. He had previously hidden the gun after an incident with a neighbor a year or two before the shooting. Defendant remembered seeing Lisa in the basement, feeling threatened, and hearing profanity. He also remembered hearing "popping noises," but he did not remember pulling the trigger. Defendant "vaguely" remembered seeing Jeff Thomas and felt threatened by him. Defendant did not remember aiming the gun or pulling the trigger. After the shooting, defendant remembered "driving around in the country."

¶ 31 Carol Hari, defendant's mother, testified he came to live with her in January 2002

after he and Lisa started having marital problems. After defendant started taking Zoloft, Carol noticed defendant slept less, worked less, ate less, and "paced the house more." On February 10, 2002, defendant was "extremely sad" and began "pacing the floors."

¶ 32 Dr. Robert Mitrione, a psychiatrist, testified he conducted an examination of defendant prior to the first trial and reviewed various medical records. Since then, Mitrione spent time in prison for false claims and mail fraud. Mitrione stated prescribing Zoloft was consistent with a diagnosis of major depression. Defendant exhibited certain side effects associated with Zoloft, including agitation, sleeplessness, restlessness, confusion, weight loss, gastrointestinal distress, clenching his jaw, and grinding his teeth. He also exhibited signs of akathisia, which Dr. Mitrione described as being "like an itch that can't be scratched."

¶ 33 Dr. Mitrione stated defendant's poor memory of the shooting could be attributed to the Zoloft. He diagnosed defendant with major depression, cannabis dependence, alcohol dependence, and probable paranoid personality disorder. Further, he opined defendant suffered an adverse reaction to the Zoloft and Tylenol PM. Based on a reasonable degree of medical and psychiatric certainty, Mitrione opined the adverse effect of the Zoloft caused defendant to lack the substantial capacity to conform his behavior to the requirements of the law. In his opinion, that fit the legal definition of involuntary intoxication.

¶ 34 Dr. Douglas Jacobs, a psychiatrist, testified in the State's rebuttal case. He stated he was the director of psychiatric emergency services at Cambridge City Hospital for 10 years and a board-certified psychiatrist since 1977. He stated he was currently a faculty member at Harvard and focused on the issue of suicide. He had been qualified to testify as an expert witness and only testified for the prosecution in criminal cases. He stated Zoloft is an SSRI, an antide-

pressant medication, that is used for depression, panic, posttraumatic stress disorder, and obsessive-compulsive disorder. He had found no studies indicating Zoloft causes impulsive behavior. Jacobs stated no scientific evidence supported a link between an adverse interaction between Zoloft and Tylenol PM. The product label for Zoloft did not list any interactions with Benedryl, Tylenol PM, or diphenhydramine.

¶ 35 The prosecutor asked Dr. Jacobs whether in his opinion, based on a reasonable degree of medical, psychiatric, and scientific certainty, the ingestion of 25 milligrams of Zoloft and diphenhydramine by a healthy, 140-pound, 40-year-old male would likely produce intoxication. Jacobs opined it would not likely produce intoxication because 25 milligrams is "about the smallest dose" one would start with as the average therapeutic doses ranged between 50 and 100 milligrams.

¶ 36 On cross-examination, Dr. Jacobs stated the Diagnostic and Statistical Manual IV did not mention involuntary intoxication as a criteria because it is a legal, not a medical, term. In his opinion, defendant was not involuntarily intoxicated on the day of the shootings. Jacobs admitted he never met or examined defendant, but he reviewed two examinations of defendant, the police reports, prior testimony, and Dr. Mitrione's literature.

¶ 37 Dr. David Hagan, defendant's family physician, testified that on February 4, 2002, he observed in defendant symptoms of depression, lack of sleep, fatigue, and increased alcohol use. Hagan prescribed Zoloft and started defendant on a 25-milligram dose. He stated "most patients will do fine with 50 or 100 milligrams." Defendant's dosage increased to 50 milligrams after the first week.

¶ 38 Dr. Robert Chapman's video deposition was played to the jury. Chapman testified

as an expert in psychiatry. He examined defendant in March 2002. Defendant described his feelings of depression following his separation from his wife. Defendant discussed his Zoloft use and felt it benefitted him. He did not describe any problems with the Zoloft. Moreover, he did not tell Chapman he was taking Tylenol PM. Defendant did not report anything in his March 27, 2002, meeting with Chapman that would be considered a toxic or adverse reaction to Zoloft suffered by him on February 10, 2002. In his opinion, based on a reasonable degree of medical and psychiatric certainty, Chapman opined defendant did not suffer a toxic or adverse reaction to Zoloft individually or in combination with Tylenol PM such that it would deprive him of the substantial capacity to either appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

¶ 39 Following closing arguments, the jury found defendant guilty of first degree murder and attempt (first degree murder). In May 2007, defendant filed a posttrial motion seeking a new trial. In June 2007, the trial court denied the motion. Thereafter, the court sentenced defendant to a 48-year prison term for murder and a consecutive 25-year term for attempt (first degree murder). In July 2007, defendant filed a motion to reconsider sentence, which the court denied.

¶ 40 Defendant appealed, and this court affirmed his convictions and sentences. *People v. Hari*, No. 4-07-0826 (May 5, 2009) (unpublished order under Supreme Court Rule 23). Defendant then filed a petition for leave to appeal, which the supreme court denied. *People v. Hari*, 233 Ill. 2d 575, 919 N.E.2d 358 (2009).

¶ 41 In June 2010, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2010)). Defendant

argued, *inter alia*, his trial counsel was ineffective for failing to adequately comply with the trial court's request for more information regarding the testimony of potential defense witness Keith Altman. Defendant claimed Altman was an expert on adverse event reporting analysis and his testimony "would have assisted the jury in understanding SSRI's and would have removed any confusion as to what adverse reactions occur with SSRI's and how often they are reported."

Defendant claimed the testimony would have been beneficial to his defense. Along with alleging trial counsel was ineffective, defendant argued appellate counsel was ineffective for not raising the issue on direct appeal. Within the nearly 600 pages attached to defendant's petition was Altman's purported curriculum vitae and partial transcripts of the pretrial hearings. Defendant also attached his own affidavit, which was signed but not notarized.

¶ 42 In September 2010, the trial court found the postconviction frivolous and patently without merit and dismissed it. Pursuant to a supervisory order from the Illinois Supreme Court, this court was directed to allow the notice of appeal filed April 18, 2011, to stand as a validly filed notice of appeal from the September 27, 2011, order dismissing defendant's postconviction petition.

¶ 43 II. ANALYSIS

¶ 44 Defendant argues the trial court erred in summarily dismissing his postconviction petition, stating he raised the gist of a claim of denial of his constitutional right to effective assistance of counsel for failure to call a witness on his behalf. Initially, the State argues defendant failed to comply with the requirements of the Act by not attaching a notarized affidavit as well as by not including an affidavit from Altman regarding the testimony he would have offered at trial.

¶ 45 The Act "provides a means for a criminal defendant to challenge his conviction or sentence based on a substantial violation of constitutional rights." *People v. Beaman*, 229 Ill. 2d 56, 71, 890 N.E.2d 500, 509 (2008). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *Beaman*, 229 Ill. 2d at 71, 890 N.E.2d at 509. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights. *People v. Caballero*, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008).

¶ 46 The Act establishes a three-stage process for adjudicating a postconviction petition. *Beaman*, 229 Ill. 2d at 71, 890 N.E.2d at 509. Here, defendant's petition was dismissed at the first stage. At the first stage, the trial court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010). Our supreme court has held "a *pro se* petition seeking postconviction relief under the Act for a denial of constitutional rights may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). A petition lacks an arguable legal basis when it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition lacks an arguable factual basis when it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Hodges*, 234 Ill. 2d at 16-17, 912 N.E.2d at 1212.

¶ 47 "In considering a petition pursuant to [section 122-2.1 of the Act], the [trial] court may examine the court file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding[,] and any transcripts of such proceeding." 725

ILCS 5/122-2.1(c) (West 2010); *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). The petition must be supported by "affidavits, records, or other evidence supporting its allegations," or, if not available, the petition must explain why. 725 ILCS 5/122-2 (West 2010).

¶ 48 Our review of the first-stage dismissal of a postconviction petition is *de novo*. *People v. Ligon*, 239 Ill. 2d 94, 104, 940 N.E.2d 1067, 1074 (2010). "Although the trial court's reasons for dismissing a petition may provide assistance to this court, we review the judgment, and not the reasons given for the judgment." *People v. Jones*, 399 Ill. App. 3d 341, 359, 927 N.E.2d 710, 724-25 (2010).

¶ 49 In the case *sub judice*, defendant alleged his trial counsel was ineffective for failing to call Altman as a witness. Defendant also alleged appellate counsel was ineffective for not pursuing this issue on appeal. Defendant argued Altman would have "testified regarding pharmaceutical companies' adverse event reports to the FDA and that the Adverse Event Database is consistent with the Zoloft side effects [defendant] experienced." Defendant also claimed "Altman's testimony would have assisted the jury in understanding SSRI's and would have removed any confusion as to what adverse reactions occur with SSRI's and how often they are reported."

¶ 50 Claims of ineffective assistance of counsel are evaluated under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). In the petition, a defendant "must show counsel's performance was deficient and that prejudice resulted from the deficient performance." *Brown*, 236 Ill. 2d at 185, 923 N.E.2d at 754. A petition alleging ineffective assistance of counsel may not be dismissed at the first stage "if: (1) counsel's performance arguably fell below an objective standard of reasonableness; and

(2) the petitioner was arguably prejudiced as a result." *Brown*, 236 Ill. 2d at 185, 923 N.E.2d at 754. A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Houston*, 226 Ill. 2d 135, 144-45, 874 N.E.2d 23, 30 (2007). The *Strickland* standard also applies to claims of ineffective assistance of appellate counsel. *People v. Petrenko*, 237 Ill. 2d 490, 497, 931 N.E.2d 1198, 1203 (2010).

"A claim that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness. [Citations.] In the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary." *People v. Enis*, 194 Ill. 2d 361, 380, 743 N.E.2d 1, 13 (2000).

See also *People v. Wilborn*, 2011 IL App (1st) 092802 ¶ 71 ("To support a claim of failure to present a witness, a defendant must tender a valid affidavit from the individual who would have testified"); *People v. Ford*, 368 Ill. App. 3d 562, 571, 857 N.E.2d 900, 908 (2006) (the defendant must attach affidavits "showing the potential testimony of the witnesses and its significance"); *People v. Palmer*, 352 Ill. App. 3d 877, 885, 817 N.E.2d 129, 137 (2004) (in the absence of an affidavit, further review of the claim is not necessary).

¶ 51 Here, defendant did not tender an affidavit from Altman setting forth the testimony he would have given at trial. Without an affidavit, we cannot determine whether Altman would have provided information or testimony favorable to defendant. Moreover, the

records attached to the petition do not shed sufficient light on what Altman's testimony would have been. All we have is defendant's belief as to what Altman's testimony would have been and speculation as to its result had it been given. Defendant's allegations, however, are not capable of objective or independent corroboration without an affidavit from Altman. Because defendant failed to support his claim with the appropriate affidavit and did not explain the absence of such documentation, his postconviction petition was properly dismissed at the first stage. See *People v. Collins*, 202 Ill. 2d 59, 66, 782 N.E.2d 195, 198 (2002).

¶ 52

III. CONCLUSION

¶ 53 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 54 Affirmed.