

NOTICE
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2012 IL App (4th) 110531-U

NO. 4-11-0531

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 29, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
ELIZABETH DREWES,)	No. 08CF2288
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 2 Defendant, Elizabeth Drewes, is currently serving a 14-year prison sentence for aggravated driving under the influence (DUI). In May 2011, the trial court dismissed defendant's *pro se* postconviction petition, finding it frivolous and patently without merit. Defendant appeals, arguing that one of her contentions of error stated the gist of a constitutional claim that warrants further review in the trial court. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2008, while out on bond for an earlier DUI charge, defendant drove her vehicle on Interstate 74 in the wrong direction and collided head-on with two vehicles, killing an occupant of one of the vehicles and injuring three others. Defendant's blood-alcohol

concentration (BAC) was 0.283. In April 2009, defendant pleaded guilty to aggravated DUI (625 ILCS 5/11-501(d)(1)(F) (West 2008)). In May 2009, the trial court sentenced defendant to the maximum 14-year prison sentence and the maximum \$25,000 fine for that offense. 625 ILCS 5/11-501(d)(2)(G) (West 2008); 730 ILCS 5/5-9-1(a)(1) (West 2008).

¶ 5 In September 2009, new counsel for defendant filed an amended motion to reconsider or reduce sentence. In relevant part, that motion alleged that defendant's previous attorney provided ineffective assistance of counsel in failing "to investigate and present any mitigation testimony regarding [defendant's] mental health issues and her addi[c]tion issues." In October 2009, the trial court denied defendant's amended motion to reconsider or reduce sentence. In July 2010, this court affirmed on direct appeal. *People v. Drewes*, No. 4-09-0832 (July 8, 2010) (unpublished order under Illinois Supreme Court Rule 23). Defendant was represented on appeal by the attorney who had argued her amended motion to reconsider or reduce sentence.

¶ 6 In May 2011, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2010)). Along with other allegations, defendant alleged that she received ineffective assistance of counsel in that "he failed to have a psychiatric evaluation of the defendant performed following the arrest." Later that month, the trial court summarily dismissed the petition. The court found defendant's claims had already been pursued in her amended motion to reconsider or reduce sentence, and on appeal. Further, the court found any errors by counsel were harmless in that they would not have affected the court's sentencing decision.

¶ 7 This appeal followed.

¶ 8

II. ANALYSIS

¶ 9 On appeal, defendant argues that her postconviction petition stated the gist of a constitutional claim and that the trial court erred in dismissing it. Specifically, she maintains that she received ineffective assistance of counsel in that her attorney failed to request a psychiatric evaluation or otherwise investigate her mental condition. We disagree.

¶ 10 The Post-Conviction Hearing Act provides a procedure for correcting substantial constitutional violations that resulted in the defendant's conviction. 725 ILCS 5/122-1(a)(1) (West 2010). At the first stage of postconviction proceedings, the trial court must *sua sponte* summarily dismiss a postconviction petition within 90 days of its filing if the court finds it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2010). A defendant's postconviction petition is frivolous or patently without merit if all of its allegations, taken as true and liberally construed in the defendant's favor, fail to state the "gist of a constitutional claim." (Internal quotation marks omitted.) *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001). Summary dismissal is warranted only if the petition has no arguable basis in either law or fact. *People v. Hodges*, 234 Ill. 2d 1, 16, 912 N.E.2d 1204, 1212 (2009).

¶ 11 A defendant receives ineffective assistance amounting to a constitutional violation when counsel's objectively deficient performance prejudices the defendant. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). To make out a claim for ineffective assistance of counsel, a defendant must show that (1) defense counsel's performance was so deficient that it "fell below an objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 687-88, 694. At the first stage of postconviction proceedings, if "counsel's

performance *arguably* fell below an objective standard of reasonableness" and "the petitioner was *arguably* prejudiced as a result," then summary dismissal is inappropriate. (Emphasis added.) *People v. Brown*, 236 Ill. 2d 175, 185, 923 N.E.2d 748, 754 (2010).

¶ 12 Defendant was not even arguably prejudiced by the alleged deficiency in her representation, and therefore, she failed to state the gist of a claim that she was denied the effective assistance of counsel. Defendant already presented an identical claim in her amended motion to reconsider or reduce sentence, which the trial court denied. Moreover, evidence reflecting defendant's mental health was presented at defendant's sentencing hearing. The court heard about defendant's habitual drinking, her history with outpatient treatment for alcohol abuse, her history of threatening suicide and harm to others, her medication with psychotropic prescription drugs, and the deterioration of her mental and personal stability in the months preceding her aggravated DUI. The court concluded that defendant had repeatedly missed opportunities for treatment, even when friends, family members, and authority figures urged her to find help and when her drinking got her into legal trouble. A maximum sentence, the court found, was necessary to deter defendant and others from repeating her unlawful behavior. What else could defendant hope a psychiatric evaluation would have shown to overcome the aggravating circumstances of this case? In dismissing defendant's postconviction petition, the court stated that the claimed errors, if corrected, would not have affected its sentencing decision. We consider that fairly reliable evidence against defendant's assertion that her sentence could have arguably resulted from defense counsel's failure to investigate her mental health, rather than factors that were properly before the court.

¶ 13 Notably, defendant does not claim that counsel's reasonable investigation into her

mental health would have revealed information precluding her from being held criminally responsible for her acts or showing her unfit to plead guilty or stand trial. Rather, she claims that "mental health information explaining [her] rapid deterioration *** from a caring, helpful, law-abiding citizen to *** 'a belligerent, mean-spirited, manipulative drunk[]' may have warranted a lesser sentence." The trial court did not err in finding that claim was frivolous and patently without merit.

¶ 14 Defendant failed to state the gist of an ineffective-assistance claim based on her attorney's failure, prior to her plea and sentencing hearings, to investigate her mental health. Accordingly, we need not consider defendant's further ineffective-assistance argument based on her appellate counsel's failure to raise the initial ineffective-assistance claim on direct appeal. Defendant has abandoned all her other postconviction claims. Accordingly, the trial court did not err in summarily dismissing her postconviction petition.

¶ 15 III. CONCLUSION

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

¶ 17 Affirmed.