

2013 IL App (1st) 110523-U

FOURTH DIVISION
April 11, 2013

No. 1-11-0523

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. 08 CR 11337
)	
DANIEL CASTILLO,)	Honorable
)	Garritt E. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant's allegations that his trial counsel rendered ineffective assistance were rebutted by the record, the circuit court's summary dismissal of his postconviction petition is affirmed.

¶ 2 Defendant Daniel Castillo appeals from an order of the circuit court summarily dismissing his *pro se* postconviction petition as frivolous and patently without merit. On appeal, defendant contends that the circuit court erred in dismissing his petition because it raised arguable claims that his trial counsel rendered ineffective assistance when counsel refused to

allow defendant to testify, failed to conduct a meaningful pretrial investigation, and failed to file a motion to suppress his statement to police. We affirm.

¶ 3 Following a 2010 jury trial, defendant was convicted of aggravated battery of a child. The evidence presented at trial established that defendant held the hands of his three-year-old stepson, Matthew, under steaming hot water in the bathroom sink for several seconds, causing second-degree burns on both of Matthew's hands. The trial court sentenced defendant to a term of nine years' imprisonment.

¶ 4 On direct appeal, defendant argued that the trial court erred when it refused to give a jury instruction on simple battery. This court rejected that argument, modified the fines and fees order to reflect a missing credit, and affirmed defendant's conviction and sentence. *People v. Castillo*, 2013 IL App (1st) 102211-U.

¶ 5 On November 8, 2010, defendant filed the instant *pro se* petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging, *inter alia*, that he was denied his constitutional right to effective assistance of counsel. Defendant alleged that his trial counsel failed to conduct a meaningful pretrial investigation into defendant's claim that the police misled or tricked him into signing a false admission of guilt. Defendant stated that he told the police the incident was an accident and that he did not know how hot the water was, and the police tricked him into signing a false statement that he intentionally burned his son's hands. Defendant claimed the police refused to allow him to make a telephone call unless he signed the statement, which he later learned was false. Defendant also argued that counsel was ineffective because she failed to file a motion to suppress defendant's statement after defendant explained to her that he was coerced to sign the statement with the promise that he could then call his family. In addition, defendant alleged that counsel rendered ineffective assistance when she refused to allow him to testify, and he wanted to testify that he was tricked into signing the

statement. The circuit court found defendant's allegations frivolous and patently without merit, and summarily dismissed his postconviction petition.

¶ 6 On appeal, defendant contends that the circuit court erred in dismissing his petition because it raised arguable claims that his trial counsel rendered ineffective assistance. Defendant contends that counsel was ineffective because she refused to allow defendant to testify, she failed to conduct a meaningful pretrial investigation into defendant's claim that the police misled and tricked him into signing the statement, and she failed to file a motion to suppress his statement.

¶ 7 As a threshold matter, we note that defendant contends that our supreme court held that in order to receive the appointment of counsel for his postconviction petition, "defendant merely had to allege his ineffective assistance claims." See *People v. Ligon*, 239 Ill. 2d 94, 117 (2010). Defendant has taken this quote out of context to assert that a factual finding specific to *Ligon* is a rule of law that allows conclusory claims of ineffective assistance to advance to second-stage postconviction proceedings. The interpretation advanced by defendant is in direct contradiction with the pleading requirements of the Act and years of our supreme court's precedents which hold that broad, conclusory allegations of ineffective assistance of counsel are not allowed under the Act. See *People v. Delton*, 227 Ill. 2d 247, 258 (2008) (and cases cited therein).

¶ 8 We review the circuit court's summary dismissal of defendant's postconviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). The Act provides a process whereby a prisoner can file a petition asserting that his conviction was the result of a substantial denial of his constitutional rights. 725 ILCS 5/122-1 (West 2010); *Coleman*, 183 Ill. 2d at 378-79. Our supreme court has held that a petition may be summarily dismissed as frivolous or patently without merit if it has "no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). A petition lacks such an arguable basis when it is based on fanciful factual

allegations or an indisputably meritless legal theory. *Id.* A legal theory that is completely contradicted by the record is indisputably meritless. *Id.*

¶ 9 Claims of ineffective assistance of counsel are evaluated using the two-prong test handed down by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Graham*, 206 Ill. 2d 465, 476 (2003). To support a claim of ineffective assistance of trial counsel, defendant must demonstrate that (1) counsel's representation was deficient, and (2) as a result, he suffered prejudice that deprived him of a fair trial. *Strickland*, 466 U.S. at 687. To establish prejudice, defendant must show that there is a reasonable probability that, but for counsel's deficient performance, the result of the trial would have been different. *Graham*, 206 Ill. 2d at 476. If defendant cannot prove he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Id.* All well-pleaded facts in defendant's petition that are not positively rebutted by the original trial record must be taken as true. *Coleman*, 183 Ill. 2d at 385. However, where the court examines the court file and trial transcripts and finds that the allegations in the petition are contradicted by the trial record, the court may summarily dismiss the petition. *People v. Deloney*, 341 Ill. App. 3d 621, 626 (2003), citing 725 ILCS 5/122-2.1(c) (West 1998), and *People v. Rogers*, 197 Ill. 2d 216, 222 (2001).

¶ 10 Defendant first contends that counsel was ineffective when she refused to allow defendant to testify at trial. Defendant asserts that he wanted to testify that the police tricked him into signing the statement. He argues that his testimony would have refuted his statement and would have shown that he did not knowingly intend to injure his son. Defendant acknowledges that he raised this claim in a *pro se* posttrial letter to the trial court, which considered and rejected the claim, but argues that the trial record does not rebut his claim.

¶ 11 We find that defendant's claim that trial counsel refused to allow him to testify is completely contradicted by the trial record. The record shows that, outside the jury's presence,

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the State indicated that it was going to rest, and defense counsel asked the court for a 15-minute recess to confer with defendant. After the recess, the following colloquy occurred:

"THE COURT: Will the defense be calling any witnesses?

[DEFENSE COUNSEL]: Judge, I don't believe that we will be calling any witnesses at this time. I ask the Court to inquire of the defendant on the record.

THE COURT: Have you talked to your client with whether or not he's going to testify?

[DEFENSE COUNSEL]: I have, your Honor, at this point he had indicated he does not wish to testify.

THE COURT: Very well. I will inquire then.

Mr. Castillo, do you understand, sir, you have a Constitutional right to testify on your own behalf? You also have a Constitutional right not to testify on your own behalf. Have you discussed this with your lawyers?

THE DEFENDANT: Yes.

THE COURT: And after discussing this with your lawyers, have you made the decision that you are not going to testify on your own behalf?

THE DEFENDANT: I am not going to testify.

THE COURT: Very well. I will instruct the jury that they cannot use that against you."

The record reveals that counsel did not tell the court that defendant would not be testifying, but instead, asked for time to discuss the matter with defendant. After doing so, counsel informed the court that she did not "believe" the defense would be calling any witnesses, but asked the court to question defendant on the record. Thus, counsel did not prevent defendant from testifying, and was equivocal in her response to the court, leaving the decision to testify entirely

up to defendant. The court verified with defendant that he understood he had a right to testify, and had discussed the matter with counsel. The court then expressly asked defendant if he had made the decision that he was not going to testify, and defendant confirmed "I am not going to testify."

¶ 12 Defendant's allegation is further rebutted by the transcript from the hearing on his *pro se* posttrial claim that counsel was ineffective. At that hearing, defendant informed the trial court that he told counsel he wanted to testify, but counsel advised him not to because it could "ruin" the case. Defendant said he and counsel discussed the issue "for a long time" and he told her several times that he wanted to testify. Defendant further said he had "confidence" in counsel and "was relying on her." Defendant then stated "and I left it not to testify because I was confident on [*sic*] her." The record thus shows that defendant made the decision not to testify based on counsel's advice.

¶ 13 At that same hearing, the trial court asked defendant if he recalled the court advising him of his right to testify during the trial, and defendant replied "[t]ruthfully, no." The court responded "you told me it was your decision not to testify. *** I do not think you're being candid." Counsel informed the court that she never received an answer from defendant about whether or not he was going to testify, and defendant made the determination not to testify after counsel had left the lock-up at the courthouse. Defendant later informed counsel's partner that he was not going to testify. Defendant again denied that he understood the court's admonishment that it was his decision to make, and claimed the court spoke too quickly. The court denied defendant's claim, noting that it spoke slowly and deliberately to insure defendant understood. The court stated:

"there's no doubt in my mind at that point you did understand, sir.

And you made the decision not to testify. You're just unhappy with

the result of the trial so you're trying to get a new trial and you're trying to say anything to accomplish that result. That is what is very clear to me."

The court then found that defendant received effective assistance of counsel.

¶ 14 The record additionally shows that later that day, the case was recalled for co-counsel to respond to defendant's allegation regarding his right to testify. Co-counsel stated that she spoke with defendant on several occasions, and she and counsel repeatedly advised defendant not to testify. However, every time counsel asked defendant if he wanted to testify, he refused to answer. Counsel then decided they had to assume defendant was going to testify, and they attempted to prepare him for cross-examination, but defendant refused to respond to the questions. Counsel and co-counsel left the room in frustration. Co-counsel returned to the room shortly thereafter, asked defendant if he was still going to testify, and he then told her no, which was the extent of their conversation. Co-counsel denied any coercion, and stated that she and counsel repeatedly told defendant it was his right to make the decision whether or not to testify. The trial court again found defendant's claim without merit, and found that he received effective assistance of counsel.

¶ 15 Our review of the record reveals that defendant's allegation that counsel refused to allow him to testify was extensively and thoroughly considered by the trial court and found to be without merit. In light of the numerous discussions contained in the record, illustrated above, we find that the allegation in defendant's postconviction petition is completely contradicted by the record.

¶ 16 Defendant next contends that trial counsel rendered ineffective assistance when she failed to conduct a meaningful pretrial investigation into defendant's claim that the police misled and tricked him into signing a false inculpatory statement. Defendant maintains that he told the

police the incident was an accident, he did not know the water was that hot, and he did not intend to burn his son's hands. Defendant argues that this allegation is not contradicted by the trial record because counsel never said she investigated his claim.

¶ 17 We find that the trial record contradicts defendant's allegation. Initially, we note that more than a year before the trial, counsel requested a fitness exam to determine defendant's fitness to stand trial, his sanity at the time of the offense, and his ability to understand the *Miranda* warnings. Defendant was found fit to stand trial, legally sane at the time of the offense, and able to comprehend his *Miranda* warnings at the time of his arrest. Counsel's pretrial request for an evaluation shows that counsel was investigating defendant's competence and ability to understand what was occurring, which may have provided her with grounds for challenging defendant's statement.

¶ 18 Moreover, the record shows that the trial court considered and rejected defendant's allegation. In his *pro se* posttrial motion that counsel rendered ineffective assistance, defendant raised the same argument he raises now, that counsel failed to research his claim that his statement was different from what he told the police. Defendant argued that the police would not let him call his family until he signed the statement, and that he told the police the incident was an accident. At the hearing on defendant's motion, counsel informed the court that she reviewed the written statement with defendant on "several occasions," and counted out seven seconds so defendant would understand the contents of the statement.¹ Counsel noted that she had defendant evaluated by Forensic Clinical Services, and she considered whether or not defendant was able to waive his *Miranda* rights. She further noted that defendant's *Miranda* waiver was in Spanish, his

¹Defendant's statement said he held Matthew's hands under the steaming hot water for "for 6 or 7 seconds." Defendant denied he ever made that statement.

native language. Counsel explicitly stated she "did review all of that information prior to making any trial decisions." The trial court found that defendant received effective assistance.

¶ 19 The trial record thus shows that counsel did research defendant's claim and attempted to find grounds on which to challenge his statement. Accordingly, we find that defendant's allegation is completely contradicted by the trial record.

¶ 20 Finally, defendant contends that counsel rendered ineffective assistance when she failed to file a motion to suppress his statement after defendant told her the statement was coerced and not true. Defendant again argues that the police refused to allow him to call his family unless he signed the statement, and when he signed it, he did not know it was a false statement. He maintains that he told the police the incident was an accident.

¶ 21 To establish that he was prejudiced by trial counsel's failure to file a motion to suppress his statements, defendant must show that a reasonable probability exists that the motion would have been granted, and that the outcome of the trial would have been different if the statements had been suppressed. *People v. Givens*, 237 Ill. 2d 311, 331 (2010). If a motion to suppress would have been futile, then counsel's failure to file that motion does not constitute ineffective assistance. *Givens*, 237 Ill. 2d at 331. Determining whether or not to file a motion to suppress is a matter of trial strategy, and thus, counsel's decision is given great deference and is generally immune from claims of ineffective assistance. *People v. Martinez*, 348 Ill. App. 3d 521, 537 (2004).

¶ 22 For the same reasons stated in the allegation above, we find defendant's claim that counsel was ineffective for failing to file a motion to suppress completely contradicted by the trial record. The record shows that counsel had defendant evaluated to determine his ability to understand the *Miranda* warnings, and it was found that he was able to comprehend those warnings. The record also shows that counsel considered that the warnings were given to

defendant in Spanish, his native language, and that one of the officers interviewing defendant interpreted everything for defendant in Spanish. Counsel expressly stated that she reviewed "all of that information prior to making any trial decisions." The record shows that counsel attempted to find grounds to support a motion to suppress the statement, but was unable to do so. We find that a motion to suppress the statement would have been futile. Therefore, counsel was not ineffective for failing to file that motion.

¶ 23 In addition, we note that the record further reveals that, in her closing argument, counsel used defendant's statement to try to persuade the jury that defendant did not intend to cause harm to the child. Counsel argued that the statement did not show that defendant knew the water was that hot, that defendant was angry at the child, that he wanted to injure the child, or that he was aware the child was injured after washing his hands. We find that the record shows that after counsel could not find a way to suppress the statement, she attempted to use the statement to support the defense theory that defendant never intended to harm the child. In doing so, counsel presented the same arguments defendant alleges that he shared with her – that he did not know the water was that hot, and that the incident was an accident.

¶ 24 Based on the above findings, we conclude that defendant's allegations that his trial counsel rendered ineffective assistance are completely contradicted by the trial record. Accordingly, we find that the circuit court's summary dismissal of defendant's *pro se* postconviction petition was proper.

¶ 25 For these reasons we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.