

No. 1-11-2004

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.)	Nos. 08 CR 2767
)	08 CR 2768
)	
DEMETRIOUS BOBOLIS,)	Honorable
)	Steven J. Goebel,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held:* Court did not err in summarily dismissing post-conviction petition. Claim that defense counsel coerced defendant's guilty plea by threatening to not assist him if he did not accept the State's plea offer was fanciful and delusional, and all other allegations regarding his plea and his motion to withdraw his plea were either belied by the record or do not entitle him to relief.

¶ 2 Pursuant to a 2010 negotiated guilty plea, defendant Demetrios (also known as Demetrious) Bobolis was convicted of home invasion and violation of an order of protection (VOP) and sentenced to concurrent prison terms of eight and three years respectively. Defendant now appeals from the summary dismissal of his *pro se* post-conviction petition. He contends that he stated an arguably meritorious claim that his guilty plea was the result of counsel telling him

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that she would not assist him if he rejected the State's plea offer. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with home invasion for, on or about January 1, 2008, entering without authority the residence of Elpida and George Bobolis¹ knowing, or having reason to know, that the home was occupied and then, while armed with a screwdriver, using force or threatening the imminent use of force against Elpida and George. He was charged with VOP for, contrary to an order of protection in case 2007 OP 5819, (1) entering the home of Elpida and George on January 1, 2008, and (2) on or about December 24, 2007, (a) knocking and pushing at the door of Elpida's residence, and (b) telephoning and demanding money from her. The State alleged that defendant had a prior conviction for domestic battery and VOP in case 04144636, and the State sought an extended-term sentence for the December 24 VOP offenses on the basis that Elpida was 60 years old or older at the time of the offenses.

¶ 4 Defendant requested to proceed *pro se* in April 2009 "because [counsel] doesn't speak to me" and "is trying to prosecute me more than the" State itself, he alleged. The court admonished defendant of the charges and sentences he faced, of his right to counsel, that he would be held to the rules of procedure if he represented himself, and that the duty of defense counsel to candidly assess his case "doesn't mean they are not trying to represent you to the best of their abilities." The court ascertained that he did not complete high school, had never represented himself in court, and had a history of mental treatment. After being told by defendant that his desire to represent himself was not prompted by threats or promises but by his distrust of his Assistant Public Defenders (APDs), the court allowed defendant to proceed *pro se* and allowed the Public Defender to withdraw as counsel.

¶ 5 In a May hearing, defendant told the court that he was unable to represent himself but did not want the Public Defender to be reappointed. In June 2009, defendant filed a *pro se* motion seeking appointment of "a bar association attorney" on the grounds that he was indigent, that the

¹The record indicates elsewhere that defendant is the son of Elpida and George.

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APD on his case (the "prior APD") has an "attitude *** that she is unconcerned with defendant's proposed defense and is therefore not willing to investigate zealously," and that his APD told him that "usually their first order of business was to effect the least possible sentence through plea bargaining." He raised several specific allegations against the prior APD. "She has 'lied' to me on several occasions, stating that she will come to the jail to visit me, and not doing so" but "visiting one time in 11 months." She spoke with him for about three minutes in the courthouse "bullpen," then stated that he was being selfish by not allowing her to consult with other inmates and thus instigated "a physical altercation between me and another inmate." She discussed defendant's case "with other inmates in the" bullpen. "She's pressuring me to plead guilty, by stating I can't beat the case, even though I'm innocent of the charges." He complained of these "reckless, unprofessional" actions to the prior APD's supervisor and to the Attorney Registration and Disciplinary Commission (ARDC) and commenced a civil action against the Public Defender.

¶ 6 At the July 2009 hearing on the motion, the court told defendant that it would not appoint outside counsel so that his choices were reappointment of the Public Defender, hiring counsel, or proceeding *pro se*. Defendant chose to remain *pro se*. As he represented himself, however, defendant repeatedly opined that he could not represent himself, while the court reiterated that his other choices were the Public Defender or hired counsel and that the court does not control which APD the Public Defender assigned to his case. In October 2009, defendant filed another *pro se* motion seeking the appointment of "a bar association attorney" because he could not competently represent himself, which the court again denied on the basis that he could hire counsel or accept the Public Defender. When the court informed defendant in December 2009 that the prior APD was no longer assigned to that courtroom, defendant accepted the court's reappointment of the Public Defender.

¶ 7 After July 2010, a different judge presided over defendant's case.

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¶ 8 On September 7, 2010, defense counsel (the "plea APD") told the court that defendant wanted a plea conference, and defendant himself confirmed the request. The court admonished defendant substantially as provided in Supreme Court Rule 402(d)(1) (eff. July 1, 2012), and defendant reiterated that he wanted a plea conference. After the conference was held, the case was set for trial on October 22. The court spread of record that it made no plea decision in the conference because the parties were disputing the underlying facts of the case.

¶ 9 On October 22, 2010, the State and the plea APD informed the court that the parties had reached a plea agreement whereby defendant would serve concurrent prison terms of eight and three years for home invasion and VOP respectively. The court recited the plea agreement to defendant, including *nolle prossed* charges, and the sentencing ranges for home invasion and VOP. Defendant stated that he understood, and volunteered his explanation that he was pleading guilty so that his mother would not have to testify against him. The court recited the two charges to which he was pleading, and defendant pled guilty to each. He waived his right to a jury trial in writing and, after the court explained what a jury is, in person. He waived his right to a trial, including examination of witnesses, after the court described the right. He denied that his plea was the result of force or threats, and he affirmed that he was pleading guilty of his own free will.

¶ 10 The State recited the factual basis for the plea. Regarding the home invasion charge, Elpida would testify that she was at home at about 9:30 p.m. on January 1, 2008, when she heard unexpected footsteps. As she was about to call the police, she found defendant in the kitchen holding a screwdriver. He grabbed the telephone from her hand and then fled the home. George would testify that he also heard a commotion and saw defendant in the kitchen with a screwdriver, whereupon defendant threatened to kill George. Noticing that the rear door had been forced open and fearful for his safety, George fled, barefoot and in pajamas, to a nearby gasoline station from which the police were called. Regarding the VOP charge, Elpida would testify that she was at home on December 24, 2007, when defendant knocked on the back door and tried to enter, fleeing when she called the police. The State would introduce defendant's

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prior conviction, the order of protection in case 2007 OP 5819, and evidence that defendant had been served with that order. The plea APD agreed that Elpida and George would thus testify.

¶ 11 The court accepted the plea as freely and voluntarily given with a proper factual basis. Defendant waived, in writing and in person, his right to a pre-sentencing investigation. (A pre-sentencing investigation report was issued in July 2008.) When the court asked defendant if he wished to speak, he said "I rest. I'm tired, Your Honor." The court sentenced defendant, as agreed, to concurrent prison terms of eight years for home invasion and three years for VOP, with three years of mandatory supervised release (MSR). The court also issued a plenary order of protection against defendant and for the protection of George, Elpida, and defendant's sister Spirodoula Bobolis, effective for two years beyond defendant's imprisonment for these offenses. The court admonished defendant of his appeal rights, which he acknowledged understanding.

¶ 12 Defendant timely filed a *pro se* motion to withdraw his plea alleging that he pled "due to confusion, distress, and despair, caused by [the plea APD] forcing me to plead guilty and telling me I would get two years parole." The plea APD filed a motion to withdraw plea arguing that defendant "did not fully understand the ramifications of his plea" and "was not in the right frame of mind at the time of the plea in that he had not slept and was extremely nervous." A different APD (the "withdrawal APD") filed a supplemental motion to withdraw plea, alleging that the plea APD told defendant "that he would not receive adequate representation and that his attorney would not investigate his claims" so that despite his desire "to go to trial and challenge the credibility of the State's witnesses," his plea was coerced by "fear of going to trial with his prior attorney, and his belief that he would not adequately be represented." He also reiterated that defendant "was tired and not in the right mental frame of mind" at his plea hearing. The withdrawal APD certified, pursuant to Supreme Court Rule 604(d) (eff. Feb. 6, 2013), that he consulted with defendant, ascertained his claims of error, examined the record, and concluded that the supplemental motion was necessary to raise defendant's claims.

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¶ 13 On December 16, 2010, the withdrawal APD filed the supplemental motion but then told the court that he had just consulted with defendant, who had decided to stand on his plea and withdraw his motion to vacate his plea. Defendant confirmed that he had consulted at length with the withdrawal APD and that he indeed wanted to stand on his plea and to withdraw his motion to vacate his plea. Defendant denied that he was being forced or threatened to stand on his plea, or that he was "tired today," and confirmed that he was standing on his plea of his own free will. The court admonished defendant that "you can't change your mind" and asked if "this is the decision you're sticking with" and defendant replied "Yes, sir." The court found defendant's decision to be "rational *** and with full knowledge of Counsel and your rights," and accepted withdrawal of the motion to vacate plea.

¶ 14 Defendant filed this *pro se* post-conviction petition in April 2011 raising claims of ineffective assistance of counsel by the plea APD, including claims of failure to investigate various allegedly exculpatory or impeaching matters. In relevant part, defendant claimed that he "didn't want to plead guilty" but the plea APD "basically forced me to" by giving "an intimidating look and [telling] me she wasn't going to help me if I didn't take the plea offer." The plea APD allegedly told him that other defendants had reported her to the ARDC "but still had to go to trial with her and lost." She told him that he "had a small chance of winning at trial and a big chance of losing," that the "good-time" credit law would "come back" after the imminent gubernatorial election, and that he faced two years' MSR rather than three. He explained his silence in the plea hearing: he believed that if he objected, he would still be represented at trial by the plea APD, as the court had not given credence to his complaints about the prior APD. Defendant also alleged that the withdrawal APD "coerced me to give up on my motion to withdraw guilty plea, by giving me false information" that "I had a 75% chance of being found guilty because of what I did to my sister in a past case and because this was not the first time I had problems with my family also because of my parents' age." Defendant considered this false information because the court had denied a State pre-trial motion to introduce other-crimes evidence, and "this false

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information from [withdrawal counsel] confused me, intimidated me, and made me panic.

Before all this, I signed the paper that lets me know I can get more time if I go to trial and get found guilty." Defendant alleged that the withdraw APD conspired with the plea APD to coerce him into withdrawing his plea vacatur motion. He alleged generally that "I am not guilty."

¶ 15 On May 17, 2011, the court summarily dismissed the petition. The court found in relevant part that the advice of the plea APD was "entirely reasonable," and indeed that "it would be irresponsible for counsel to proceed to trial knowing [defendant] would lose, as it would forego [his] opportunity to plea bargain with the State, thus subjecting [him] to a potentially longer and more onerous sentence." The court found that the "intimidating look" by the plea APD was merely "a stern glare from a public defender who is attempting to get her client to understand his prospective jail time" and thus proper. This appeal timely followed.

¶ 16 On appeal, defendant contends that the court erred in summarily dismissing his petition because it stated an arguably meritorious claim that his plea resulted from the plea APD telling him that she would not assist him if he rejected the State's offer.

¶ 17 Under the Post Conviction Hearing Act (Act), 725 ILCS 5/122-1 *et seq.* (West 2010), a petition may be summarily dismissed within 90 days of its filing and docketing if "the court determines the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010). Summary dismissal is appropriate only if the petition has no arguable basis in law or in fact; that is, it is based on an indisputably meritless legal theory, such as one completely contradicted by the record, or a fanciful and/or delusional factual allegation. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). Where a "petition is not dismissed pursuant to this Section, the court shall order the petition to be docketed for further consideration in accordance with Sections 122-4 through 122-6" of the Act. 725 ILCS 5/122-2.1(b) (West 2010). Our review of a summary dismissal is *de novo*. *People v. Cathey*, 2012 IL 111746, ¶ 17.

¶ 18 In general, for a successful claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient – that is, objectively unreasonable under

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prevailing professional norms – and that said performance prejudiced him; that is, that there is a reasonable probability that the result of the proceeding would have been different absent the alleged error. *Cathey*, ¶ 23. A post-conviction 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.*, citing *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984).

¶ 19 A defendant has no absolute right to withdraw his guilty plea but must show a manifest injustice; plea withdrawal is appropriate where the plea resulted from a misapprehension of the facts or law, or where there is doubt as to the defendant's guilt so that justice would be better served by a trial. *People v. Hughes*, 2012 IL 112817, ¶ 32.

¶ 20 Here, defendant pled guilty in a proceeding where the trial court took all appropriate measures to determine from defendant himself that his plea was voluntary and knowing. Indeed, during this hearing, defendant voluntarily disclosed his reason for pleading guilty. He then had ample opportunity to withdraw his plea in the trial court, having timely filed a motion to do so. Contrary to his allegation that the withdrawal APD conspired with the plea APD to coerce him into abandoning his challenge, the withdrawal APD clearly demonstrated with his supplemental motion his willingness to present arguments of the plea APD's ineffectiveness. The trial court then determined, again from questioning defendant in detail, that he was voluntarily withdrawing his plea vacatur motion.

¶ 21 Defendant attempts in his petition to cast doubt on the voluntariness of his well-documented dual assents – to plead guilty and to stand on that plea – by alleging that the withdrawal APD gave him false information and that he believed a challenge to the plea APD would be futile in light of the trial court's failure to accept his allegations against the prior APD. As to the latter, the trial court granted defendant appropriate relief on his allegations against the prior APD by allowing him to proceed *pro se* while not accepting his repeated requests to effectively choose or veto his appointed counsel. Moreover, a different judge was presiding in

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defendant's case by the time of his plea and post-plea proceedings. As to the former, the advice of the withdrawal APD as described in defendant's petition is not false information but is, instead, reasonable advice regarding the sentence he faced if he went to trial and was convicted. In particular, while other-crimes evidence regarding defendant's sister would not be introduced at trial, it could very well negatively impact his sentence following an unsuccessful trial. Lastly, read in light of the entire record, we find that the particular allegation upon which this appeal is based – that the plea APD told defendant that she would not assist him unless he pled guilty – is fanciful and delusional. In sum, the allegations in defendant's petition regarding his plea are either fanciful and delusional, refuted by the trial record, or do not support his entitlement to relief. Thus, summary dismissal was proper.

¶ 22 Accordingly, we affirm the judgment of the circuit court.

¶ 23 Affirmed.