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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 Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1497
	)	
ANTWAN D. YOUNGBLOOD,	)	Honorable
	)	Allen M. Anderson,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Zenoff and Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly summarily dismissed defendant's postconviction petition, which alleged prosecutorial misconduct: defendant's claim was forfeited, as it could have been raised on direct appeal, and none of the exceptions to forfeiture applied; we could not, in the guise of liberal construction, recast defendant's claim as a claim of ineffective assistance of appellate counsel.

¶ 2 At issue in this appeal is whether the summary dismissal of the postconviction petition filed by defendant, Antwan D. Youngblood, was proper. More specifically, we are asked to consider whether defendant forfeited his postconviction claim that the State engaged in prosecutorial

misconduct by mischaracterizing the evidence presented at trial. For the reasons that follow, we, like the trial court, deem this claim forfeited. Accordingly, we affirm.

¶ 3 The facts relevant to resolving the issue raised in this appeal are as follows. Following a jury trial, defendant was convicted of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2008)), armed violence (720 ILCS 5/33A-2(a) (West 2008)), and two counts of aggravated battery (720 ILCS 5/12-4(a), (b)(1) (West 2008)). He was sentenced to concurrent prison terms of 16 years for attempted first-degree murder, 7 years for armed violence, and 5 years for each aggravated battery.

¶ 4 Defendant appealed, arguing that (1) the State failed to prove beyond a reasonable doubt that he did not act in self-defense when he hit the victim and (2) his convictions of armed violence and aggravated battery had to be vacated because all of his convictions arose from a single act. While we affirmed defendant's attempted first-degree murder conviction, we agreed with defendant's second argument and vacated the remaining convictions. See *People v. Youngblood*, 2011 IL App (2d) 100396-U.

¶ 5 Soon thereafter, defendant petitioned *pro se* for postconviction relief. In his petition, defendant essentially argued that his counsel was ineffective for failing to have forensic testing done on a knife recovered at the scene, his sentence should be reduced, and the State committed prosecutorial misconduct when it argued to the jury that defendant admitted to an investigating police officer that he hit the victim three times on the head. With regard to this last claim, although defendant admitted to hitting the victim, he did not admit to hitting the victim on the head three times. The trial court summarily dismissed the petition, finding defendant's prosecutorial misconduct claim forfeited. Defendant timely appeals from that dismissal.

¶ 6 On appeal, defendant contends that the trial court erred in summarily dismissing his postconviction petition, in light of his claim of prosecutorial misconduct. “The [Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010))] provides a remedy to defendants who have suffered substantial violations of their constitutional rights.” *People v. Barcik*, 365 Ill. App. 3d 183, 190 (2006). When the death penalty is not involved, there are three stages to the proceedings. *Id.* This appeal concerns the dismissal of a petition at the first stage.

¶ 7 At the first stage, the trial court has 90 days to examine the petition independently and summarily dismiss it if it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2010); *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). A petition is considered frivolous or patently without merit when the allegations in the petition fail to present the gist of a constitutional claim. *People v. Harris*, 224 Ill. 2d 115, 126 (2007); *People v. Little*, 335 Ill. App. 3d 1046, 1050 (2003).

¶ 8 “The ‘gist’ standard ‘is a low threshold.’ ” *People v. Edwards*, 197 Ill. 2d 239, 244 (2001) (quoting *Gaultney*, 174 Ill. 2d at 418). Although a ‘gist’ is something more than a bare allegation of a deprivation of a constitutional right (*People v. Prier*, 245 Ill. App. 3d 1037, 1040 (1993)), it is something less than a completely-pleaded or fully-stated claim (*Edwards*, 197 Ill. 2d at 245). Thus, to set forth the gist of a constitutional claim, the petition need present only a limited amount of detail and need not set forth the claim in its entirety. *Id.* at 244.

¶ 9 However, at the first stage, “the common law doctrines of *res judicata* and [forfeiture] operate to bar the raising of claims that were or could have been adjudicated on direct appeal.” *People v. Blair*, 215 Ill. 2d 427, 443 (2005). Forfeiture bars review of issues that could have been raised on direct appeal, but were not raised. *People v. Williams*, 209 Ill. 2d 227, 233 (2004). That said, the forfeiture rule is not without exceptions. For example, “[t]he doctrine[] of \*\*\* [forfeiture]

will \*\*\* be relaxed in three circumstances: where fundamental fairness so requires, where the [forfeiture] stems from the ineffective assistance of appellate counsel, or where the facts relating to the claim do not appear on the face of the original appellate record.” *Id.* We review *de novo* the dismissal of a petition at the first stage. See *People v. Youngblood*, 389 Ill. App. 3d 209, 214 (2009).

¶ 10 In determining whether defendant’s prosecutorial misconduct claim is forfeited, we recite here his claim in its entirety. Defendant asserted in his petition that:

“Though the states [*sic*] opening arguments for the reason why the jury should find petitioner guilty of attempted murder, refers extensively to petitioners [*sic*] statement to Detective Spencer that there were three blows, one which hit Wright’s arm. The states [*sic*] comments to the jury was that petitioner himself admits to hitting Wright three times on the head. The state showed prosecutorial misconduct by alleging that petitioner admits to hitting Wright three times on the head. He argued to the jury that one or two blows could have been out of pure anger but three blows to the head is attempted murder. There is no evidence that petitioner struck Wright three times in the head nor did petitioner admit to hitting Wright three times in the head, as state alleges petitioner said he did. Petitioners [*sic*] statement to Det. Spencer was that there were three blows, one which was to Wrights [*sic*] arm the other two were unspecified. Petitioner contends that this allegation is improper, false, and a fundamental error which denied the defendant a fair trial[.]”

¶ 11 We determine that defendant’s claim is forfeited. Clearly, defendant’s claim could have been raised on direct appeal, and a review of our disposition of defendant’s direct appeal reveals that such a claim was not advanced. Moreover, we cannot conclude that any of the exceptions to the forfeiture rule apply here. First, because defendant did not allege cause for his failure to raise the claim, the

“fundamental fairness” exception is inapplicable. See *People v. Jackson*, 205 Ill. 2d 247, 281 (2001) (“fundamental fairness is essentially a cause and prejudice test [citation], with ‘cause’ defined as ‘an objective factor that impeded defense counsel’s efforts to raise the claim on direct review’ and ‘prejudice’ defined as ‘an error which so infected the entire trial that the defendant’s conviction violates due process.’ [Citation.]”). Second, defendant did not allege that appellate counsel was ineffective. Last, everything needed to raise the claim was contained in the record submitted to this court in the original appeal.

¶ 12 Defendant argues that his prosecutorial misconduct claim should not be considered forfeited because, liberally construed, his argument was essentially that appellate counsel was ineffective for failing to raise this claim in the direct appeal. In support of this position, defendant cites *People v. Hodges*, 234 Ill. 2d 1 (2009).

¶ 13 In *Hodges*, the defendant filed a postconviction petition alleging that “his trial counsel was ineffective for failing to produce evidence that would have supported his claim of self-defense.” *Id.* at 6. More specifically, the defendant alleged that “counsel failed to investigate or interview three potential witnesses whose testimony would have corroborated [the] defendant’s theory.” *Id.* The defendant contended that the witnesses, whose affidavits were attached to the petition, “would have corroborated his claim of self-defense, and he argued that, because of counsel’s incompetence, the jury ‘did not get a chance to hear any of this evidence.’ ” *Id.* at 7-8. The trial court summarily dismissed the petition, the appellate court affirmed, and our supreme court reversed and remanded with directions. *Id.* at 8, 23. In doing so, our supreme court addressed whether the witnesses’ testimony would have supported a second-degree-murder instruction, which the appellate court did not consider. *Id.* at 21. The State argued that our supreme court, like the appellate court, should not

address that issue because the defendant did not raise that issue in his petition. *Id.* Our supreme court disagreed, noting that “the issue of whether [the] defendant’s *pro se* petition, which focused on self-defense, could be said to have included allegations regarding ‘unreasonable belief’ second degree murder—*i.e.*, imperfect self-defense—is at a minimum the type of ‘borderline’ question which, under a liberal construction, should be answered in [the] defendant’s favor.” *Id.*

¶ 14 The State contends that the issue is forfeited, because construing defendant’s prosecutorial misconduct claim as a claim that appellate counsel was ineffective for failing to challenge the State’s actions goes far beyond liberal construction. In support of its position, the State cites *People v. Mars*, 2012 IL App (2d) 110695, and *People v. Cole*, 2012 IL App (1st) 102499.

¶ 15 In *Mars*, the defendant asserted in his petition, among other things, that “ ‘[d]efense counsel failed to challenge the sufficiency of the grand jury indictment which omitted essential elements of the charges.’ ” *Mars*, 2012 IL App (2d) 110695, ¶ 31. The defendant argued that “ ‘[b]ut for, [*sic*] counsel’s ineffective assistance of counsel’s [*sic*] no trier of fact could have found [the defendant] guilty beyond any reasonable doubt of first degree murder.’ ” *Id.* The trial court summarily dismissed the petition, and the defendant appealed. *Id.* ¶ 11. On appeal, the defendant claimed that appellate counsel was ineffective for failing “on direct appeal to argue that the trial court erred in not dismissing the 2007 indictment, because it was subject to compulsory joinder with the 2005 indictment and violated [the] defendant’s right to a speedy trial.” *Id.* ¶ 31. We found this claim forfeited. *Id.* ¶ 33. In doing so, we noted that the defendant’s petition was organized and coherent and that it demonstrated that he was aware of legal concepts, including claims that appellate counsel was ineffective, and was able to articulate to what relief he thought he was entitled. *Id.* Moreover, we observed that “[n]o matter how liberally we construe the [allegation raised in the defendant’s

petition], viewing it in context, we cannot conclude that by this allegation [the] defendant actually raised a claim relating to *appellate* counsel's failure on direct appeal to raise the issue of compulsory joinder and violation of his right to a speedy trial." (Emphasis in original.) *Id.*

¶ 16 In *Cole*, the defendant alleged in his postconviction petition that "prosecutorial misconduct occurred during the State's closing argument when [the State] commented on the 'credibility' of a prosecution witness." *Cole*, 2012 IL App (1st) 102499, ¶ 9. On appeal from the summary dismissal of his petition, the defendant claimed for the first time that "appellate counsel's failure to raise [this] issue[] on direct appeal rendered his assistance constitutionally deficient." *Id.* ¶¶ 9-10. The appellate court affirmed the summary dismissal of the defendant's petition. *Id.* ¶ 25. In doing so, the court, relying on our supreme court's decision in *People v. Jones*, 213 Ill. 2d 498 (2004), observed that " 'implicit' claims in the defendant's postconviction petition may not be raised for the first time on appeal when those postconviction issues were never ruled upon by the [trial] court." *Cole*, 2012 IL App (1st) 102499, ¶ 13 (citing *Jones*, 213 Ill. 2d at 504). Thus, because the defendant never raised a claim that appellate counsel was ineffective for failing to assert that the State committed prosecutorial misconduct by commenting on the credibility of the State's witness, the defendant could not raise such a claim on appeal from the summary dismissal of his petition. *Id.* ¶ 16 ("Because the defendant's postconviction petition makes no allegations against appellate counsel's performance on direct appeal, the defendant is precluded from asserting for the first time on appeal claims of ineffective assistance of appellate counsel never ruled upon by the circuit court.").

¶ 17 We deem this case closer to *Mars* and *Cole* than to *Hodges*. In *Hodges*, the defendant asserted that trial counsel failed to support his claim of self defense, and the court liberally construed

the claim only to envelop “imperfect” self-defense. Thus, liberally construing the claim did not amount to completely recasting the issue that the defendant actually raised.

¶ 18 Unlike in *Hodges*, the defendants in *Mars* and *Cole* raised claims on appeal that were in no way asserted in the petitions. In *Cole*, which is factually similar to this case, the court determined that the defendant’s failure to couch his postconviction claim in terms of appellate counsel’s ineffectiveness precluded it from addressing whether appellate counsel was ineffective. The court so held because, under our supreme court’s decision in *Jones*, claims concerning appellate counsel’s ineffectiveness cannot be inferred merely by liberally construing a defendant’s postconviction claims. *Id.* ¶ 14. In *Mars*, this court noted that, given the defendant’s well-composed petition, it was clear that the defendant could have asserted in his petition the claim he wished this court to infer. *Mars*, 2012 IL App (2d) 110695, ¶ 33. Like in *Mars*, defendant’s petition here reflects that defendant knew how to raise a claim of counsel’s ineffectiveness; yet, that was not the claim defendant chose to advance. Given the similarities between defendant and the defendants in *Mars* and *Cole*, we conclude that defendant’s claim of prosecutorial misconduct cannot be liberally construed as a claim that appellate counsel was ineffective for failing to raise the claim of prosecutorial misconduct. Accordingly, we affirm the summary dismissal of defendant’s petition.

¶ 19 For these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 20 Affirmed.