

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).

2013 IL App (4th) 120596-U
NO. 4-12-0596
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
December 5, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
BRENDA S. HAMAND,)	No. 08CF186
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 2012)) was properly dismissed because defendant failed to attach corroborating evidence or explain the reasons for the absence of such evidence.

¶ 2 In March 2012, defendant, Brenda S. Hamand, filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2012)). In her petition, defendant argued her constitutional rights were violated when she at the sentencing hearing "was seated in the jury box unable to object to things that were unjust." In May 2012, the trial court summarily dismissed defendant's petition finding it frivolous and patently without merit. Defendant appeals and argues she stated the gist of a constitutional claim she was denied counsel when she was not allowed to sit with her counsel during the sentencing hearing. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In August 2008, the State charged defendant with three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)) and one count of permitting sexual abuse of a child (720 ILCS 150/5.1(A) (West 1998)). The State alleged defendant, in the fall of 1999, aided and encouraged or solicited her ex-husband to sexually assault her six-year-old daughter.

¶ 5 In December 2008, following a bench trial, defendant was found guilty of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)). At the sentencing hearing, the State presented no evidence in aggravation. Defendant called her pastor to testify on her behalf. The trial court sentenced defendant to 15 years' imprisonment.

¶ 6 Defendant filed a direct appeal. On appeal, she unsuccessfully argued her sentence was excessive. *People v. Hamand*, No. 4-09-0293 (May 28, 2010) (unpublished order under Supreme Court Rule 23).

¶ 7 In March 2012, defendant filed a *pro se* petition for postconviction relief. On a preprinted form, defendant wrote, in part, she was denied her constitutional rights when she "was not allowed to set [*sic*] with counsel at sentencing hearing[,] was seated in the jury box unable to object to things that were unjust." In support, defendant attached an affidavit verifying the facts in her petition. That same day, defendant also filed a handwritten *pro se* postconviction petition. In this petition, she asserted a number of alleged constitutional violations, including that her rights were violated at the "sentencing hearing *** by not being allowed or able to sit with her Public Defender but being placed in the jury box while this proceeding is going on and not being able to talk to [her counsel] on this matter or to object to things being said against her."

Defendant further asserted trial counsel was ineffective on a number of grounds, including failing to call witnesses defendant requested. Defendant did not attach an affidavit to her handwritten *pro se* petition.

¶ 8 In May 2012, the trial court summarily dismissed defendant's petition, upon finding defendant failed to set forth the gist of a constitutional claim her right to counsel was violated. The court emphasized the postconviction petition was filed more than three years after her conviction. The court further found defendant failed to set forth any facts showing she was denied the effective assistance of counsel. The court observed other arguments were not raised on direct appeal, but could have been.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 At the first stage of proceedings under the Act, the trial court examines the petition to decide whether it alleges a constitutional deprivation, uncontradicted by the record, that renders it neither frivolous nor patently without merit. *People v. Andrews*, 403 Ill. App. 3d 654, 658, 936 N.E.2d 648, 652 (2010). The petitioner need only to present a limited amount of detail and no legal argument or authority. *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). The allegations of fact in the petition must be taken as true and liberally construed and need only state the gist of a constitutional claim for relief. *Id.* This threshold is low, "requiring only that the petitioner plead sufficient facts to assert an arguably constitutional claim." *Id.* We review *de novo* first-stage dismissals of postconviction petitions. *People v. Collins*, 202 Ill. 2d 59, 66, 782 N.E.2d 195, 198 (2002).

¶ 12 Defendant argues her petition states the gist of a constitutional claim and should

not have been summarily dismissed. Defendant contends her Sixth Amendment right to counsel includes the right to consult with counsel during the proceedings against her. She contends she was denied that right when she was placed in the jury box, away from her attorney, during sentencing. In support, defendant relies, in part, on *Geders v. United States*, 425 U.S. 80, 91 (1976), in which the Supreme Court ruled the order preventing the petitioner from consulting with his counsel "during a 17-hour overnight recess between his direct- and cross-examination impinged upon his right to the assistance of counsel guaranteed by the Sixth Amendment."

¶ 13 We agree a defendant's constitutional rights are violated if that defendant is separated from counsel, absent a valid reason, during a sentencing hearing. A defendant has a constitutional right to be represented by counsel during sentencing, which is a critical stage in a criminal proceeding. *People v. Baker*, 92 Ill. 2d 85, 90, 440 N.E.2d 856, 858 (1982). To separate a defendant from counsel, thus preventing a defendant access to his or her counsel, arguably deprives a defendant of that right. The case law regarding *Boose* hearings (see *People v. Boose*, 66 Ill. 2d 261, 362 N.E.2d 303 (1977)), hearings held before an accused may be shackled or otherwise restrained, shows the importance of an "accused's ability to cooperate with his attorney and assist in his defense." *People v. Kelley*, 2013 IL App (4th) 110874, ¶¶ 17-18, 986 N.E.2d 770.

¶ 14 The record does not contradict the factual allegations made by defendant. The record also does not reveal a valid reason for the separation, and the State identifies none. See, e.g., *Perry v. Leeke*, 488 U.S. 272, 284-85 (1989) (limiting *Geders*, 425 U.S. at 88 and holding "the Federal Constitution does not compel every trial judge to allow the defendant to consult with his lawyer while his testimony is in progress if the judge decides that there is a good reason to

interrupt the trial for a few minutes"); *Boose*, 66 Ill. 2d at 266-67, 362 N.E.2d at 305-06 (concluding an accused's ability to cooperate with counsel may be limited by restraints when specific circumstances justify such limits).

¶ 15 As argued by the State, however, a defendant must attach to her petition affidavits, records, or other evidence to support her constitutional claim or explain why such evidence is unavailable. 725 ILCS 5/122-2 (West 2012). The purpose of this requirement is to show the allegations in the petition may be objectively or independently corroborated. See *Collins*, 202 Ill. 2d at 67, 782 N.E.2d at 199. The absence of either supporting evidence or sufficient explanation for its absence justifies summary dismissal of the postconviction petition. *Id.* at 66, 782 N.E.2d at 198.

¶ 16 Defendant neither attached evidence nor explained the absence of such evidence. The record shows at least one person not affiliated with the trial court or defense counsel was present at sentencing—defendant's pastor. Defendant, however, did not attach an affidavit from her pastor to corroborate her allegation, nor did she explain why she did not attach one. This failure is fatal to defendant's claims. Her petition was properly dismissed.

¶ 17 III. CONCLUSION

¶ 18 We affirm the trial court's judgment and grant the State its statutory assessment of \$50 against defendant as costs of this appeal.

¶ 19 Affirmed.