

No. 1-12-0157

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Respondent-Appellee,)	Cook County.
)	
v.)	Nos. 04 CR 9536;
)	04 CR 9537
)	
KEITH PINKLEY,)	Honorable
)	Charles P. Burns,
Petitioner-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The trial did not err in summarily dismissing the defendant's *pro se* postconviction petition as frivolous and patently without merit because trial counsel's performance was not unreasonable and did not prejudice the defendant.

¶ 2 This appeal arises from a November 18, 2011 order entered by the circuit court of Cook County which summarily dismissed the *pro se* postconviction petition filed by petitioner-appellant Keith Pinkley (the defendant), as frivolous and patently without merit. On appeal, the defendant argues that the trial court erred in summarily dismissing his *pro se* postconviction petition as frivolous and patently without merit because the petition alleged facts which

demonstrate that trial counsel was ineffective for failing to impeach two State's witnesses. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 In April 2004, the defendant was charged by indictment with first-degree murder for the murder of Walter Stephenson (Stephenson); attempted first-degree murder of Derrick White (Derrick); aggravated discharge of a firearm; and aggravated unlawful use of a weapon. The charges against the defendant were a result of events that took place on March 19, 2004, when the defendant's family (the Reynolds family), was involved in a daylong feud with Derrick's family (the Peppers family). On that day, two separate shootings occurred. The defendant was charged with the attempted murder of Derrick in the first shooting, and the attempted murder of Derrick and the murder of Stephenson in the second shooting.

¶ 5 On May 28, 2008, the defendant's jury trial commenced in the circuit court of Cook County. At trial, Derrick's mother, Vadalia Peppers (Vadalia) testified that she lived in an apartment with her children: Travis, Trevino, Tavaris, Shameka, Celeste, Derrick, and Antoine. Vadalia also had two foster children, Ashanti and Gavin. Vadalia stated that on March 19, 2004, her daughter Celeste ran into the apartment and told Vadalia that some other children were fighting Ashanti and Gavin. Vadalia sent Derrick, Tavaris, and Shameka to check on Ashanti and Gavin. Shortly thereafter, Vadalia changed clothes and went to the fight as well. Vadalia testified that when she arrived, there was a big fight which involved Tavaris, Derrick, Ashanti, and Gavin. Vadalia's children were fighting members of the Reynolds family including Jaurice Reynolds (Jaurice), and a friend of the Reynolds family, Freddie Guise (Guise). Jaurice is the defendant's brother. Vadalia aided in breaking up the fight and stated that Jaurice hit her in the jaw.

¶ 6 After the fight, Vadalia gathered her children and walked toward the intersection of Washington and Lotus in Chicago. Most of the children stayed behind at the corner of Washington and Central, and Vadalia took Ashanti to look for Jaurice in order to find out why the children were fighting. Vadalia encountered Jaurice's brother, Maurice Reynolds (Maurice), and Jaurice's mother, Arlecia Reynolds (Arlecia). Vadalia testified that she told Arlecia that Jaurice had hit her, and that she was going to call the police. Vadalia then began walking back toward her other children and her apartment. Vadalia testified that as she approached the corner of Washington and Pine, she saw the defendant walk up and pull out a gun. Vadalia testified that the defendant began shooting toward Derrick, Tavaris, Trevino, Antoine, and Gavin. Vadalia stated that she recognized the defendant because she could see his face and noticed his limping gait. The defendant was known for walking with a limp because he had been previously shot in the leg. Vadalia testified that the defendant was wearing black pants and a black hooded sweatshirt. Vadalia stated that she called the police and told them about the shooting. Vadalia testified that the police arrived and she talked to them, but the police did nothing. The record suggests that no one was struck with a bullet during this shooting.

¶ 7 After the shooting, Vadalia gathered her children and began walking back toward their apartment. As they approached their apartment, Derrick encountered Arlecia and began arguing with her. Vadalia testified that Arlecia grabbed Derrick, and Vadalia grabbed Arlecia. Everyone let go of each other and Vadalia saw Arlecia make a telephone call. Vadalia told her children to go inside, and the children obeyed her orders. Shortly thereafter, the defendant arrived with his brothers Jaurice and Laurice Reynolds (Laurice). The defendant yelled for Derrick to come outside and fight. Derrick came outside to fight the defendant but Vadalia pushed Derrick back and told him to go inside. Derrick obeyed Vadalia's orders and did not fight the defendant.

¶ 8 Vadalia testified that later that night, she wanted to send Derrick to her half-sister's house because the feud with the Reynolds family was getting out of control. Vadalia stated that Derrick left the apartment to go to the bus stop at Madison and Parkside. Vadalia testified that shortly after he left, Derrick returned to the apartment and said that the defendant, Laurice, and Jaurice were "trying to get him." Vadalia decided that she would escort Derrick to the bus with her children Trevino, Tavaris, Gavin and Celeste. Vadalia and her children waited for the bus for 20-25 minutes. Vadalia testified that as soon as Derrick boarded the bus, someone started shooting at the bus. She looked in the direction of the gunfire and saw someone dressed in all black running through the alley near the Madison and Parkside intersection. She could not see the face of the shooter, but she noticed that the shooter was limping. Vadalia stated that she sent her other children onto the bus to check on Derrick. None of the gunshots that were fired struck Derrick. Vadalia then took her children home and called the police. On March 20, 2004, Vadalia identified the defendant as the shooter in the shooting at Washington and Pine (the afternoon shooting) in a physical lineup.

¶ 9 Shameka's testimony about the events of March 19, 2004 largely corroborated Vadalia's testimony. Shameka testified that during the afternoon of that day, she saw the defendant shoot a gun toward her brothers near the intersection of Washington and Pine. She stated that the defendant was wearing a black hooded sweatshirt and she recognized him because she saw his face and noticed that he walked with a limp. Shameka testified that later that night, Derrick left the apartment because the situation with the Reynolds family was getting out of control. She stated that Derrick left to go to the bus stop at the corner of Madison and Parkside, but returned to the apartment shortly after. Derrick told his mother and siblings that the Reynolds family was trying to hurt him. Shameka testified that her mother and siblings accompanied Derrick to the

bus stop, but she stayed home because she was sick. She stated that about 15 minutes after her family left, she heard gunshots firing. On March 20, 2004, Shameka identified the defendant as the shooter in the afternoon shooting in a physical lineup.

¶ 10 Chicago Transit Authority bus driver Sheila Stone (Stone) testified that during the night of March 19, 2004, her boyfriend, Stephenson, accompanied her as she drove her bus route in order to protect her. She stated that when she approached the corner of Madison and Parkside, four members of the Peppers family boarded her bus. After the Peppers family boarded her bus, someone began shooting at the bus. Stone testified that she noticed two people shooting, but could not see the shooters' faces. She stated that the shooters were wearing dark clothes. After the shooting, Stone began to drive the bus away from the corner of Madison and Parkside. One of the passengers on the bus told Stone to check on Stephenson. Stone testified that Stephenson suffered a gunshot wound to the mouth. Stone then called the police and when the police arrived she told them what happened. The parties stipulated that the Cook County Medical Examiner would testify that Stephenson's gunshot wound was the cause of his death.

¶ 11 In addition to the testimony of members of the Peppers family, the State presented the handwritten and videotaped statements of Jaurice, Laurice, and Guise, as well as the grand jury testimony of Laurice. In Jaurice's written statement, he stated that on March 19, 2004, he was leaving school when he saw his cousin in a fight with Ashanti. Jaurice and his brother Maurice joined the fight, and Jaurice attempted to punch Derrick. Jaurice stated that the defendant was also involved in the fight. The fight continued until the police arrived and broke up the fight. After the fight, Jaurice got into a car with Maurice, the defendant, and others. Jaurice was driving the car and dropped off the defendant. Jaurice continued driving and heard some gunshots firing. Jaurice then saw Michael Parker running through a vacant lot with a gun in his

hand. Jaurice stated that he went to hang out with his brother Laurice, and everyone was talking about how they wanted to beat up Derrick.

¶ 12 Jaurice stated that he, Laurice, and family friend Pharlaris Coleman (Coleman) saw Derrick at a bus stop on Madison and Parkside. They approached Derrick and Derrick ran away. Coleman then ran to tell the defendant that they found Derrick. Jaurice stated that earlier that day, the defendant told him to let the defendant know if he found Derrick so the defendant could come and “crush him.” Jaurice waited for the defendant in an alley near Madison and Parkside. As he waited, he saw Derrick come back to the bus stop with some other boys and girls. Jaurice then started walking down the alley and saw the defendant, Guise, and Coleman walking toward him. Guise told Jaurice to wait in the alley, and if they needed Jaurice they would yell “yah yah.” Jaurice stated that the defendant was wearing a black Carhartt coat and a black hooded sweatshirt. The defendant and Guise walked up to the curb on Parkside and the defendant was standing in front of Guise. Jaurice stated that Guise told the defendant to “bust it,” which Jaurice understood to mean that Guise told the defendant to shoot his gun. Jaurice stated that the defendant took his hand out of his sleeve and Jaurice could see that the defendant was holding a gun. The defendant pointed the gun in the direction of the bus stop at Madison and Parkside and fired the gun. Jaurice stated he could see the flash from the muzzle of the gun and he heard four or five shots. After the defendant fired the gun, he ran west toward Austin Street with Guise. Jaurice stated that after the shots were fired, he was picked up in a car driven by his brother Maurice. While they were driving home, the defendant called Maurice. Maurice dropped off Jaurice at home and then went to pick up the defendant. When the defendant arrived at home, Laurice and the defendant went into Jaurice’s room and the defendant told Jaurice to hide a gun. The defendant handed a gun to Jaurice and then left the house. Jaurice stated that he took the

gun and went to his aunt's apartment. Once he arrived at his aunt's apartment, he hid the gun in his aunt's bedroom closet on a shelf under some boxes.

¶ 13 Jaurice stated that while he was at the police station, he had a chance to speak to a lawyer. He stated that he then told the detectives what happened. Jaurice stated that he was treated well by the police and the assistant State's Attorney. Jaurice stated that he gave his statement freely and voluntarily, and no threats or promises were made in exchange for his statement. Jaurice's statement was signed by Jaurice, assistant State's Attorney David Williams (ASA Williams), and Chicago Police Department Detective Arthur Young (Detective Young).

¶ 14 The statements completed by Laurice and Guise largely corroborated the details of Jaurice's statement. However, at trial, Jaurice, Laurice, and Guise all recanted their statements and claimed that their statements were coerced by the police through threats and physical abuse.

¶ 15 Detective Young testified that he spoke to Jaurice before Jaurice spoke with ASA Williams. Detective Young stated that he asked Arlecia to be present during his conversation with Jaurice because Jaurice was a minor, but Arlecia refused. Detective Young testified that Jaurice was allowed to talk to his attorney and that during the interrogation Jaurice responded to all of Detective Young's questions and did not seem upset.

¶ 16 ASA Williams testified that he took Jaurice's statement. ASA Williams testified that Jaurice's statement was not prepared ahead of time and that the statement was written in his presence. ASA Williams stated that no one threatened Jaurice in his presence.

¶ 17 On June 3, 2008, the jury found the defendant guilty of first-degree murder with personally discharging a firearm, attempted first-degree murder, and aggravated discharge of a firearm. On July 2, 2008, defense counsel filed a motion for new trial. On July 9, 2008, the trial court denied the motion for new trial. On that same day, the trial court sentenced the defendant

to 45 years' imprisonment for first-degree murder plus an additional 20 years' imprisonment for discharging the firearm that caused Stephenson's death. Additionally, the trial court sentenced the defendant to 15 years' imprisonment for one of the attempted murder charges to run consecutively with the sentence for first-degree murder; and 15 years' imprisonment for the other attempted murder charge to run concurrently with the sentence for first-degree murder. The defendant was sentenced to a total of 80 years' imprisonment.

¶ 18 On direct appeal, the defendant argued that: (1) the trial court violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012); (2) he was denied a fair trial due to the State's improper use of hearsay testimony; and (3) he was denied a fair trial by the State's repetitive use of Laurice's written statement and grand jury testimony, and the trial court's exclusion of evidence that Laurice complained of police abuse. This court affirmed the judgment of the trial court.

¶ 19 On August 11, 2011, the defendant filed a *pro se* motion for extension of time until September 30, 2011 to file a postconviction petition. The trial court granted the defendant's motion for extension of time. On August 30, 2011, the defendant filed a *pro se* postconviction petition in which he argued that: (1) appellate counsel provided ineffective assistance; (2) the trial court exceeded its authority when it convicted the defendant of attempted murder and imposed the enhanced penalty for aggravated discharge of a firearm; (3) his constitutional rights were violated when he was prevented from confronting Derrick at trial; (4) the State failed to prove beyond a reasonable doubt that the defendant killed Stephenson; (5) trial counsel provided ineffective assistance; and (6) the State denied the defendant a fair trial during closing arguments. On November 18, 2011, the trial court summarily dismissed the defendant's petition as frivolous and patently without merit. Pursuant to a supervisory order from the Illinois Supreme Court, the defendant's notice of appeal was timely filed on December 20, 2011.

Therefore, this court has jurisdiction to consider the defendant's arguments on appeal pursuant to Illinois Supreme Court Rules 606 (eff. Feb. 6, 2013) and 651 (eff. Feb. 6, 2013).

¶ 20

ANALYSIS

¶ 21 On appeal, we determine whether the trial court erred in summarily dismissing the defendant's *pro se* postconviction petition as frivolous and patently without merit.

¶ 22 The defendant argues that the trial court erred in summarily dismissing his petition because the petition alleged facts that demonstrate that trial counsel was ineffective for failing to impeach Vadalia and Shameka about the inconsistencies in their descriptions of the defendant's clothing in their statements to the police and their testimonies at trial. The defendant notes that attached to his petition was a police report in which Vadalia stated that during the bus shooting, she saw a person wearing a brown Carhartt jacket running in the alley south of Madison. She stated that the brown jacket was the same style that Jaurice was wearing earlier that day. At trial, Vadalia testified that during the afternoon shooting, the defendant was wearing black pants and a black hooded sweatshirt, and that he walked with a limp. Similarly, in the police report, Shameka stated that during the afternoon shooting, the defendant was wearing dark blue pants, black shoes, a black Carhartt jacket and a white tee shirt. Shameka told the police that the defendant walked with a limp. At trial, Shameka testified that the defendant was wearing a black hooded sweatshirt and walked with a limp.

¶ 23 The defendant argues that trial counsel was ineffective because it was unreasonable for trial counsel not to impeach Vadalia and Shameka about their descriptions of the defendant; and that if Vadalia and Shameka were properly impeached, there is a reasonable probability that the jury would have acquitted the defendant of murder and the second attempted murder charge based on the bus shooting. The defendant argues that it was unreasonable for trial counsel not to

impeach Vadalia and Shameka regarding their descriptions of the defendant because there was no risk to the defendant. The defendant contends that failing to impeach a State's witness is unreasonable where there is no reason not to pursue the tactic. The defendant asserts that there was no reason not to impeach Vadalia and Shameka, especially since there was no other major attack on their credibility that counsel could have reasonably chosen to exploit. Thus, the defendant claims that counsel's decision not to impeach Vadalia and Shameka regarding their descriptions of the defendant's clothing was unreasonable.

¶ 24 Further, the defendant argues that trial counsel was ineffective because if Vadalia and Shameka were properly impeached, there is a reasonable probability that the jury would have acquitted the defendant of the murder and the second attempted murder charge based on the bus shooting. The defendant argues that the State's case against the defendant was comparatively strong for the attempted murder at the afternoon shooting, but comparatively weak for the second attempted murder at the bus shooting. The defendant acknowledges that whoever conducted the bus shooting was probably a member of the Reynolds family, but it is not clear *which* member of the Reynolds family was responsible. The defendant points out that no witnesses saw the face of the shooter in the bus shooting, and that Vadalia and Shameka testified that they saw a man dressed in black who was running. Vadalia also testified that she saw that the man dressed in black was limping. The defendant argues that if Vadalia and Shameka were impeached regarding their descriptions, it is likely that the jury would have believed Jaurice, Laurice, and Guise's recantations at trial in which they claimed that their statements to the police were coerced. Also, the defendant claims that Vadalia and Shameka altered their trial testimonies so that their descriptions of the defendant during the afternoon shooting would more closely align with their descriptions of the shooter during the bus shooting. The defendant asserts that if

Vadalia and Shameka were impeached regarding their descriptions of the defendant, the jury would have concluded that they altered their trial testimony to inculcate the defendant for the bus shooting. The defendant contends that if the jury would have come to that conclusion, it would have acquitted the defendant of the murder and the second attempted murder based on the bus shooting. Therefore, the defendant argues that the trial court erred in summarily dismissing his petition because the petition demonstrated that trial counsel was ineffective for failing to impeach Vadalia and Shameka regarding their descriptions of the defendant.

¶ 25 In response, the State argues that the trial court did not err in summarily dismissing the defendant's postconviction petition. Initially, the State argues that the defendant forfeited his argument regarding trial counsel's failure to impeach Vadalia and Shameka because the defendant did not include the issue in his postconviction petition. The State contends that although allegations in a postconviction petition are liberally construed at the first stage of proceedings, this court cannot excuse the defendant's forfeiture. Additionally, the State argues that even if the defendant did not forfeit his argument, the trial court properly dismissed his petition because he failed to demonstrate either element of ineffective assistance of counsel. The State argues that it is not unreasonable that trial counsel chose not to impeach Vadalia and Shameka regarding their descriptions of the defendant because there is nothing in the record that shows that their statements to the police were in conflict with their trial testimonies. Specifically, the State points out that in the police report, Vadalia stated that after the bus shooting, she saw a person wearing a brown Carhartt jacket running in the alley south of Madison. However, in the police report, Vadalia did not identify the defendant as the person wearing the brown jacket. She simply stated that she saw an unidentified person running. Also, in the police report, Shameka stated that during the afternoon shooting, the defendant was

wearing dark blue pants, black shoes, a black Carhartt jacket, and a white tee shirt. At trial, Shameka testified that during the afternoon shooting, the defendant was wearing a black hooded sweatshirt. Thus, the State argues that there was no conflict between Vadalia's and Shameka's statements to the police and their trial testimonies.

¶ 26 Further, the State argues that the defendant did not present any facts that suggest that he was prejudiced by trial counsel's representation. The State points out that the defendant admitted that the State's case against the defendant was strong as to the afternoon shooting, and that the defendant's own brothers and friend admitted in their statements to the police that the defendant committed the bus shooting. The State argues that the statements of the Reynolds family were inestimably more important than any alleged inconsistencies in Vadalia's and Shameka's descriptions of the defendant. The State contends that Vadalia's and Shameka's credibility had nothing to do with the credibility of the Reynolds family witnesses, and that any impeachment of Vadalia and Shameka would not have impacted the jury's view of the Reynolds family witnesses. Therefore, the State argues that the trial court did not err in summarily dismissing the defendant's *pro se* postconviction petition as frivolous and patently without merit.

¶ 27 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 (West 2010)) provides a method by which persons under criminal sentence in Illinois can argue that their convictions were the result of a substantial denial of their rights under the United States Constitution, the Illinois Constitution, or both. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). In a case that does not involve the death penalty, a postconviction petition contains three stages. *Id.* at 10. At the first stage, the trial court must independently review the petition within 90 days of the petition's filing, and taking the allegations as true, the court must determine whether " 'the petition is frivolous or patently without merit.' " *Id.* (quoting *People v. Edwards*, 197 Ill. 2d 239, 244

(2001)). The court must dismiss the petition if it determines that the petition is frivolous or patently without merit. *Hodges*, 234 Ill. 2d at 10; 725 ILCS 5/122-2.1(a)(2) (West 2010). A petition is frivolous or patently without merit if it has no arguable basis in law or fact. *Hodges*, 234 Ill. 2d at 16. A petition lacks an arguable basis in either law or fact if it is based on an indisputably meritless legal theory or fanciful factual allegation. *Id.* The trial court must assume that the facts in the petition are true, and must liberally construe those facts. *Edwards*, 197 Ill. 2d at 244. A postconviction petition must only present the " 'gist of a constitutional claim' " which requires a limited amount of detail. *Id.* (quoting *People v. Gauntley*, 174 Ill. 2d 410, 418 (1996)). The trial court's summary dismissal of a postconviction petition is reviewed under the *de novo* standard of review. *Hodges*, 234 Ill. 2d at 9.

¶ 28 When a petitioner argues that counsel's assistance was ineffective in a postconviction petition, the court's determination is guided by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Id.* at 16. "At the first stage of the proceedings under the Act, a petition alleging ineffective assistance 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.*

¶ 29 We note that the State initially argues that the defendant forfeited his argument that trial counsel was ineffective for failing to impeach Vadalia and Shameka regarding their descriptions of the defendant, because the defendant did not present the issue in his postconviction petition. We disagree. In his *pro se* postconviction petition, one of the defendant's arguments is that his constitutional rights were violated when he was prevented from confronting Derrick at trial. Within that argument, the defendant stated "[i]n closing, Shameka, [Derrick], Trevino, and Vadalia all gave different colored clothing descriptions. See (Group Exhibits C page 12-13 of

25)." The exhibit that the defendant was referring to was the police report attached to his petition which contained Vadalia's and Shameka's descriptions of the shooters' clothing during the shootings. Also, later in the defendant's petition, he argued that trial counsel provided ineffective assistance. Within that argument the defendant stated "[t]rial counsel's failure to pursue witnesses [*sic*] torture allegations, and Derrick White, his mother and sister theory as alleged in the Police Investigation report here with (Group Exhibits C) constituted ineffective assistance of counsel ***." Presumably, the defendant's "mother and sister theory" referred to his previous argument that Vadalia and Shameka gave different colored clothing descriptions of the defendant. Notably, within his ineffective assistance argument, the defendant again referred to the police report which contained Vadalia's and Shameka's descriptions of the shooters' clothing during the shootings. As previously discussed, the allegations in a *pro se* postconviction petition must be liberally construed. Thus, although the defendant's argument could have been more clearly articulated, we find that he did present the argument that trial counsel was ineffective for failing to impeach Vadalia and Shameka regarding their descriptions of the defendant and his clothing. Accordingly, in the interest of fairness and justice, the defendant's argument is not forfeited and we discuss the argument on its merits.

¶ 30 We are not persuaded by the defendant's argument that his postconviction petition alleged facts that demonstrate that trial counsel was ineffective for failing to impeach Vadalia and Shameka regarding their descriptions of the defendant and his clothing. In this case, the defendant fails to establish even an arguable basis for either prong of the *Strickland* standard for ineffective assistance of counsel. First, as the State points out, it was not unreasonable for trial counsel to choose not to impeach Vadalia and Shameka because there were barely any inconsistencies in their descriptions of the defendant and his clothing in the police report and

their trial testimonies. In the police report, Vadalia stated that during the bus shooting she saw "a subject wearing a brown 'Carhartt' coat running in the south alley of Madison." Vadalia did not state that the subject was the defendant. At trial, Vadalia testified that during the afternoon shooting, the defendant was wearing black pants and a black hooded sweatshirt, and that he walked with a limp. She further testified that during the bus shooting, the shooter was dressed in all black and running through the alley near Madison and Parkside; and that the shooter was limping. There is no indication that Vadalia was describing the same person in her police report description and her trial testimony. "The manner in which to cross-examine a particular witness involves the exercise of professional judgment which is entitled to substantial deference from the reviewing court." *People v. Pecoraro*, 175 Ill. 2d 294, 326-27 (1997). Thus, we find that it was not unreasonable for trial counsel to decide not to attempt to impeach Vadalia regarding her descriptions of the defendant.

¶ 31 Similarly, there were no inconsistencies in Shameka's description of the defendant in the police report and her trial testimony. In the police report, Shameka stated that during the afternoon shooting, the defendant was wearing dark blue pants, black shoes, a black Carhartt jacket, and a white tee shirt. At trial, Shameka testified that during the afternoon shooting, the defendant was wearing a black hooded sweatshirt. Although she provided less detail in her trial testimony, her testimony was not inconsistent with her description in the police report. Shameka did not accompany her family members to the bus stop that night so she was not able to provide a description of the shooter at the bus shooting. Accordingly, it was not unreasonable for trial counsel to decide not to attempt to impeach Shameka regarding her descriptions of the defendant.

¶ 32 Further, the defendant failed to present any facts to support his argument that he was prejudiced by trial counsel's representation. By the defendant's own admission, the State's case against him for the afternoon shooting was strong. For the bus shooting, the State presented the handwritten and videotaped statements of the defendant's two brothers and his friend, all of whom stated that the defendant was the one who committed the bus shooting. Additionally, the State presented the testimony of police officers and assistant State's Attorneys who testified that the statements were properly taken and were not coerced. Even if trial counsel had attempted to impeach Vadalina's and Shameka's descriptions of the defendant, it would have had no effect on the outcome of the trial. Therefore, it is not arguable that trial counsel's performance was unreasonable and that the defendant was prejudice by trial counsel's performance. Accordingly, we hold that the trial court did not err in summarily dismissing the defendant's *pro se* petition as frivolous and patently without merit.

¶ 33 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 34 Affirmed.