

No. 1-12-0577

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Court Circuit of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 12003
	)	
TONY CAMPBELL,	)	The Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Hyman and Justice Pucinski concurred in the judgment .

**ORDER**

¶ 1 *Held:* Summary dismissal of defendant's postconviction petition was proper where it was not arguable that defendant's pretrial counsel was ineffective for failing to attach certain documents to the motion to suppress statements.

¶ 2 Defendant Tony Campbell, who was convicted of armed robbery and first degree murder while personally discharging a firearm that caused great bodily harm and was ultimately sentenced to 110 years in prison, appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act. 725 ILCS 5/122-1 *et seq.* (West 2010). Defendant

contends that his petition presented an arguable claim of ineffective assistance of counsel based on a failure to attach documents to the motion to suppress statements which he asserts would have supported an argument that he lacked the intellectual ability to read and understand his *Miranda* rights and was susceptible to mental coercion.

¶ 3 For the reasons that follow, we affirm.

¶ 4 In 2001, defendant was charged with multiple counts of first degree murder and armed robbery in connection with the shooting death of Garvey Bernard. At a pretrial status hearing, defense counsel indicated to the trial court that she had obtained some of defendant's special education records, but did not yet have "the important psychological testing that was done." At a subsequent status hearing, counsel reported that defendant had taken special education classes, that she had subpoenaed his school records from the Chicago Board of Education, and that the Board had only given her current records from the alternative high school in the Cook County jail. She stated that she had urged the Board to look further and that she was still trying to find records of defendant's psychological testing.

¶ 5 Defense counsel subsequently filed a motion to suppress statements, alleging that (1) defendant had not been advised of his rights prior to being interrogated; (2) due to defendant's physical, physiological, mental, educational, and/or psychological state, capacity, and condition, he was incapable and unable to appreciate and understand the full meaning of *Miranda* warnings, and that therefore, any statements were not made voluntarily, knowingly, and intelligently; (3) that interrogation continued after defendant had elected to remain silent and/or had elected to consult with an attorney; (4) that his statement was obtained as a result of illegal physical coercion; (5) that his statement was obtained as a result of illegal psychological and mental

coercion, *i.e.*, threats of violence, name-calling, and a statement that the "truth will set you free"; and (6) that his statement was obtained as the result of material misrepresentations, *i.e.*, a threat that defendant was eligible for the death penalty.

¶ 6 A hearing was held on the motion to suppress. At the hearing, Chicago police detective David Fidyk testified that he and his partner, Detective Scott Rotkovich, interviewed defendant on April 16, 2001. Detective Rotkovich read defendant his *Miranda* rights and defendant agreed to speak with the officers. On April 17, 2001, Detective Fidyk spoke with defendant a second time. He again advised defendant of his *Miranda* rights. Defendant told Detective Fidyk that he understood, agreed to speak, and gave a statement. Later on April 17, 2001, Detective Fidyk spoke with defendant a third time. This time, Assistant State's Attorney Iris Ferosie gave defendant his *Miranda* warnings. Defendant indicated that he understood, gave a statement, and thereafter elected to memorialize his statement on video. In the video room, defendant was advised of his *Miranda* rights, and he indicated he understood. In Detective Fidyk's opinion, defendant understood his rights each time they were read to him.

¶ 7 Assistant State's Attorney (ASA) Iris Ferosie testified that she initially spoke with defendant in Detective Fidyk's presence. She then spoke with defendant alone so that she could ask him about how he had been treated by the police. Defendant indicated he had no complaints and said he had been treated "fine."

¶ 8 Chicago police detective Scott Rotkovich testified that during the morning of April 16, 2001, he interviewed defendant at the police station. After uncuffing defendant, Detective Rotkovich advised him of his *Miranda* rights. Defendant indicated that he understood his rights and would speak with the detective. Later that day, Detective Rotkovich and his partner,

Detective Fidyk, interviewed defendant together. Detective Rotkovich testified that he read *Miranda* warnings to defendant, who agreed to speak with the officers. In Detective Rotkovich's opinion, defendant understood the *Miranda* warnings both times.

¶ 9 Defendant testified that he was 17 years old when he was arrested and had not finished ninth grade. He was handcuffed to a wall and no one answered his "hollering" for a washroom, so he had to urinate in a cup. Defendant stated that Detective Rotkovich refused his request to call his mother; told him he could have food when he cooperated; said that if he did not tell the truth, he was looking at the death penalty; "smacked" his face; slapped his head; and punched his chest. Detective Rotkovich called defendant "all kinds of little bitches," said it was going to be a long night, and threatened that if he had to keep coming back in the room, he would "kick [defendant's] ass" every time.

¶ 10 Defendant testified that the next morning, Detective Rotkovich gave him some papers and told him "this is what" happened. Detective Rotkovich then read the papers to defendant. When defendant told the detective the content of the papers was not true, Detective Rotkovich slapped him. Defendant thereafter agreed that the contents were true and agreed to make a videotaped statement to the Assistant State's Attorney. On cross-examination, defendant testified that he did not recall ever being given *Miranda* warnings, including on the video recording; that he did not know how to read at the time he was questioned by the police; that he was not familiar with *Miranda* rights at the time; that he agreed to the "story" because he wanted the police to stop hitting him, give him something to eat, and leave him alone; and that he learned to read in jail.

¶ 11 The trial court denied defendant's motion to suppress.

¶ 12 Defendant's case proceeded to a jury trial at which he represented himself. The underlying facts of the case are presented at length in our first order on direct appeal (*People v. Campbell*, No. 1-05-0927 (2008) (unpublished order under Supreme Court Rule 23)) and will be repeated here only briefly. In short, the State presented evidence at trial that defendant and an accomplice, Melvin Gaddy, robbed their mutual friend, Garvey Bernard, of \$3,500 and shot him 11 times, killing him. The State's evidence included two eyewitness accounts in addition to defendant's videotaped confession.

¶ 13 John Williams testified that on the day in question, he, defendant, Gaddy, and the victim were walking around, looking for a car for the victim to purchase. The men made a five-minute stop at the apartment where defendant and Gaddy lived, during which defendant and Gaddy went upstairs and Williams and the victim remained downstairs in the alley. Shortly after the men regrouped, defendant pulled a gun, pointed it at the victim, and said, "Give it up." Williams testified that he fled when defendant drew the gun and that the victim also tried to run. Williams heard shots, looked back, and saw defendant shooting the victim, who fell to the ground. After Gaddy went through the victim's pockets, defendant shot the victim two more times. Defendant and Gaddy then fled the scene.

¶ 14 Reginald Johnson testified that he was in his third-floor apartment when he heard six or seven gunshots. He looked out his window and saw three men in the alley, one lying on the ground and two standing over him. Johnson testified, "The tall one with the braids went in his pocket, got his wallet, jumped over the fence, ran through the yard towards Bishop. The shorter guy stood over the guy and shot him above - - above his chest, somewhere above his chest." In court, Johnson identified defendant as the shooter. Johnson testified that he called the police.

When they arrived at the scene, Johnson gave them descriptions of the offenders. Three days later, the police returned to Johnson's apartment and showed him some photographs from which he was able to identify defendant as the shooter and Gaddy as the person who took the victim's wallet. At the police station four days later, Johnson viewed a lineup and made the same identifications.

¶ 15 A medical examiner testified that the victim had been shot 11 times and died as the result of multiple gunshot wounds. A detective testified that in his course of investigation, he spoke with defendant's uncle. Thereafter, the detective and the uncle went to Kankakee together, where the detective recovered a handgun. A forensic scientist testified that he received the handgun, several fired cartridges from the scene, and five fired bullets taken from the victim's body. He determined that all of the cartridges and bullets were fired from the recovered handgun.

¶ 16 The jury found defendant guilty of first degree murder, armed robbery, and personally discharging a firearm that caused great bodily harm. The trial court entered judgment on the verdict and sentenced defendant to an aggregate term of 140 years in prison. On appeal, we vacated defendant's conviction for felony murder based on the one-act, one-crime doctrine, affirmed defendant's remaining convictions, and, based on a finding that the trial court had considered an improper aggravating factor, remanded for resentencing. *People v. Campbell*, No. 1-05-0927 (2008) (unpublished order under Supreme Court Rule 23).

¶ 17 On remand, the trial court sentenced defendant to an aggregate term of 110 years' imprisonment. We affirmed the trial court's judgment. *People v. Campbell*, No. 1-09-1378 (2011) (unpublished order under Supreme Court Rule 23).

¶ 18 In 2011, defendant filed a *pro se* petition for postconviction relief which, among other things, included a claim that he was denied the effective assistance of counsel because pretrial counsel failed to attach "available school records" to his motion to suppress statements. Defendant alleged that these records "would have been strong mitigating evidence to support [his] allegations that he was mistreated into giving a[n] incriminating confession." Defendant also argued that the school records would have supported his "defense that he was tricked or mistreated into giving the confession," and stated that he was prejudiced by counsel's failure to obtain the records.

¶ 19 Defendant attached several papers to his petition. Among them were a Chicago Public Schools (CPS) form titled "Parent/Guardian Consent for Initial Special Education Placement," signed by defendant's mother in 1995, giving her consent for defendant to be placed in a learning disability program; a CPS form titled "Parent/Guardian Notification of Conference Recommendations, dated 1995, indicating that defendant would be receiving special education and related services as listed on his Individualized Education Program (IEP); an IEP form dated 1996, indicating that defendant had "learning disabilities"; and a computer printout from the alternative high school, showing defendant's reading test scores from sixth and ninth grade.

¶ 20 The trial court summarily dismissed the petition.

¶ 21 In cases not involving the death penalty, the Post-Conviction Hearing Act provides a three-stage process for adjudication. 725 ILCS 5/122-1 (West 2008); *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). The instant case involves the first stage of the process, during which the trial court independently assesses the petition, taking the allegations as true. *Hodges*, 234 Ill. 2d at 10. Based on this review, the trial court must determine whether the petition "is frivolous or is

patently without merit," and, if it so finds, dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2010).

¶ 22 A *pro se* petition may be dismissed as frivolous or patently without merit "only if the petition has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 16. A petition has no arguable basis in law when it is founded in "an indisputably meritless legal theory," for example, a legal theory that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16. A petition has no arguable basis in fact when it is based on a "fanciful factual allegation," which includes allegations that are "fantastic or delusional" or belied by the record. *Hodges*, 234 Ill. 2d at 16-17; *People v. Morris*, 236 Ill. 2d 345, 354 (2010). Our review of a first-stage dismissal is *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 23 On appeal, defendant contends that the trial court erred in summarily dismissing his petition because it presented an arguable claim of ineffective assistance of pretrial counsel for failing to attach documents to the motion to suppress which would have supported an argument that he lacked the intellectual ability to read and understand *Miranda* rights and was susceptible to mental coercion. Defendant asserts it was arguable that counsel's performance fell below an objective standard of reasonableness because she failed to obtain documents that demonstrated his enrollment in special education courses, low test scores, and learning disabilities, and failed to attach documents which she had already discovered. Defendant further asserts it was arguable he was prejudiced by counsel's ineffectiveness because had the trial court been provided with proof of his inability to knowingly and intelligently waive his *Miranda* rights, it is arguable that it would have suppressed his statements.

¶ 24 Traditionally, to establish ineffective assistance of counsel, a defendant must show (1) that his counsel's representation fell below an objective standard of reasonableness; and (2) but for counsel's errors, there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). However, our supreme court has indicated that in the context of first-stage postconviction proceedings, a defendant need not conclusively establish these factors; in *Hodges*, our supreme court held that "a petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17.

¶ 25 In the instant case, we need not determine whether it is arguable that counsel's performance fell below an objective standard of reasonableness. This is because defendant has not presented an arguable claim of prejudice. See *Strickland*, 466 U.S. at 697 (if a claim of ineffectiveness may be disposed of due to lack of prejudice, a reviewing court is not required to address whether counsel's performance was unreasonable).

¶ 26 Here, even if trial counsel had been successful on the motion to suppress defendant's statement, it is not arguable that the outcome of defendant's trial would have been different. As we found in our initial decision on direct appeal, the evidence against defendant was overwhelming. *People v. Campbell*, No. 1-05-0927, slip op. at 35 (unpublished order under Supreme Court Rule 23).

¶ 27 Two eyewitnesses testified that defendant shot the victim and his accomplice robbed him. The testimony of a single eyewitness is sufficient to sustain a criminal conviction. See *People v. Castillo*, 372 Ill. App. 3d 11, 20 (2007). The first eyewitness, John Williams, was with

defendant, the victim, and Melvin Gaddy when defendant pulled a gun, pointed it at the victim, and said, "Give it up." As Williams ran, he heard shots, looked back, and saw defendant shooting the victim, who fell to the ground. Williams then watched as Gaddy went through the victim's pockets and defendant shot the victim twice more. The second eyewitness, Reginald Johnson, heard several gunshots, looked out his window, and saw defendant and Gaddy standing over the victim, who was lying on the ground. As Johnson watched, Gaddy took the victim's wallet, after which defendant shot the victim again. Finally, in addition to the eyewitness testimony, a forensic scientist testified that all the fired cartridges he received from the scene and the bullets recovered from the victim's body were fired from the handgun recovered by the police with the assistance of defendant's uncle.

¶ 28 In light of the overwhelming evidence against defendant, even absent the statement he made to the police, we cannot say it is arguable that defendant was prejudiced by counsel's alleged deficient performance. Defendant's legal theory of ineffective assistance of counsel is contradicted by the record. Therefore, the petition lacks an arguable basis in law. See *Hodges*, 234 Ill. 2d at 16. Accordingly, summary dismissal of the petition was proper.

¶ 29 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.