

No. 1-12-2569

**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).

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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
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 7095
	)	
CHRISTOPHER WALES,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE TAYLOR delivered the judgment of the court.  
Justices McBride and Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held:* Summary dismissal of defendant's post-conviction petition was proper where it was not arguable defendant received ineffective assistance of counsel during his guilty plea proceedings.

¶ 2 Defendant Christopher Wales appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2012). On appeal, defendant contends that he set forth the gist of a constitutional claim that he did not knowingly and voluntarily plead guilty to armed robbery where counsel provided him ineffective assistance by misinforming him that the court would only consider the State's witnesses if he

chose to have a bench trial. We affirm.

¶ 3 The record shows that defendant was charged with one count each of armed robbery with a firearm and aggravated unlawful restraint after a March 17, 2011 incident during which he allegedly approached the victim, Pablo Raynor, at a bus stop near 1300 West Roosevelt Road in Chicago, produced a weapon, and took his coat, cell phone, ring, and money. The record also shows that defendant had a pending violation of probation charge.

¶ 4 On November 28, 2011, defendant entered a negotiated guilty plea to armed robbery stemming from the March 17 incident. In exchange for pleading guilty, the State recommended that the armed robbery count would be amended to state that defendant was armed with a bludgeon instead of a firearm, confirmed that the offense remained a Class X felony but was not extendable, and proposed that defendant be sentenced to 10 years' imprisonment, to be served at 50% good-time credit. The State also dropped the aggravated unlawful restraint charge and the pending violation of probation charge was "terminated unsatisfactorily."

¶ 5 The trial court admonished defendant regarding the applicable sentencing range and the term of mandatory supervised release to which he was subject. The trial court further admonished defendant that he was relinquishing his right to a trial of any kind, to confront the witnesses against him, and to put on a defense. Defendant indicated that he understood the admonishments, was pleading guilty voluntarily, and that nobody threatened or forced him to accept the State's offer. The State set forth a factual basis for the plea, the court accepted defendant's plea of guilty, and the court admonished defendant of his appeal rights in accordance with a negotiated plea under Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 6 Defendant never sought to withdraw his guilty plea, nor did he attempt to file a direct appeal. On May 24, 2012, he filed a *pro se* petition under the act, alleging that he was denied effective assistance of counsel. In relevant part, defendant stated that:

"I never had a gun or possession of one, so I asked the defense counsel what if I would take a bench trial[.] \*\*\* The [public defender] informed me that the judge would go by the evidence[.]" However, defendant averred that on the date he was scheduled to go to trial, his attorney told him "that the judge w[ould] go by the witness['s] statement only." Based on this advice, defendant indicated that he accepted the State's offer.

¶ 7 On June 22, 2012, the circuit court summarily dismissed defendant's petition in a written order, finding it frivolous and patently without merit. The court specifically found that defendant's plea was voluntary and that the claims he raised in his petition were conclusory and not legally sufficient under the Act. In so finding, the court did not specifically address defendant's contentions regarding the alleged advice he received from counsel on his trial date. This appeal followed.

¶ 8 On appeal, defendant contends that the summary dismissal of his petition must be reversed and his cause remanded for second-stage proceedings where his petition alleged the gist of a claim of ineffective assistance of counsel. In particular, defendant contends that before he entered a guilty plea his trial attorney informed him that the court would only consider the State's witnesses if he chose to have a bench trial. Defendant maintains that based on this misstatement, he entered a plea of guilty that was not knowing and voluntary.

¶ 9 The State initially maintains that defendant waived his claims on review because he did not raise them in his post-conviction petition. Despite the State's arguments to the contrary, we

find that defendant's petition, when liberally construed (*People v. Jones*, 213 Ill. 2d 498, 505 (2004)), raised the claims at bar. Although defendant's petition does not state his claims as precisely as his brief, it is clear that he was arguing an ineffective assistance claim based on the alleged advice he received from counsel on the day his trial was scheduled to begin. We therefore review the merits of defendant's claim.

¶ 10 The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. 725 ILCS 5/122-1 (West 2012). At the first stage of a post-conviction proceeding, the circuit court independently reviews the petition, taking the allegations as true, and determines if it is frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). A petition should be summarily dismissed as frivolous or patently without merit only when it has no arguable basis in either fact or law. *Id.* at 11-12; see also *People v. Tate*, 2012 IL 112214, ¶ 9 ("the threshold for survival [is] low"). Our supreme court has held that a petition lacks an arguable basis in fact or law when it is based on "an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. Fanciful factual allegations are those which are "fantastic or delusional" and an indisputably meritless legal theory is one that is completely contradicted by the record. *Id.* at 16-17. We review the summary dismissal of a post-conviction petition *de novo*. *Tate*, 2012 IL 112214, ¶ 10.

¶ 11 To establish an ineffective assistance of counsel claim, a defendant must show that counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A challenge to a guilty plea based on

allegations of ineffective assistance of counsel is subject to the standards set forth in *Strickland*. *People v. Hall*, 217 Ill. 2d 324, 334-35 (2005). Under *Strickland*, the defendant must establish that counsel's performance fell below an objective standard of reasonableness and the defendant was prejudiced by that substandard performance. *Id.* at 335. Counsel performs inadequately where he fails to ensure the defendant's guilty plea was entered voluntarily and intelligently. *Id.* Prejudice exists if there is a reasonable probability absent counsel's errors, the defendant would have pleaded not guilty and insisted on going to trial. *Id.* A bare allegation that the defendant would have pleaded not guilty and insisted on trial is not enough to establish prejudice. *Id.* Instead, such a claim must be accompanied by either a claim of innocence, or the articulation of a plausible defense that could have been raised at trial. *Id.* at 336-37.

¶ 12 However, our supreme court has indicated that, in the context of first-stage post-conviction proceedings, a defendant need not conclusively establish these factors. In *Hodges*, our supreme court held: "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.

¶ 13 In the instant case, we need not determine whether or not it is arguable that counsel's performance fell below an objective standard of reasonableness because defendant has not presented an arguable claim of prejudice. See *People v. Salas*, 2011 IL App (1st) 091880, ¶ 91 (if a claim of ineffectiveness may be disposed of due to lack of prejudice, this court is not required to address whether counsel's performance was objectively reasonable). In both defendant's petition and his brief on appeal, he asserted that he accepted the State's offer of 10

years' imprisonment because defense counsel told him that the court would make its decision based on the State's witnesses only. In defendant's brief on appeal, he further indicated that he "would have gone to trial had he not received [defense counsel's erroneous advice]." However, defendant has neither claimed that he is innocent of the charges brought against him, nor articulated any defense which could have been raised at trial. Therefore, defendant has failed to make a showing that it is arguable he suffered prejudice as a result of counsel's alleged deficiencies. See *People v. Hughes*, 2012 IL 112817, ¶ 66 (characterizing the defendant's claim "that had he known of the possibility for civil commitment he would not have pled guilty because he thought that it would resolve the matter" as insufficient to articulate prejudice.).

¶ 14 Defendant asserts that *Hall* and *Hughes* are distinguishable from the case at bar because the defendants in those cases benefitted from the assistance of appointed counsel (*Hughes*, 2012 IL 112817, ¶ 12; *Hall*, 217 Ill. 2d at 330), whereas he drafted his petition without the assistance of counsel. Defendant thus maintains that this court should not hold him to the same standards that applied to the defendants in *Hughes* and *Hall*. As we indicated above, however, we did not find that defendant had to conclusively show that he was prejudiced by counsel's alleged deficient performance but, instead, only required that he state an arguable claim that he was prejudiced, which he failed to do.

¶ 15 Nevertheless, in his reply brief, defendant maintains that he made an arguable claim that he was actually innocent and had a plausible defense when he asserted in his petition that he never possessed a gun. Furthermore, defendant asserts that because he distinguished between "the witness statement" and "the evidence" in his petition, he showed that he would have presented evidence on his behalf at trial. Despite defendant's contentions to the contrary, his

assertion that he did not have a gun was a conclusory statement that did not show arguable prejudice, particularly where he pled guilty to armed robbery with a dangerous weapon other than a firearm (720 ILCS 5/18-2(a)(1) (West 2010)). See *People v. Delton*, 227 Ill. 2d 247, 258 (2008) (allegations of ineffective assistance of counsel that are "broad" and "conclusory" are not permitted under the Act). Moreover, defendant's use of the word "evidence" instead of "witness statement" in his petition did not show that he had a plausible defense at trial. As defendant acknowledges in his reply brief, he does not even specify in his petition what evidence he planned to present at trial.

¶ 16 We also reject defendant's argument that the trial court did not explain the procedures of trial when it admonished defendant of the rights he was relinquishing by pleading guilty. Defendant maintains that the trial court simply asked him if he knew what a jury was and informed him that he was giving up his right to put on a defense. The record shows, however, that the trial court fully admonished defendant of the rights he was relinquishing. The court specifically stated:

"THE COURT: When you plead guilty to a charge \*\*\* you give up certain constitutional rights that you have and one of those rights is your right to trial by jury. Do you know what kind of trial that is?

DEFENDANT: Yes, ma'am.

THE COURT: You have a right to have a jury trial, sir.

Are you giving up your right to have that kind of trial?

DEFENDANT: Yes, ma'am.

THE COURT: \*\*\* You also have a right to have a written report available \*\*\* of your background available to the Court before you are sentenced. That's called a presentence investigative report. Are you waiving your right to have the availability of the report today?

DEFENDANT: Yes, ma'am.

THE COURT: \*\*\* Further, \*\*\* you give up your right to have a trial of any kind. You give up your right to confront the

witnesses that would be brought into court against you at trial and to have your attorney cross-examine those witnesses. You also give up your right to put on any defense to this charge if you wanted to do that. Do you understand?

DEFENDANT: Yes, ma'am.

THE COURT: Are you pleading guilty voluntarily?

DEFENDANT: Yes, ma'am.

THE COURT: Did anyone force you in any way to accept the prosecutor's offer?

DEFENDANT: No, ma'am.

THE COURT: Did anyone threaten you in any way to have you accept the prosecutor's offer?

DEFENDANT: No, ma'am.

THE COURT: Did the prosecutor offer you anything or promise you anything other than a recommended sentence?

DEFENDANT: No, ma'am."

Contrary to defendant's contention, the above exchange between him and the court shows that the court's admonition regarding defendant's "right to put on a defense" did not ring hollow. If anything, the court's comments dispelled any alleged advice by counsel that the court would "go by the witness['s] statement only."

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court summarily dismissing defendant's petition under the Act at the first-stage of proceedings.

¶ 18 Affirmed.