

2014 IL App (2d) 121401-U  
No. 2-12-1401  
Order filed December 29, 2014

**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  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Stephenson County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-180
	)	
BILLY J. BROOKS,	)	Honorable
	)	Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed defendant's postconviction petition, which alleged that he was unconstitutionally denied transcripts at trial: although the claim was not forfeited, it lacked merit, as defendant agreed to proceed to trial without the transcripts as long as the State also lacked them, which it did, and in any event defendant did not explain how the transcripts would have helped him.

¶ 2 Defendant, Billy J. Brooks, appeals the trial court's order dismissing his postconviction petition at the second stage. In the petition he alleged that he was deprived of his constitutional rights when the State failed to produce, prior to trial, transcripts of the hearing on his pretrial motions, which he had hoped to use for impeachment. He contends that the court erred by ruling

that this issue was forfeited when the petition also alleged that counsel on direct appeal was ineffective for failing to raise this issue. Although the court incorrectly found the issue forfeited, we conclude that the petition was properly dismissed because it lacked substantive merit. Therefore, we affirm.

¶ 3 Defendant was charged by information with possession with intent to deliver less than one gram of a controlled substance within 1,000 feet of a church (720 ILCS 570/407(b)(2) (West 2008)) and resisting a peace officer (720 ILCS 5/31-1 (West 2008)).

¶ 4 Defendant, representing himself, filed several pretrial motions, including motions to quash his arrest and suppress evidence. Following a hearing, the court denied these motions. Shortly before trial, defendant asked if transcripts of that hearing would be available at trial. The court stated that it would likely take some time to prepare them. Defendant stated that if the State had the transcripts he would like to have them, but “if neither one of us got it, it’ll be even, so I couldn’t complain.” Defendant also indicated that he did not want to delay the trial to wait for them. The prosecutor said that if either party intended to use the transcripts for impeachment then both sides should have them. The court stated that it would see if the transcripts could be prepared, but assured defendant that “both sides’ll be equal going into it” and that it would not let only one side have the transcripts.

¶ 5 At the final pretrial hearing, the court stated that the reporter responsible for the suppression-hearing transcripts “was gone and is now back and I will have to inquire about that.” The following day, however, the court said that the reporter was still on vacation and, thus, the transcripts would not be available to either party.

¶ 6 The evidence at trial showed that Freeport police officer Anthony Smith encountered defendant riding a bicycle. Smith learned that defendant was wanted on two complaints, so he

turned his squad car around and followed defendant. Defendant abandoned his bicycle and fled on foot. Smith, in full police uniform, left his car and chased defendant. Defendant slipped and fell on wet grass in front of a house on Prospect Street. Smith handcuffed defendant and began escorting him to the squad car.

¶ 7 On the way to the car, they met Trent Gaines. Smith agreed to let Gaines take defendant's keys and bicycle. Defendant began complaining of cramps and twisting and dragging his legs. Shortly after they reached the squad car, Smith started searching defendant. He looked down and saw a clear plastic bag on the ground between defendant's feet. The bag was dry although the ground was wet from recent rain. Smith then placed defendant in the squad car. A few seconds later, the car's recorder picked up Smith saying to another officer, "I don't know if he dropped the drugs when he ran or he had them on him when I brought him over to the car." Smith admitted making the statement. Defendant cross-examined Smith extensively about the statement, claiming that it showed that Smith did not know whether defendant had ever possessed the drugs. Defendant also extensively cross-examined Smith about other matters.

¶ 8 On the final day of trial, the prosecutor told the court that he had been informed that the transcripts from the suppression hearing were being prepared. Defendant moved for a mistrial. The court expressed doubt that the transcripts were being prepared, because the court reporter responsible for them was not at the courthouse.

¶ 9 The jury found defendant guilty on both counts. Defendant appealed, and this court affirmed. *People v. Brooks*, No. 2-09-0069 (2010) (unpublished order under Supreme Court Rule 23).

¶ 10 Defendant filed a postconviction petition in which he alleged, *inter alia*, that withholding the transcripts denied him the right to a fair trial and interfered with his right to confront the

witnesses against him. Defendant also contended that his counsel on direct appeal was ineffective for not raising this argument.

¶ 11 The trial court advanced the petition to the second stage and appointed counsel, who filed an amended petition. The State moved to dismiss the petition, arguing that defendant had agreed to proceed without the transcripts. The trial court dismissed the petition in part, ruling that the claim about the transcripts was “subject to waiver” because defendant did not raise it on direct appeal. The court advanced one claim, that defendant was not allowed to present evidence that his arrest occurred in a high-crime area, to the third stage. Following an evidentiary hearing, the court denied that claim. Defendant timely appeals.

¶ 12 Defendant contends that the trial court erred by ruling that his claim regarding the transcripts was forfeited because defendant specifically alleged that appellate counsel was ineffective for not raising that claim. The State responds that, while the court’s ruling on forfeiture was incorrect, the court nevertheless properly dismissed the claim because it lacked merit.

¶ 13 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)) provides a mechanism for a criminal defendant to assert that his or her conviction was the result of a substantial denial of rights under the United States Constitution or Illinois Constitution. *People v. Coleman*, 183 Ill. 2d 366, 379-80 (1998). The adjudication of a postconviction petition follows a three-stage process. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). The dismissal of a postconviction petition is warranted at the second stage where the defendant’s claims, liberally construed in light of the trial record, do not show a substantial constitutional violation. *People v. Hall*, 217 Ill. 2d 324, 334 (2005). At this stage, all factual allegations that are not positively rebutted by the record are accepted as true. *People v. Young*, 355 Ill. App. 3d 317, 321 (2005).

We review *de novo* the trial court's dismissal of a postconviction petition at the second stage. *People v. Turner*, 2012 IL App (2d) 100819, ¶ 21.

¶ 14 Any claim that could have been raised on direct appeal is forfeited. *People v. Whitehead*, 169 Ill. 2d 355, 371 (1996). However, the rule is relaxed where, as here, the petition alleges that the forfeiture resulted from the incompetency of appellate counsel. *Id.*

¶ 15 We agree with the State that the underlying claim lacks merit. Although the trial court did not dismiss the claim for this reason, we may affirm the dismissal of a postconviction petition on any valid basis that appears in the record. *People v. Youngblood*, 389 Ill. App. 3d 209, 213 (2009).

¶ 16 As the State points out, defendant agreed to proceed without the transcripts. See *People v. Carter*, 208 Ill. 2d 309, 319 (2003) (“an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error”). In his reply brief, defendant argues that he merely acquiesced in the trial court's suggestion that he proceed without the transcripts. However, from our reading of the record, it was defendant who first suggested forgoing the transcripts when he informed the court that he did not want to delay the trial to wait for them. However, even if defendant merely acquiesced in the court's suggestion, his acquiescence is no less binding. Nothing in the record shows that the court tried to intimidate defendant into forgoing the transcripts.

¶ 17 Defendant's primary concern was that the State not have unequal access to the transcripts. The trial court repeatedly assured defendant that “both sides'll be equal,” and the record shows that that was in fact the case: the State never had access to the transcripts, either. While the prosecutor might have been wrong when he stated on the last day of trial that the

transcripts were possibly being prepared, the trial court immediately corrected him and nothing in the record suggests that the State obtained any advantage by this misrepresentation.

¶ 18 Defendant asserts, again for the first time in his reply brief, that he decided not to testify because he feared that the State would use the transcripts to cross-examine him. However, in light of the trial court's repeated assurances that the State would not have unilateral access to the transcripts, this claim must be rejected.

¶ 19 Finally, in his reply brief, defendant argues that he was denied his constitutional right to confront witnesses. We disagree. A defendant does not have absolute rights under the confrontation clause; rather, a defendant has the right to effective cross-examination, but not to a cross-examination that is effective in whatever way, and to whatever extent, that the defense desires. *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000). The record shows that the trial court gave defendant great latitude to cross-examine Smith and that he did so extensively. Moreover, despite apparently having access to the transcripts in preparing this appeal, defendant points to nothing in the transcripts that would have been helpful in his cross-examination of Smith.

¶ 20 Because defendant's claim of a constitutional violation based on the lack of transcripts is without merit, and because defendant does not argue that his petition contained any other viable claim, the trial court properly denied relief.

¶ 21 We affirm the judgment of the circuit court of Stephenson County.

¶ 22 Affirmed.