

NOTICE

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2014 IL App (4th) 121061-U

NO. 4-12-1061

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 18, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Morgan County
RONALD RICHARDSON,	)	No. 09CF19
Defendant-Appellant.	)	
	)	Honorable
	)	Richard T. Mitchell,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Pope and Steigmann concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly dismissed defendant's *pro se* petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2012)) as frivolous and patently without merit; defendant's claim he was unfit to waive counsel and represent himself at trial is unsupported by other evidence and is rebutted by the record.
- ¶ 2 In August 2012, defendant, Ronald Richardson, filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)). In his petition, defendant alleged, in part, the trial court erred by failing to inquire into the specifics of defendant's use of psychotropic medication before allowing defendant to represent himself at trial. The court found defendant's petition frivolous and patently without merit and summarily dismissed it. Defendant appeals, arguing the dismissal was improper because he raised the gist of a claim he was unfit when he waived counsel and represented himself during his murder trial.

We affirm.

¶ 3

## I. BACKGROUND

¶ 4 In February 2009, defendant was charged with three counts of first degree murder, related to the stabbing death of Shawnskie Patterson (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)). Counsel was appointed to represent defendant.

¶ 5 In July 2009, pursuant to defense counsel's motion, the trial court appointed Terry Killian, M.D., to ascertain whether, due to mental disease or defect, defendant was unable to appreciate the criminality of his alleged conduct. In August 2009, Dr. Killian issued his report. According to Dr. Killian, he was asked not only to determine whether defendant could appreciate the criminality of his alleged conduct, but also to determine the presence of any mental illness. Dr. Killian met with defendant for 90 minutes and reviewed information related to the case, including police reports, psychiatric records, and video recordings of the police interrogations of defendant. After the interview, Dr. Killian contacted defense counsel and told him defendant did not have "any substantial mental illness which was currently interfering with his fitness or which would have rendered him incapable of appreciating the criminality of his alleged conduct."

¶ 6 Dr. Killian further noted in his report defendant's psychiatric history. Defendant reported being depressed, estimating he was depressed 70% of the time when he was clean and almost 100% of the time when he was using drugs. Defendant stated he had seen psychiatrists a couple of times while imprisoned. Defendant had not been hospitalized for emotional problems. Defendant reported taking several antidepressant medications, including Prozac and Paxil. These drugs, according to defendant, "relaxed him a lot and \*\*\* decreased his depression a little." Dr. Killian examined Department of Corrections psychiatric records, which "were very

slim." A psychiatric evaluation from August 2007 indicated he had no psychiatric diagnosis or history until June 2007, when, as an inmate, he sought treatment for stress. He was treated with Vistaril and Paxil. Mental status exams through August 2008 "were generally good." No significant problems with mood or stress were indicated, and no evidence of a thought disorder existed. Defendant was diagnosed with Anxiety Disorder not otherwise specified (NOS) or Mood Disorder NOS, with alcohol and cocaine dependence. In February 2008, while imprisoned, defendant claimed his "depression was getting bad." Defendant was placed in segregation. Within a day, defendant reported feeling better. Mental-status-examination notes indicated defendant maintained good eye contact and spoke appropriately. Defendant was alert, oriented, quiet, and cooperative.

¶ 7 Regarding his recent psychiatric history, defendant reported he was on Prozac and Vistaril at unknown doses at the time of his interview. Defendant reported his mood was "up and down recently." He also reported "having a lot of anxiety" and having suicidal thoughts "a lot" when he was not on medication. Defendant denied "having significant social anxiety." Dr. Killian found defendant to be "a very gregarious person who does not have social anxiety." Defendant denied having hallucinations.

¶ 8 Dr. Killian opined defendant "was not suffering from \*\*\* a psychiatric illness which would have rendered him incapable of appreciating the criminality of his alleged conduct." Dr. Killian found "no evidence from the police reports or police [digital video disc] of [defendant's] interview of him being mentally ill." Dr. Killian noted defendant denied "having any significant psychiatric symptoms at that time." Dr. Killian further concluded, despite not being asked for a fitness determination, defendant was "clearly fit to stand trial."

¶ 9 In March 2010, defendant filed a *pro se* motion to discharge his counsel and represent himself at trial. The trial court questioned defendant. Defendant answered the questions. He reported he was 35 years old and had a general equivalency diploma. Defendant reported being in prison five times and having a familiarity with the criminal justice system. The court admonished defendant of the charges he faced and the potential penalties. Defendant stated he understood. The court informed defendant of his right to counsel. Defendant acknowledged he understood. The court told defendant he would be expected to follow the same rules of procedure as counsel would. Defendant stated, "I understand, sir." The court told defendant his counsel had practiced law for over 20 years and was experienced. The court told defendant defense counsel "works very hard and does a good job, very good job of representing his clients." Defendant acknowledged defense counsel was "good," but he wanted to proceed on his own. The court told defendant to "think long and hard" before proceeding on his own and gave him the weekend to think it over. When asked if he had anything to add, defendant stated his counsel was "absolutely fantastic in this case." Defendant wanted, however, "to confront [his] accusers or so on." Defendant believed his case was "unique" and special to him. He did not want to waste the State's money.

¶ 10 Defendant stood by his motion to discharge counsel and proceeded by representing himself. Jury selection began on March 9, 2010. Defendant elected not to question the jurors, but he chose to strike seven potential jurors.

¶ 11 At trial, the State's evidence showed the following: Patterson's body was found in a walkway of the apartment building next to defendant's apartment building. Witnesses saw defendant acting strangely in the area in the early morning hours of February 14, 2009, and

defendant told the witnesses he had seen someone "sleeping" between the apartment buildings. During a search of the apartment defendant shared with his wife, Valerie J. Dulaney, police found boots and overalls, which had Patterson's blood on them. Dulaney informed the police their large knife was missing. Later, the knife, with Patterson's blood on it, was found on the roof of a neighboring apartment building. During a police interview in which Dulaney was present, defendant admitted stabbing Patterson with their knife, but he claimed he acted in self-defense. During another interview and also during two telephone calls, defendant admitted stabbing Patterson while he was high on drugs.

¶ 12 In presenting its case, the State elicited the testimony of 19 witnesses. Defendant cross-examined each one. In a number of his cross-examinations, defendant made sure the jury knew his life "was on the line." Defendant also attempted to point the blame to someone named "P" or "Master P" by asking a number of witnesses if they knew someone named "P" or "Master P." Defendant asked the trial court for a photograph and background report on Jevon Walton, to identify him as the murderer. The trial court denied the request, but it stated defendant could ask if the officer knew Walton and whether Walton went by the name "P." Defendant also tried to show Patterson was an inexperienced drug dealer. In his cross-examination of Patterson's cousin, Selena Jones, defendant asked whether she had been asked if anyone looked for Patterson because he started selling drugs. She denied anyone could have been, because she would have known as Patterson told her everything. Defendant highlighted the term "everything," and, through his questioning, showed she did not know he was selling drugs. In his cross-examination of a forensic pathologist, defendant attempted to show the attacker was left-handed. Defendant also asked the forensic pathologist if blood could have been transferred from his boots

to his overalls when he removed his boots.

¶ 13 During closing argument, defendant stated he was focused on getting high. Defendant stated he walked up to the victim and got blood on his shoes, and the blood transferred to his jeans when he kicked off his boots. Defendant reiterated his drug addiction and denied killing Patterson. Defendant denied he would sacrifice over 25 years of his life to kill someone over \$15. Defendant focused on testimony showing multiple footprints in the mud near the victim.

¶ 14 The jury found defendant guilty of first degree murder. In May 2010, the trial court sentenced him to 40 years' imprisonment. Defendant pursued a direct appeal, arguing the jury should have been instructed on the lesser offense of second degree murder. This court affirmed his conviction. *People v. Richardson*, 2011 IL App (4th) 100358, ¶ 1, 961 N.E.2d 923.

¶ 15 In August 2012, defendant filed his *pro se* postconviction petition. Defendant alleged he was denied due process as he was not provided a fitness hearing despite being treated for major depression and bipolar disorder and taking psychotropic medication. Attached to his petition are an affidavit by defendant and a copy of the report by Dr. Killian. The affidavit is signed by defendant, but not notarized. In his affidavit, defendant stated he had been on medication for bipolar and major depressions since 2006, when he was incarcerated at Vandalia Correctional Center. Defendant averred: "The Morgan County Jail allowed my wife to bring me my medication and diagnosed me with the same mental [disease]—medicated with Prozac, [P]axil and [Vistaril]." Defendant concluded, during his trial, he was not "able to understand what was taking place because the medication [made him] sleepy."

¶ 16 In November 2012, the trial court found the petition frivolous and patently

without merit and dismissed the petition.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Under the Act, a three-stage process provides defendants the opportunity to seek postconviction review of claims their convictions led to a substantial denial of constitutional rights. *People v. Dopson*, 2011 IL App (4th) 100014, ¶ 17, 958 N.E.2d 367. In the first stage of this process, a trial court considers whether a petition is frivolous or patently without merit. *People v. Andrews*, 403 Ill. App. 3d 654, 658, 936 N.E.2d 648, 652 (2010). To accomplish this task, the court examines the petition and determines "whether the petition alleges a constitutional deprivation that is unrebutted by the record." *People v. Couch*, 2012 IL App (4th) 100234, ¶ 11, 970 N.E.2d 1270. To survive dismissal at this stage, the petitioner needs only to "plead sufficient facts to assert an arguably constitutional claim." *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). A *pro se* petitioner need not provide a complete and detailed recitation of facts but must provide some facts that are capable of corroboration and are objective in nature or an explanation of why such facts are absent. *People v. Delton*, 227 Ill. 2d 247, 254-55, 882 N.E.2d 516, 520 (2008). A petition is frivolous and patently without merit if it has no arguable basis in either fact or law. *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). A petition deemed frivolous and patently without merit must be dismissed. 725 ILCS 5/122-2.1(a)(2) (West 2012).

¶ 20 A petition deemed not frivolous or patently without merit advances to the second stage, where the trial court appoints counsel, who may amend the *pro se* petition. *Andrews*, 403 Ill. App. 3d at 658, 936 N.E.2d at 653. At this stage, the State acts by either answering the

petition or moving to dismiss it. 725 ILCS 5/122-5 (West 2012). A petition advances to the third stage if the State answers the petition or the court denies the motion to dismiss. At that time, the defendant may submit additional evidence. *Andrews*, 403 Ill. App. 3d at 658-59, 936 N.E.2d at 653; 725 ILCS 5/122-5 (West 2012).

¶ 21 This case is an appeal from a first-stage dismissal of a postconviction petition. We review the appeal *de novo*. *Couch*, 2012 IL App (4th) 100234, ¶ 13, 970 N.E.2d 1270.

¶ 22 Defendant asserts his case should be remanded for second-stage proceedings because his *pro se* petition raised the gist of a claim he was unfit when he waived counsel and represented himself at his murder trial. Defendant argues his claim is not fanciful or meritless because his affidavit shows he had been prescribed medication for bipolar disease and depression since 2006, and he was taking Prozac, Paxil, and Vistaril during his trial. Defendant contends his affidavit shows his medication made him sleepy and unable to understand what was happening during trial. Defendant emphasizes the report by Dr. Killian supports his claim.

¶ 23 A court, before accepting a waiver of counsel, must determine the defendant is competent to stand trial and the waiver of counsel was knowingly and voluntarily made. *People v. Harris*, 2013 IL App (1st) 111351, ¶ 79, 998 N.E.2d 618 (citing *Godinez v. Moran*, 509 U.S. 389, 400 (1993)). A waiver is knowing and voluntary when the defendant has "full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.*

¶ 24 A defendant incompetent to stand trial may not be convicted or sentenced. *People v. Williams*, 364 Ill. App. 3d 1017, 1023, 848 N.E.2d 254, 259 (2006). In Illinois, "[a] defendant is presumed to be fit to stand trial or to plead, and be sentenced." 725 ILCS 5/104-10 (West 2010). If, however, the trial court has a *bona fide* doubt of the defendant's fitness to stand

trial, that court must order a hearing "so that the question of fitness may be resolved before the matter proceeds any further." *Williams*, 364 Ill. App. 3d at 1023, 848 N.E.2d at 259. A defendant is fit if he is able to understand the nature and purpose of the proceedings against him or assist in his defense. *Id.*; 725 ILCS 5/104-10 (West 2010). Factors relevant to the determination of whether a *bona fide* doubt as to fitness exists include "(1) the rationality of the defendant's behavior and demeanor at trial; (2) counsel's statements concerning the defendant's competence; and (3) any prior medical opinions on the issue of the defendant's fitness." *People v. Hanson*, 212 Ill. 2d 212, 223, 817 N.E.2d 472, 478 (2004). If a defendant who is fit to stand trial asks to waive counsel, a trial court must grant the request. *Harris*, 2013 IL App (1st) 111351, ¶ 81, 998 N.E.2d 618. We must reverse the first-stage dismissal of defendant's petition if we find it arguable the trial court would have found a *bona fide* doubt as to defendant's fitness to stand trial. See *Hodges*, 234 Ill. 2d at 11-12, 912 N.E.2d at 1209 (stating the standard for a first-stage dismissal of a postconviction petition); see also *Harris*, 2013 IL App (1st) 111351, ¶ 82, 998 N.E.2d 618 (stating the second-stage dismissal must be reversed if the facts in the postconviction petition made "a substantial showing that the trial court would have ordered a fitness hearing if it had been apprised of the evidence now offered").

¶ 25 Defendant's petition does not state the gist of a constitutional claim. The evidence in the record fails to show it is arguable the trial court would have found a *bona fide* doubt as to his fitness to stand trial. The evidence refutes defendant's claim. Dr. Killian, who interviewed defendant and was apprised of defendant's medication history, found defendant alert, oriented, and cooperative. Dr. Killian also reviewed defendant's documentary history and the files relevant to the case, including police interviews and telephone conversations, and found

defendant did not suffer the type or severity of a psychiatric illness that would have " rendered him incapable of appreciating the criminality of his alleged conduct" and defendant was "clearly fit to stand trial." The trial court, before granting defendant's request to waive counsel, apprised defendant of the risks he was taking and repeatedly questioned defendant. Defendant's responses were direct and responsive. During trial, defendant cross-examined witnesses and participated in *voir dire*, opening statements, and closing argument. Nothing in the words, context, or manner in which defendant spoke indicates defendant was sleepy or lacked an understanding of the proceedings.

¶ 26 We find defendant's argument Dr. Killian's August 2009 conclusions do not necessarily mean he was fit in March 2010 unconvincing. Defendant's affidavit, which is not notarized, is the only evidence on the issue. This evidence is insufficient to overcome the evidence in the record, particularly in light of the fact Dr. Killian was aware defendant had been taking Prozac and Vistaril when he formed his opinions. No response or statement by defendant indicates defendant was incoherent or lacked an understanding of what was occurring at trial. Defendant had the responsibility of providing facts that are capable of corroboration and are objective in nature or an explanation of why such facts are absent (*Delton*, 227 Ill. 2d at 254-55, 882 N.E.2d at 520), which he did not do. He provided no objective evidence, such as a report from another psychiatrist, that his medication had such an effect on him.

¶ 27 III. CONCLUSION

¶ 28 We affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 29 Affirmed.