2015 IL App (2d) 130908-U
No. 2-13-0908
Order filed June 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-2113
RODNEY O. BRAMLETT,	)	Honorable Joseph G. McGraw,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly summarily dismissed defendant's postconviction petition, which alleged that trial and appellate counsel were ineffective: the evidentiary issues that appellate counsel allegedly should have raised would not have produced a reversal, and trial counsel was not ineffective for refusing to present evidence that would have been merely tangential to the key issue.

¶ 2 Defendant, Rodney O. Bramlett, appeals from the summary dismissal of his postconviction petition. He contends that it stated the gist of claims that (1) appellate counsel was ineffective for failing to argue that the trial court erred in barring defendant from presenting evidence that a victim's mother had a motive to encourage the victims to fabricate the sexual

allegations against him; (2) appellate counsel was ineffective for failing to argue that the trial court erred in not allowing the defense to ask one of the victims whether he had been coached; and (3) trial counsel was ineffective for not presenting available evidence that that victim's mother attempted to blackmail defendant. We affirm.

¶ 3 Defendant was charged with two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)) and one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008)). The indictment alleged that defendant put his mouth on the penises of J.C. and R.B. and placed his hand on R.B.'s penis.

¶ 4 Before trial, the State moved *in limine* to introduce DVDs of interviews with J.C. and R.B. At the hearing, Jamie C. testified that, on May 15, 2008, she noticed her son, J.C., attempting to place his penis in his mouth. When questioned, he said that he was trying to do what defendant had done to him the night before when J.C. and R.B. were playing video games at defendant's house. R.B. was defendant's six-year-old son. Jamie called her friend, Rachel. J.C. told Rachel, over the phone, that the incident had really happened, but that nothing else had occurred.

¶ 5 Marisol Tischman, the lead forensic interviewer at the Carrie Lynn Center, testified to her interviews with J.C. and R.B. After reviewing the DVDs, the trial court granted the motion, finding that the time, content, and circumstances of the interviews provided sufficient safeguards of reliability. The court further found that the victims' statements were testimonial, ruling that the interviews would not be admitted if the victims did not testify.

¶ 6 The State filed several other motions *in limine*. One such motion sought to bar defendant from eliciting evidence that Jamie had made sexual advances toward defendant and his wife,

Rebecca. The State argued that the case was about what happened to the children and not about the parents.

¶ 7 The defense argued that Jamie had made sexual advances toward defendant at the latter's home while Rebecca was at work. Defendant rebuffed them, called Rebecca, and told Jamie to leave. This occurred when Jamie picked up J.C. from the May 3, 2008, sleepover that led to the allegations against defendant. The defense also asserted that, the week before the hearing, R.B. had said that Jamie told him to make up the allegations because Jamie did not like defendant. The court granted the State's motion, ruling that the cause involved the children's veracity, not any tension between defendant and Jamie.

¶ 8 At trial, J.C. testified that he was six years old. While he was at defendant's house, defendant entered the room, said something about a "contest," then put his mouth on J.C.'s "front part." This occurred while J.C. was sitting next to his friend, R.B., who was defendant's son.

¶ 9 Defense counsel conferred with defendant and noticed J.C. signaling. Defense counsel asked J.C. if he needed anything, and he said, "I mean that [defendant] is going away in jail."

¶ 10 At a sidebar, the court and the attorneys discussed how to handle the situation. Defense counsel asked to be allowed to ask J.C. whether he had been coached in any way. The court denied the request, but it admonished the jurors that they were not to concern themselves with possible punishment.

¶ 11 Jamie testified that on May 15, 2008, she saw J.C. trying to put his "wiener" in his mouth. She "freaked out" and asked him what he was doing. He replied that he was doing what defendant had done to him when he spent the night at defendant's house. Jamie became hysterical and called a friend to ask what to do. She put her friend on the speakerphone so that

she could ask J.C. whether anything else had happened. J.C. said that the incident had really occurred but that nothing else had happened.

¶ 12 When called as a witness, R.B. initially refused to answer questions. After a brief recess, he was put back on the stand with the State allowed to ask leading questions. R.B. responded by nodding or shaking his head or by writing his answers. He denied that anyone had ever touched his "wiener" and wrote that "Jamie told me to say yes." He acknowledged telling the prosecutor and the "lady" from the Carrie Lynn Center that defendant had touched his "wiener" with his mouth and his hands. He explained that he said this because Jamie told him that if he did not she would take his dad away from him.

¶ 13 Marisol Tischman testified that she interviewed the victims at the Carrie Lynn Center. The DVDs of the interviews were played for the jury.

¶ 14 In his testimony, defendant denied ever entering the boys' bedroom on May 3, 2008. He acknowledged that he sometimes checked his son for chiggers, which required moving his penis. In rebuttal, Jamie testified that she never told R.B. or J.C. to say that defendant had touched their penises.

¶ 15 The jury found defendant guilty of all counts. The trial court sentenced him to natural life imprisonment for the counts of predatory criminal sexual assault and seven years for the aggravated-criminal-sexual-abuse count, with the sentences to run concurrently.

¶ 16 On direct appeal, defendant argued that the trial court erred by preemptively telling the jury that transcripts would not be available during its deliberations, then compounded the error by allowing DVDs of the interviews to go to the jury room during deliberations. Other than ordering that the sentences be served consecutively, this court affirmed. *People v. Bramlett*, No. 2-09-0764 (2011) (unpublished order under Supreme Court Rule 23).

¶ 17 Defendant then filed a postconviction petition. In it, he contended that appellate counsel was ineffective for not arguing that the trial court erred by granting the State's motion *in limine* to prevent defendant from asking Jamie about her sexual advances toward defendant, and by preventing him from asking J.C. whether J.C. had been coached. Defendant also contended that Jamie had attempted to blackmail Rebecca Bramlett. In supporting affidavits, Rebecca and defendant's mother, Jill Leigh, averred that they had told trial counsel about the blackmail attempt but that counsel declined to pursue it, because it "would do more harm than good" and the trial court would not allow it.

¶ 18 The trial court dismissed the petition, finding it frivolous and patently without merit. Defendant timely appeals.

¶ 19 Defendant contends that the court erred by summarily dismissing his petition. He contends that he stated the gist of constitutional claims that trial and appellate counsel were ineffective.

¶ 20 Defendant's single argument actually raises three distinct issues, and we consider each in turn. Defendant first contends that his petition stated the gist of a claim that appellate counsel was ineffective for not arguing that the trial court erred by preventing defendant from questioning Jamie about her sexual advances toward defendant, as they provided a motive for her to encourage the victims to make up the allegations.

¶ 21 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2012)) establishes a three-stage process for adjudicating a petition. *People v. Carballido*, 2011 IL App (2d) 090340, ¶ 37. At the first stage, the trial court must review the petition within 90 days of its filing and decide whether it is either frivolous or patently without merit. *Id.* If the court decides that it is either, it must dismiss the petition in a written order. *Id.*

¶ 22 A *pro se* postconviction petition is frivolous or patently without merit when it has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). A petition has no basis in law when it is based on an indisputably meritless legal theory. *Id.* That means that the legal theory is completely contradicted by the record. *Id.* A petition has no factual basis when it is based on factual allegations that are either fantastic or delusional. *Id.* at 17. We review *de novo* a trial court's first-stage dismissal. *Id.* at 9.

¶ 23 A claim of ineffective assistance of counsel is assessed under the standards articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Shipp*, 2015 IL App (2d) 130587, ¶ 24. "Under the Act, the trial court may not summarily dismiss a petition alleging ineffective assistance of counsel if: (1) counsel's performance arguably fell below an objective standard of reasonableness and (2) the defendant was arguably prejudiced as a result." *Id.* The failure to establish either prong of *Strickland* is fatal to the claim. *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010).

¶ 24 The *Strickland* test also applies to claims of ineffective assistance of appellate counsel. *People v. Rogers*, 197 Ill. 2d 216, 223 (2001). A defendant who claims that appellate counsel was ineffective for failing to raise an issue on appeal must allege facts demonstrating that such failure was objectively unreasonable and that counsel's decision prejudiced the defendant. *Id.* Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetent to refrain from raising issues that, in counsel's judgment, are without merit, unless counsel's assessment is patently wrong. *People v. Simms*, 192 Ill. 2d 348, 362 (2000). Thus, the prejudice inquiry requires the reviewing court to examine the merits of the underlying issue, because a defendant suffers no prejudice from appellate counsel's failure to raise a

nonmeritorious claim. *Id.* Appellate counsel's choices about which issues to pursue are entitled to substantial deference. *People v. Rogers*, 197 Ill. 2d at 223.

¶ 25 Here, a challenge to the trial court's decision to bar defendant from testifying about Jamie's sexual advances would not have been meritorious. R.B. recanted at trial his allegation of abuse, testifying that Jamie told him to make it up. In rebuttal, Jamie denied telling the victims to fabricate abuse allegations. Thus, the critical issue of whether Jamie encouraged the victims to falsely accuse defendant of abuse was squarely before the jury. Moreover, defendant's theory that his rejection of her sexual advances motivated her to encourage the victims to make up the allegations was speculative. In his informal offer of proof, defense counsel conceded that he had no direct evidence that Jamie acted as she allegedly did because defendant rejected her sexual advances. This highly speculative evidence hinting at a possible motive would not have added much to the impact of R.B.'s testimony that Jamie told him to make up the allegations, and it might even have diluted its impact by shifting the focus from R.B.'s recantation to Jamie. Given the speculative nature of the evidence and the fact that the ruling would have been reviewed under the highly deferential abuse-of-discretion standard (*People v. Becker*, 239 Ill. 2d 215, 234 (2010) (admission of evidence reviewed for abuse of discretion)), the issue would not have resulted in a reversal. Thus, defendant suffered no prejudice.

¶ 26 The only case defendant cites to support his contention that this particular evidence should have been admitted is inapposite. In *People v. Jackson*, 2012 IL App (1st) 100398, the defendant was charged with numerous sex offenses. At trial, the defendant theorized that the victim's mother was motivated to lie because she was angry with the defendant's brother (the victim's father). *Id.* ¶ 30. The trial court allowed the defendant to question the victim's mother but did not allow him to question the victim's grandmother, on the ground that her testimony

would have been hearsay. *Id.* ¶ 31. When the defendant challenged on appeal the latter ruling, the reviewing court, noting that the trial court had allowed the defendant to pursue his defense, held that the trial court correctly barred the grandmother's testimony on hearsay grounds. *Id.*

¶ 27 The *Jackson* court had no occasion to review directly the ruling permitting the defendant to question the victim's mother. The court merely noted that ruling in passing. Thus, *Jackson* cannot be read as authority that such testimony must be admitted in every case.

¶ 28 Defendant next contends that appellate counsel should have argued that the trial court erred by barring him from asking J.C. whether he had been coached. Again, this issue would not have been meritorious. Defendant does not explain how J.C.'s attempting to signal someone in the courtroom and referring to defendant going to jail entitled him to explore whether he had been "coached in his earlier testimony."

¶ 29 We briefly dispose of defendant's final contention, that trial counsel was ineffective for failing to present available evidence that Jamie had attempted to blackmail defendant's family. As the supporting affidavits make clear, defense counsel was aware of this evidence before trial and made a strategic decision not to use it. Generally, decisions about what witnesses to call and what evidence to present are matters of trial strategy that cannot support a claim of ineffective assistance. *People v. Enis*, 194 Ill. 2d 361, 378 (2000). Defendant does not convince us that counsel's strategy was so unsound that we should ignore the usual rule of substantial deference. Where trial counsel indicated that the introduction of this evidence "would do more harm than good" he reasonably could have concluded that, as the State points out, the accusations against the victim's mother would sound concocted and desperate. Indeed, as the trial court noted, this case turned on the children's veracity, not on issues between Jamie and defendant. See *People v.*

Patterson, 192 Ill. 2d 93, 119 (2000) (counsel cannot be ineffective for not offering irrelevant evidence).

¶ 30 The judgment of the circuit court of Winnebago County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2202(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 31 Affirmed.