

FIFTH DIVISION  
May 13, 2016

Nos. 1-14-0319 and 1-14-0330  
(Consolidated)

**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. 10 CR 3035
	)	
DAVID SEDDON,	)	Honorable
	)	Larry G. Axelrood,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Gordon and Burke concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* The trial court erred by summarily dismissing defendant's *pro se* postconviction petition at the first stage of proceedings where defendant's claim that his trial counsel coerced him into waiving his right to a jury trial was neither frivolous nor patently without merit as it contained the gist of a constitutional claim.
- ¶ 2 Following a bench trial, defendant David Seddon was found guilty of first degree murder and sentenced to 25 years' imprisonment. His conviction was affirmed on direct appeal. *People v. Seddon*, 2012 IL App (1st) 110091-U. Defendant filed a postconviction petition alleging

ineffective assistance of trial counsel. The trial court summarily dismissed the petition and subsequently denied defendant's motions to reconsider. Defendant filed two notices of appeal from the court's rulings, which we have consolidated. On appeal, defendant contends the trial court erred by summarily dismissing his *pro se* postconviction petition alleging ineffective assistance of trial counsel where counsel coerced defendant into waiving his right to a trial by jury. We reverse.

¶ 3 Immediately preceding trial on November 16, 2010, defendant waived his right to a jury by signing a jury waiver and confirming in open court that he discussed the matter with his attorney and wanted to proceed to a bench trial. He denied being threatened, promised, or forced to give up his right to a jury. The trial court accepted his waiver and the cause was adjudicated by the trial court.

¶ 4 The court found defendant guilty of first degree murder for the January 15, 2010, stabbing death of the victim, Alan Lauritzen. A brief synopsis of the evidence at trial is as follows. Defendant and the victim were truck drivers. On January 15, 2010, defendant noticed that the victim's truck was following too closely behind his own. The two argued over CB radio and eventually pulled their trucks over to the side of the road and began fighting. During the fight, defendant used his knife to stab the unarmed victim three times, which caused the victim's death shortly thereafter.

¶ 5 On direct appeal, defendant argued the State failed to prove that he was not acting in self-defense, that the trial court misapplied the law of self-defense, or in the alternative, that his conviction should be reduced to second degree murder because he unreasonably believed his life was in danger. This court affirmed defendant's conviction and sentence. *Seddon*, 2012 IL App (1st) 110091-U.

¶ 6 Defendant subsequently sought relief *pro se* under the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2012)), raising three claims including, as relevant to this appeal, that his trial counsel was ineffective for placing counsel's own pecuniary interests before defendant's best interests by coercing him to waive his right to a jury trial against his will. Defendant asserted that, unbeknownst to him at the time of trial, counsel had informed defendant's brother, James Seddon, that he would not represent defendant in a jury trial because his legal fees were outstanding. On September 19, 2013, the trial court summarily dismissed defendant's petition without an evidentiary hearing, finding his petition failed to state a claim and was patently without merit.

¶ 7 Defendant filed a motion to reconsider the trial court's dismissal of his postconviction petition, which was denied on November 1, 2013. The record also indicates defendant filed a motion to reconsider the denial of his motion to reconsider, which was also denied on December 19, 2013. A copy of the motion to reconsider the earlier motion to reconsider is not included in the record on appeal. Defendant filed a timely notice of appeal (No. 1-14-0330) from the order denying his second motion to reconsider. He filed a late notice of appeal (No. 1-14-0319), challenging the trial court's summary dismissal of his *pro se* postconviction petition. On February 21, 2014, this court granted leave to file the late notice of appeal and appointed appellate counsel to represent defendant. On defendant's motion, we consolidated the cases.

¶ 8 Defendant contends the trial court erred by summarily dismissing his *pro se* postconviction petition as frivolous or patently without merit. He argues his claim that he was denied effective assistance of trial counsel where counsel improperly coerced him into waiving his right to a jury trial because his brother failed to pay outstanding legal fees stated an arguable basis in both law and fact to survive the first stage of postconviction proceedings. He requests

that we reverse and remand the cause for further proceedings and the appointment of counsel.

Defendant does not challenge the court's summary dismissal of his other postconviction allegations.

¶ 9 The State responds that defendant's claim that his jury waiver was involuntary is positively rebutted by the record. It asserts the record shows the court admonished defendant regarding his right to a jury and defendant signed a jury waiver and stated in open court that he was not forced or threatened into waiving his right to a trial by jury. The State argues defendant's failure to express surprise from counsel's pre-trial statement that the matter would proceed without a jury indicated he expected a bench trial. It also points out that both defendant and his brother spoke at the sentencing hearing and neither mentioned any dissatisfaction or difficulty with trial counsel.

¶ 10 The trial court's summary dismissal of a defendant's postconviction petition is reviewed *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); *People v. Coleman*, 183 Ill. 2d 366, 389 (1998). For the reasons that follow, we reverse and remand.

¶ 11 A postconviction petition allows a criminal defendant to challenge his conviction on the basis that it substantially violated his rights under the federal or state constitutions. *People v. Morris*, 236 Ill. 2d 345, 354 (2010). There are three stages involved in the adjudication of a postconviction petition. *People v. English*, 2013 IL 112890, ¶ 23. At the first stage of the postconviction process, the trial court must independently determine whether the "petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2012); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The first stage focuses on the pleading alone, and the trial court is precluded from considering the petition on its merits. *People v. Smith*, 326 Ill. App. 3d 831, 839 (2001). Thus, all well-pleaded facts are to be taken as true unless positively rebutted by

the record. *Coleman*, 183 Ill. 2d at 385. If the court determines the petition is frivolous or patently without merit, the court must dismiss the petition in a written order. *Edwards*, 197 Ill. 2d at 244.

¶ 12 A petition is frivolous or patently without merit if it fails to state an arguable basis in either law or fact. *Hodges*, 234 Ill. 2d at 11-12. Such claims include those based on "indisputably meritless" legal theories or those whose factual contentions are "clearly baseless" or fanciful. *Id.* at 13, 16. An indisputably meritless legal theory is one which is "completely contradicted by the record." *Id.* at 16.

¶ 13 To survive dismissal at this stage, a *pro se* petition need only present the gist of a constitutional claim. *People v. Porter*, 122 Ill. 2d 64, 74 (1988). If the petition is not dismissed at this stage, it advances to the second stage. 725 ILCS 5/122-2.1(b) (West 2012). The purpose of the second stage is to determine whether defendant is entitled to an evidentiary hearing based upon the plain language in his petition. *Coleman*, 183 Ill. 2d at 381. The petition here was dismissed at the first stage.

¶ 14 Defendant argues, as he did in his postconviction petition, that his privately retained trial counsel's unreasonable conduct coerced him into waiving his right to a jury. Defendant asserts that counsel pressured him into selecting a bench trial because of counsel's financial self-interest, against the wishes and best interests of defendant. Defendant claims that, unbeknownst to him at the time he waived his right to a jury, his brother had fallen behind in paying legal fees and counsel informed his brother he would not represent defendant in a jury trial unless the outstanding fees were paid. Defendant also claims he consistently informed counsel that he wanted a jury trial and he would have proceeded by jury if not for counsel's forceful insistence

that he waive this right. Finally, he asserts that he did not discover the reason counsel pressed for a bench trial until his brother informed him of counsel's motivation for doing so.

¶ 15 Defendant attached to his postconviction petition an affidavit from his brother. In the affidavit, James Seddon avers that he obtained the services of defense counsel on behalf of defendant. Prior to trial, he "fell behind on payments for legal services" to counsel. Counsel subsequently informed him that "without [the] remaining balance due being paid," "[counsel] was unwilling to represent defendant \*\*\* in a jury trial \*\*\* and would therefore have to take a bench trial." Seddon also avers that defendant was in custody and unable to pay the outstanding balance himself and thus, "was persuaded by [defense counsel] against defendant['s] \*\*\* desire, that defendant \*\*\* should have to take a bench trial rather than a jury trial." Defendant also attached his own affidavit in which he avers that he adopts the statements and allegations in the postconviction petition.

¶ 16 Claims alleging ineffective assistance of counsel are judged against the standards set forth by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *Coleman*, 183 Ill. 2d at 397. Under *Strickland*, a defendant alleging ineffective assistance of counsel must establish that defense counsel rendered performance that fell below an objective standard of reasonableness, and that defendant was prejudiced because of this deficient performance. *Strickland*, 466 U.S. at 688, 694; *People v. Morgan*, 187 Ill. 2d 500, 529-30 (1999). Prejudice, in this context, means a reasonable probability that but for counsel's deficient performance, defendant would not have waived his right to a trial by jury. *Smith*, 326 Ill. App. 3d at 847 (citing *People v. Maxwell*, 148 Ill. 2d 116, 142 (1992)). The *Strickland* standard has been adapted for postconviction proceedings. *People v. Tate*, 2012 IL 112214, ¶ 19. At the first stage of the postconviction process, a petition alleging ineffective assistance of counsel may not be

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summarily dismissed if it *arguably* supports a claim of deficient performance and prejudice. *Id.*,

¶ 19. Defendants who retain private counsel are entitled to the same protection under the sixth amendment as defendants who are appointed counsel by the court. See *People v. Royse*, 99 Ill. 2d 163, 169-70 (1983).

¶ 17 The right to a trial by jury in criminal cases is "fundamental to the American scheme of justice" and is guaranteed by both the United States and Illinois Constitutions. *Duncan v.*

*Louisiana*, 391 U.S. 145, 149 (1968); U.S. Const. amends. VI, XVI; Ill. Const. 1970, art. 1, §§ 8,

13. Section 103-6 of the Code of Criminal Procedure provides that every person accused of a crime has a right to a trial by jury unless the accused understandingly waives such right in open court. 725 ILCS 5/103-6 (West 2012). To be valid, a defendant must make the waiver knowingly and voluntarily. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The determination of whether the right to a jury trial has been validly waived depends on the facts of each particular case. *People v. Frey*, 103 Ill. 2d 327, 332 (1984). Ultimately, the decision to waive a jury trial belongs to the defendant. *People v. Segoviano*, 189 Ill. 2d 228, 240 (2000).

¶ 18 Defendant's petition asserts that he communicated his preference for a jury trial to counsel several times, and that he would have proceeded as such if not for counsel's forceful insistence that he waive his right to a jury. Thus, his allegations of counsel's financial self-interest as the impetus for pressing for a bench trial, if true, allege the gist of a constitutional claim of ineffective assistance of counsel. See *Porter*, 122 Ill. 2d at 74 (to survive the first stage of the postconviction process, *pro se* petition need only allege the gist a constitutional claim).

¶ 19 We do not find defendant's claim is based upon fanciful factual allegations. Defendant was, in fact, tried by bench. The record establishes that the attorney who represented defendant at trial was not appointed by the court. The affidavit from defendant's brother attached to the

postconviction petition supports defendant's argument that counsel refused to represent defendant in a jury trial unless his legal fees were paid, and that his brother was unable to do so. Thus, there is a possibility that an out-of-court conversation took place between counsel and defendant's brother regarding unpaid legal fees which led counsel to coerce or mislead defendant into believing a trial by jury was not in his best interest.

¶ 20 The State does not dispute defendant's premise that trial counsel's performance would be objectively unreasonable if he coerced defendant into waiving his right to a jury trial on the basis that he would not represent defendant in front of a jury unless his legal fees were paid. Instead, it argues that the record rebuts defendant's assertion, asserting defendant's written and in-court jury waiver and his actions preceding trial establish that he voluntarily chose to participate in a bench trial. We disagree.

¶ 21 Although defendant's in-court and written waiver demonstrate that he waived his right to a trial by jury, they do not preclude the possibility that his waiver was free of coercion by counsel. Defendant arguably held the false belief at the time he waived his right to a jury trial that counsel's insistence on a bench trial was based upon defendant's best interests rather than counsel's own pecuniary interests. Thus, his in-court waiver does not rebut his assertion of ineffective assistance where he did not know the bench trial was in counsel's best interests rather than his own. Likewise, defendant's failure to speak up prior to the jury waiver does not contradict his claim, where he had no reason to question his counsel's motives for insisting on a bench trial.

¶ 22 While we take no position on the merits of defendant's claim or his ability to prove that he was denied effective assistance of counsel, we find that his petition is not positively rebutted by the record. Thus, it is neither frivolous nor patently without merit and should advance to the



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second stage of the postconviction process. *Hodges*, 234 Ill. 2d at 11; 725 ILCS 5/122-2.1(b).

The court erred in summarily dismissing defendant's postconviction petition.

¶ 23 For the foregoing reasons, the judgment of the circuit court of Cook County is reversed and the cause is remanded for further proceedings under the Post-Conviction Hearing Act.

¶ 24 Reversed and remanded.