

FIRST DIVISION
February 1, 2016

No. 1-14-0359

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 05 CR 8412
)	
WALTER CAMPBELL,)	Honorable
)	Thomas V. Gainer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the summary dismissal of defendant's postconviction petition where defense counsel's performance was not arguably deficient and no arguable claim of prejudice resulted from alleged ineffective assistance of counsel. Mittimus corrected.

¶ 2 Following a jury trial, defendant Walter Campbell was convicted of one count of first degree murder and two counts of attempted first degree murder.¹ The trial court sentenced

¹ Codefendant Victor Perry was acquitted of all charges following a simultaneous bench trial.

defendant to 50 years' imprisonment for the murder and two concurrent 28-year terms for attempted murder to run consecutively to the sentence for murder. This court affirmed that judgment on direct appeal (*People v. Campbell*, 2012 IL App (1st) 101249). Defendant subsequently filed a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)) alleging ineffective assistance of counsel, which the circuit court summarily dismissed. On appeal, defendant contends that the circuit court erred in dismissing his petition because it presented an arguable claim that trial counsel was ineffective for failing to investigate and call two witnesses who would have testified that defendant was not a gang member. Defendant further contends that his mittimus must be corrected to reflect 1,717 days of credit for presentence incarceration. We affirm the dismissal of defendant's petition and order the mittimus corrected.

¶ 3 The evidence at trial established that on March 4, 2005, in Chicago, defendant shot and killed Chadwick Jamison and shot at Christopher Roundtree and Robert Walton. The underlying facts are set forth in this court's opinion affirming defendant's convictions on direct appeal (*Campbell*, 2012 IL App (1st) 101249, ¶¶ 3-14), and we restate only what is pertinent to the current appeal.

¶ 4 During opening statements, the prosecutor stated that defendant was a member of the Gangster Disciples gang and killed Jamison, a member of the rival Black P. Stone gang, due to a dispute over gang territory. Defense counsel remarked that the State's witnesses included gang members willing to lie about members of rival gangs.

¶ 5 Roundtree, a Black P. Stone, testified that he consumed alcohol and marijuana with Jamison, Walton, and Charles Gill about 3 p.m. on March 4, 2005. Shortly before 10 p.m., they went to a gas station in Black P. Stone territory and encountered several Gangster Disciples,

including defendant and Victor Perry. Roundtree believed that defendant was a Gangster Disciple because he hung around members of that gang. Jamison asked defendant "what the fuck y'all doing up here," and defendant told him to leave before he got himself killed. More Black P. Stones arrived and defendant drove away, hitting Jamison's car on the way out. Jamison threw a bat at defendant's vehicle and then drove Roundtree, Walton, and Gill to the alley behind Roundtree's house. Perry's car appeared at the mouth of the alley and gunfire from the car broke Jamison's back window. Gill ran inside the house and Jamison, Roundtree, and Walton drove away. Soon afterwards, defendant and Perry began following them in defendant's vehicle and Jamison crashed his car. Defendant left his vehicle and ran within two feet of Jamison's car, shooting into the back window and driver's side window until his gun jammed. Roundtree, who was in the front passenger seat, could see defendant's face clearly. Walton fled from the back seat and defendant shot at him after unjamming the gun, then shot again into the car. Roundtree was grazed by a bullet and felt Jamison's body drop. Defendant and Perry drove away and officers arrived about one minute later. Roundtree spoke with a detective and went to the police station. On March 5, 2005, he identified defendant in a photo array and physical lineup.

¶ 6 On cross-examination, Roundtree testified that the Black P. Stones and Gangster Disciples were at war when the shooting occurred, and that he would hurt a rival gang member who did something to a friend but would not lie to get a rival in trouble. On March 5, 2005, Roundtree provided police with a written statement. It was stipulated that the statement did not mention that defendant had threatened to kill Jamison at the gas station.

¶ 7 Walton's testimony essentially corroborated Roundtree's account. On March 4, 2005, Walton consumed alcohol and marijuana with fellow Black P. Stones Jamison and Roundtree. About 9 p.m., Jamison drove them to pick up Gill and then to the gas station, where they saw

defendant and Perry, whom Walton knew to be Gangster Disciples. Jamison told defendant and Perry they should not be at the gas station, and they left when more Black P. Stones arrived. As defendant drove away, he hit Jamison's car and threatened to return and "kill all of you hook-ass niggers." Jamison drove Walton, Roundtree, and Gill to the alley behind Roundtree's house, where gunfire from Perry's car broke Jamison's back window. Gill went into the house and Jamison drove away with Walton and Roundtree. Defendant's vehicle chased them, Jamison crashed his car, and defendant ran toward Jamison's car while firing a gun. Walton ran away when the gun jammed. When the gunfire stopped, he turned and saw defendant enter his car on the passenger side before the car pulled away. Walton encountered police officers and went to the police station with Roundtree, but they did not have time alone together. He told detectives that defendant was the shooter and identified him in a set of photographs. On March 6, 2005, he identified defendant in a physical lineup.

¶ 8 On cross-examination, Walton stated that on March 6, 2005, he spoke with an assistant State's Attorney and mentioned that defendant had threatened to kill Jamison. The attorney prepared and read a statement that omitted this information, which Walton signed. Walton stated that his gang's policy was to harm rival gang members but not lie to police about them. He acknowledged seeing Jamison throw a baseball bat at defendant's car as he drove away from the gas station.

¶ 9 In closing arguments, the State contended that defendant belonged to the Gangster Disciples and sought to kill Black P. Stones who had disrespected him. Defense counsel argued that Roundtree and Walton lacked credibility for claiming their gang would not let them lie about rival gang members. In rebuttal argument, the State urged that Walton and Roundtree would not jeopardize themselves by falsely accusing a member of a rival gang.

¶ 10 The jury found defendant guilty of one count of first degree murder and two counts of attempted first degree murder. This court affirmed defendant's convictions on direct appeal (*Campbell*, 2012 IL App (1st) 101249).

¶ 11 Through counsel, defendant filed a postconviction petition on September 25, 2013. He alleged, *inter alia*, that trial counsel was ineffective for "not adequately investigat[ing] his case to determine that [defendant] was not a member of a street gang." An affidavit from Curtis Williams and a notarized letter from Lionel Carter, both from April 2013, were attached to defendant's petition. In relevant part, Williams' affidavit stated:

"Walter Campbell is not a gang [member]. I've known him for over 16 years. He was never that type of person. *** Gang life was not for him. He was not a confrontational kind of person. When I joined the Black P. Stones he was mad at me [and] we didn't talk for a while. He's the reason[] I stop the gang banging and got my life together."

In relevant part, Carter's letter stated:

"I'm a former Gangsta Disciple (GD). I've known Walter Campbell for over 15 yrs [*sic*]. *** Walter Campbell is not in a gang. The G.D.'s beat him up, cause [*sic*] they know he was trying to get me to stop gang-banging. They did not like the fact that Walter got in their business."

¶ 12 On December 18, 2013, the circuit court summarily dismissed defendant's petition for having "no arguable basis in law or fact." In its order, the court stated the affidavit and letter "in no way support the claim that trial counsel failed to adequately investigate petitioner's gang involvement" and that "[n]either attachment says anything about trial counsel's investigation, and thus the claim that trial counsel was ineffective for failing to investigate stands unsupported."

The court also noted that Carter's letter corroborated trial testimony from Roundtree, who believed that defendant was a member of the Gangster Disciples because defendant associated with members of that gang.

¶ 13 On appeal, defendant first contends that the circuit court erred in dismissing his postconviction petition, which set forth an arguable claim that trial counsel was ineffective for failing to investigate and call Williams and Carter. According to defendant, these witnesses would have testified that defendant was not a gang member, contradicting the State's evidence that defendant belonged to a gang and the State's theory that defendant acted on account of a gang rivalry. Defendant submits that only Roundtree and Walton's testimony connected him to the shooting and that the outcome of his trial would have been different had trial counsel called Williams and Carter to challenge the State's witnesses. In response, the State argues that the affidavit and letter make no reference to trial counsel's investigation and that trial counsel's strategy was to show that Roundtree and Walton falsely implicated defendant because he belonged to a rival gang.

¶ 14 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)) provides a three-stage process for a defendant to challenge a conviction based on alleged violations of his constitutional rights that were not, and could not have been, adjudicated previously on direct appeal. *People v. English*, 2013 IL 112890, ¶¶ 21-23. At the first stage, the court will summarily dismiss a petition that is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012); *People v. Allen*, 2015 IL 113135, ¶ 21. The allegations in the petition, taken as true and liberally construed, need only present the gist of a constitutional claim and have an arguable basis either in law or fact. *Allen*, 2015 IL 113135, ¶¶ 24-25. If the petition survives to the second stage, it is docketed for further consideration and the State may answer or move to dismiss. 725

ILCS 5/122-2.1(b), 122-5 (West 2012); *Allen*, 2015 IL 113135, ¶ 21. If the defendant makes a “substantial showing” of a constitutional violation, the petition will proceed to the third stage, where the court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2012); *Allen*, 2015 IL 113135, ¶ 22. We review a circuit court's dismissal of a postconviction petition *de novo*. *Allen*, 2015 IL 113135, ¶ 19.

¶ 15 At the first stage of postconviction proceedings, a claim of ineffective assistance of counsel may not be dismissed if (1) it is arguable that counsel's performance fell below an objective standard of reasonableness, and (2) it is arguable there exists a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). At this stage, the court will not consider arguments pertaining to strategic reasons for trial counsel's allegedly deficient performance. *People v. Tate*, 2012 IL 112214, ¶¶ 21-22.

¶ 16 In this case, we find that defendant has made no showing that trial counsel's performance was arguably deficient. Defendant's postconviction petition stated that trial counsel was ineffective for "not adequately investigat[ing] his case to determine that [defendant] was not a member of a street gang," and included an affidavit and notarized letter from Williams and Carter, who both denied that defendant belonged to a gang. However, neither Williams nor Carter indicated whether trial counsel contacted or failed to contact them, or that they were able and willing to testify had they been called at trial. *Allen*, 2015 IL 113135, ¶ 26 (evidentiary affidavits must show that allegations in postconviction petition "are capable of objective or independent corroboration"). Additionally, defendant's petition made no allegation that trial counsel had any reason to know that either Williams or Carter had information regarding his lack of gang affiliation, or that defendant told trial counsel that either individual even existed. *People*

v. Harris, 206 Ill. 2d 293, 306 (2002) (where defendant is the source of information regarding exculpatory witnesses but fails to inform counsel before trial, he cannot subsequently blame counsel for failing to investigate); *People v. Irvine*, 379 Ill. App. 3d 116, 130 (2008) (defense counsel cannot "read the defendant's mind about the existence of a potentially exculpatory witness and the potential nature of that witness' testimony"). Consequently, defendant has not put forth an arguable claim that trial counsel's performance was deficient.

¶ 17 Moreover, even if counsel's performance was deficient, we cannot say that defendant has set forth an arguable claim of prejudice. *People v. Coleman*, 2011 IL App (1st) 091005, ¶ 13 (to prove prejudice, defendant must show reasonable probability that, but for counsel's errors, the results of the proceedings would have been different). Williams and Carter were not alibi witnesses, but rather, would have testified that defendant was not in a gang. According to defendant, this testimony would have undermined Roundtree and Walton's credibility and the State's theory of the case. Our review of the record, however, shows that Roundtree and Walton provided consistent, cogent testimony about the night of the shooting. They saw Jamison confront defendant at the gas station and later observed defendant's vehicle chasing them while they drove in Jamison's car. After the crash, both witnesses saw defendant approach the car, firing a gun. They identified defendant in photo arrays, physical lineups, and at trial. We cannot say that Williams and Carter's testimony would have discredited Roundtree and Walton's identification of defendant, or that, but for the omission of testimony contradicting whether defendant was in a gang, the outcome of the trial would have been different. *People v. Jefferson*, 345 Ill. App. 3d 60, 75-76 (2003) (no prejudice where witness' affidavit did not contradict identification testimony). Consequently, defendant was not arguably prejudiced by trial counsel's failure to investigate or call Williams and Carter.

¶ 18 Defendant next contends, and the State correctly concedes, that his mittimus must be corrected to reflect 1,717 days of credit for presentence incarceration. A defendant is entitled to credit for any part of a day he spent in custody prior to sentencing. 730 ILCS 5/5-4.5-100(b) (West 2010) (eff. July 1, 2009); *People v. Williams*, 239 Ill. 2d 503, 505, 510 (2011). Remand is unnecessary, as this court may correct the mittimus at any time. *People v. Anderson*, 2012 IL App (1st) 103288, ¶¶ 35. Accordingly, we direct the clerk of the circuit court to amend the mittimus to reflect 1,717 days of presentence credit.

¶ 19 For all the foregoing reasons, we affirm the dismissal of defendant's postconviction petition and order the mittimus corrected.

¶ 20 Affirmed; mittimus corrected.