FIRST DIVISION
April 25, 2016

Nos. 1-14-0894 & 1-14-2667 (cons.)
2016 IL App (1st) 140894-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
Respondent-Appellee,	)	Cook County.
v.	)	11 CR 1120
TERNELL WILLIAMS,	)	Honorable James Michael Obbish,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

ORDER

Held: Defendant's *pro se* postconviction petition alleging a claim of ineffective assistance of counsel did not have an arguable basis in fact or in law, and therefore was properly dismissed at the first stage.

¶ 1 Defendant, Ternell Williams, appeals from the circuit court's dismissal of his *pro se* postconviction petition as frivolous and patently without merit. On appeal, defendant contends that his *pro se* postconviction petition raised the gist of a constitutional claim that his privately retained trial attorneys failed to provide effective assistance of counsel when he could not meet their demands for additional funds. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 The details of defendant's underlying conviction were set forth on direct appeal in *People v. Williams*, 2014 IL App (1st) 122625-U. In relevant part, however, the evidence showed that when Chicago police officers signaled for defendant to stop for a seatbelt violation, defendant fled on foot but was apprehended. The officers searched the VIN number of the car defendant was driving and discovered that the car had been reported stolen, there was a warrant out for defendant's arrest, and defendant's driver's license had been suspended. Subsequent to defendant's arrest, defendant told police officers that he knew the car had been stolen, but that he did not steal it. Following a bench trial, defendant was found guilty of possession of a stolen motor vehicle and sentenced to eight years in prison.

¶ 4 In a *pro se* postconviction petition, defendant alleged that his privately-retained trial attorneys failed to appear in court on his behalf for a hearing and trial dates, and withdrew or failed to file motions on his behalf when he could not meet their demands for more funds. Specifically, defendant alleged that when his attorneys' demands for more money were not met, his attorneys failed to appear for the hearing on his motion to quash arrest and suppress evidence, and that they sent a third party to withdraw the motion. He alleged that his counsel failed to prepare him for trial and failed to appear for one of the original trial dates of March 6, 2012. He further alleged that his attorneys failed to appear for the May 18, 2012, court date on his motion for a new trial, failed to file a motion to reconsider his sentence, and failed to file a notice of appeal on his behalf. The circuit court summarily dismissed petitioner's *pro se* postconviction petition as frivolous and patently without merit.

¶ 5 In its order, the circuit court stated in relevant part that defendant submitted no evidence that would have supported the filing of a motion to quash arrest and suppress evidence,

defendant did not establish that if counsel had met with him prior to trial that the result of the proceeding would have been different, and defendant did not indicate the ruling he believed counsel should have sought on a motion to reconsider. Defendant now appeals.

¶ 6 ANALYSIS

¶ 7 On appeal, defendant contends that the trial court erred in summarily dismissing his *pro se* postconviction petition at the first stage because he raised the gist of a constitutional claim of ineffective assistance of counsel. Defendant claims that the right to effective assistance of counsel includes the right to conflict-free representation, and that he raised the gist of a constitutional claim when he argued in his petition that his attorneys did not provide conflict-free representation because counsel failed to properly represent him when he was unable to pay counsel more money.

¶ 8 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)), provides a mechanism by which defendants can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution and the Illinois Constitution. In a noncapital case, the Act creates a three-stage procedure for postconviction relief. *People v. Boclair*, 202 Ill. 2d 89, 99 (2002). At the first stage, the trial court, without input from the State, examines the petition to determine whether it is frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 2012). If the petition is not dismissed at the first stage, it proceeds to stage two, where section 122-4 of the Act provides for the appointment of counsel for an indigent defendant. 725 ILCS 5/122-4 (West 2012). At the second stage, the State has an opportunity to either answer or move to dismiss the petition. 725 ILCS 5/122-5 (West 2012). The trial court then determines whether the petition makes a substantial showing of a constitutional violation. *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). If the petition is

not dismissed at the second stage, it proceeds to the third stage, where the trial court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2012). This case presents an appeal from the dismissal of a petition at the first stage of the postconviction process. Our review of the circuit court's dismissal of defendant's postconviction petition is *de novo*. *People v. Edwards*, 197 Ill. 2d 239, 247 (2001).

¶ 9 At the first stage, the circuit court must, within 90 days of the petition's filing, independently review the petition, taking the allegations as true, and determine whether the petition is "frivolous or is patently without merit." *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A defendant at the first stage need only present a limited amount of detail in the petition. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). Because most petitions are drafted at this stage by defendants with little legal knowledge or training, our supreme court has viewed the threshold for survival as low. *Id.* "In fact, we have required only that a *pro se* defendant allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act. *Id*. (citing *People v. Porter*, 122 Ill. 2d 64, 74 (1988) (only a "gist" of a constitutional claim is needed at this stage)).

¶ 10 However, "our recognition of a low threshold at this stage does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional violation." *Id*. at 10. " 'While a *pro se* petition is not expected to set forth a complete and detailed factual recitation, it must set forth some facts which can be corroborated and are objective in nature or contain some explanation as to why those facts are absent.' " *Id*. (quoting *People v. Delton*, 227 Ill. 2d 247, 254-55 (2008)). "[A] *pro se* petition seeking postconviction relief under the Act for a denial of constitutional rights may be summarily

dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 11-12.

¶ 11 The right to effective assistance of trial counsel comes from the sixth amendment and includes the correlative right to conflict-free representation. *People v. Washington*, 101 Ill. 2d 104, 109-10 (1984). Generally, "if counsel, unknown to the accused and without his knowledgeable assent, is in a duplicitous position where his full talents – as a vigorous advocate having the single aim of acquittal by all means fair and honorable – are hobbled or fettered or restrained by commitments to others," effective assistance of counsel is lacking. *People v. Stoval*, 40 Ill. 2d 109, 112 (1968). Our supreme court has identified two categories of conflicts of interest: *per se* and actual. *People v. Hernandez*, 231 Ill. 2d 134, 142 (2008). A *per se* conflict of interest exists where certain facts about a defense attorney's status engender, by themselves, a disabling conflict. *Id.* Our supreme court has identified three situations where a *per se* conflict exists: (1) where defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution; (2) where defense counsel contemporaneously represents a prosecution witness; and (3) where defense counsel was a former prosecutor who had been involved in the prosecution of defendant. *People v. Taylor*, 237 Ill. 2d 356, 374 (2010); *Hernandez*, 231 Ill. 2d at 143-44. If a *per se* conflict exists, there is no need to show that the conflict affected the attorney's actual performance, and it is grounds for automatic reversal. *Id*. at 375-76.

¶ 12 Our supreme court has identified a second category of conflicts of interest that generally involve joint or multiple representation of codefendants. *Id*. A conflict may also arise, however, when a client's interests are adverse to his lawyer's pecuniary interests. See *People v. Falls*, 235 Ill. App. 3d 558 (1992) (defendant denied effective assistance of counsel where defense counsel

stated that he could not represent defendant with his full fervor unless he was paid more than defendant's $6,000 bond).

¶ 13 Where, as here, a potential conflict of interest was not brought to the attention of the trial court, "a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980). Certainly, the defendant is not required to prove prejudice in that the conflict contributed to his or her conviction, however, to prevail on a claim of ineffective assistance of counsel due to a conflict of interest, a defendant must show that it manifested at trial. *Taylor*, 237 Ill. 2d at375-76. "What this means is that the defendant must point to some specific defect in his counsel's strategy, tactics, or decision making attributable to the conflict." *People v. Spreitzer*, 123 Ill. 2d 1, 18 (1988).

¶ 14 In the present case, we conclude that defendant failed to establish any specific adverse effect in counsel's performance attributable to the alleged conflict. Defendant alleged in his postconviction petition that counsel failed to appear at several court dates, withdrew his motion to quash and suppress evidence, refused to visit defendant in jail or prepare him for trial, failed to appear for defendant’s posttrial motion, and failed to file a motion to reconsider or a notice of appeal.

¶ 15 We first address the withdrawal of defendant's motion to quash arrest and suppress evidence. The record reveals that the motion to quash arrest and suppress evidence was filed on October 19, 2011. It requested the court to quash defendant's arrest on the basis that the arresting officers had no authority or probable cause to arrest him, and to suppress his arrest from evidence. The motion alleged that defendant had obeyed all traffic laws while operating a motor vehicle, and that after his unlawful arrest he was detained in a way that deprived him of his

liberty. The motion also alleged that during defendant's arrest and subsequent detention, physical evidence was discovered that formed the basis of his charges.

¶ 16 The record establishes that on November 17, 2011, when the motion was up for a hearing, an attorney other than defense counsel stated that he was appearing on behalf of defense counsel and asked the judge to withdraw defendant's motion to quash and suppress evidence. The trial court noted that the case was "set for a hearing on a motion that [defense counsel] had filed," and the attorney who appeared responded, "[w]e're going to be withdrawing those motions, and we'd like to set this for trial." The trial court obliged, but noted that it was withdrawing the motion with prejudice due to the fact that the State had prepared to argue the motion and had produced witnesses.

¶ 17 Defendant alleged in his postconviction petition that "counsel could not get anymore [*sic*] money so he sent [another attorney] to withdraw the motion. The motion would have revealed most of the constitution violations [set forth] in [defendant's] petition." Defendant does not specify what constitutional violations would have been revealed, and does not state any facts that support the filing of a motion to quash and suppress evidence. Defendant does not state that he was wearing a seatbelt on the day in question, and does not point to any evidence that contradicts the evidence presented at trial that revealed that he was not wearing a seatbelt. Accordingly, we cannot say that defendant met his burden at the first stage of postconviction proceedings as he failed to point to a specific defect in his counsel's strategy, tactics, or decision making attributable to the alleged conflict of interest. See *Spreitzer*, 123 Ill. 2d at 18.

¶ 18 Defendant also argued in his petition that trial counsel failed to appear at certain court dates, namely September 20, 2011, March 6, 2012, and May 18, 2012. The record reveals, however, that on September 20, 2011, defense counsel was present in court, but the prosecution

was not. Defense counsel told the judge that there was a "calendar problem." Accordingly, defendant's allegation, taken as true, is directly contradicted by the record. On March 6, 2012, defense counsel was not present, but the prosecution informed the trial court that defense counsel's office had called that morning to say that one of them had a family emergency. The trial was then reset for April 18, 2012, at which time defense counsel was present. On May 18, 2012, the record reveals that defense counsel did not appear for the hearing on defendant's motion for a new trial. The prosecution informed the trial court that defense counsel had called and indicated that he was stuck in traffic. The hearing was set for a new date, and defense counsel was present on that date. Defendant does not point to any facts that indicate that these three absences amounted to a defect in defense counsel's tactics, strategy, or decision making. Rather, the record reveals that the prosecution had heard from defense counsel regarding the absences, and that defense counsel was present at the subsequent court dates.

¶ 19 Defendant also alleged in his postconviction petition that defense counsel failed to prepare him for trial. Specifically, defendant stated in his petition that defense counsel never consulted with defendant and "did not go over a defense with defendant and forced him not to testify because of that matter." Defendant did not state what defense should have been presented, or what he would have testified to at trial. Accordingly, defendant has presented no facts that allege a defect in trial counsel's strategy, tactics, or decision making. *Hodges*, 234 Ill. 2d at 10-12.

¶ 20 Finally, defendant alleged in his petition that defense counsel failed to file a motion to reconsider his sentence or a notice of appeal on his behalf. However, as the trial court noted, defendant did not indicate in his postconviction petition the ruling he believes counsel should have sought to reconsider. As noted above, a *pro se* petition is not excused from providing any

factual detail at all surrounding the alleged violations. *Hodges*, 234 Ill. 2d at 10 (a *pro se* petition must set forth some facts that can be corroborated and are objective in nature or contain some explanation as to why those facts are absent). Additionally, the trial court sentenced defendant on July 17, 2012, and a notice of appeal was timely filed on August 9, 2012. While the notice of appeal was filed by defendant rather than defense counsel, defendant fails to allege why it was a defect in his counsel's strategy, tactics, or decision making for counsel not to file a notice of appeal, especially since a timely notice of appeal was filed. We reiterate that a *pro se* postconviction petition must have an arguable basis in either law or in fact, and is not excused from providing any factual detail surrounding the alleged constitutional violation. *Id.*

¶ 21 Because we find that defendant has failed to point to a defect in defense counsel's strategy, tactics, or decision making, it follows that defendant has failed to point to a defect attributable to the alleged conflict of interest. See *Speitzer*, 123 Ill. 2d at 18. Accordingly, we find that defendant's *pro se* postconviction petition was properly dismissed in the first stage.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.