

No. 1-14-1354

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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. 11 CR 8441
	)	
WILLIAM HAMILTON,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE GORDON delivered the judgment of the court.  
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Summary dismissal of defendant's postconviction petition affirmed where defendant's claim of ineffective assistance of counsel lacked an arguable basis in fact or law.

¶ 2 Defendant William Hamilton appeals the summary dismissal of his petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). He contends that he stated an arguable claim of ineffective assistance of trial

counsel based on his lawyer's failure to inform him about a State's plea offer. As a remedy, he requests this court to remand his petition for second-stage proceedings.

¶ 3 The record shows that defendant was arrested on April 29, 2011, after Chicago police executed a search warrant (naming him and his apartment) on South Michigan Avenue, and recovered over 150 grams of heroin and 1 gram of methadone, firearms, a large sum of cash, and various equipment used in the packaging of narcotics. Following a bench trial on December 8, 2011, defendant was found guilty of three counts of possession of a controlled substance with intent to deliver, three counts of being an armed habitual criminal, and six counts of unlawful use of a weapon by a felon (UUV). Based on those crimes, he was sentenced to nine years in prison on the first six counts, to run concurrently with a sentence of seven years in prison on the remaining six counts. This court affirmed that judgment on direct appeal; however, we vacated two of defendant's armed habitual criminal convictions and one of his UUV convictions pursuant to the one-act, one-crime doctrine. *People v. Hamilton*, 2014 IL App (1st) 120369-U.

¶ 4 During the pendency of his direct appeal, on December 6, 2013, defendant filed the *pro se* postconviction petition at bar, alleging that Chicago police officers made false statements to obtain a search warrant and at trial, that the Illinois Department of Corrections deprived him of statutorily-required good-time credits, and that his counsel provided ineffective assistance. In particular, defendant stated in the petition that "[a]t no time during [his] confinement in jail, did Counsel talk to him about the plea bargain, Prosecution offered. Petitioner waited and waited, but Counsel never came to him with the deal or plea, the State had on the table for him, whatever the plea was, it might have been negotiable or favorable to [him]." In support of his petition,

defendant attached an affidavit in which he averred that he was not connected to the apartment in question, that the police conducted an illegal search of the property, and that the court should therefore suppress the evidence obtained from that search. Defendant did not aver any facts relating to his claim of ineffective assistance of counsel in his affidavit.

¶ 5 On March 5, 2014, the trial court timely examined defendant's petition, and dismissed the claims orally and in a written order as frivolous or patently without merit. In doing so, the court rejected defendant's contention that counsel provided ineffective assistance by failing to communicate a plea offer because defendant offered no factual support for that claim, and instead, relied on bald, conclusory allegations. The court further found that it was unclear from the record whether any plea offer was ever made, that it was possible that no offer was made, and that defendant also failed to allege facts showing that the potential plea offer would have been favorable to him.

¶ 6 In this appeal from that judgment, defendant contends that his case should be remanded for second-stage proceedings because he set forth the gist of an arguable claim of ineffective assistance of counsel, which requires further proceedings.

¶ 7 The Act provides a method by which a defendant may challenge his conviction or sentence for violations of federal or state constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2010); *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). At the first stage of proceedings, the circuit court is required to review the petition within 90 days, and dismiss it in a written order if it finds the petition frivolous or patently without merit (725 ILCS 5/122-2.1(a)(2) (West 2010)), *i.e.*, it has no arguable basis in law or in fact; or advance it to the second stage and appoint counsel if it

does have merit (725 ILCS 5/122-4 (West 2010)). *Hodges*, 234 Ill. 2d at 10, 16. Defendant need only present the "gist of a constitutional claim" at the first stage (*People v. Edwards*, 197 Ill. 2d 239, 244 (2001)); however, he is not excused from providing any factual detail whatsoever on the alleged constitutional deprivation (*People v. Delton*, 227 Ill. 2d 247, 254 (2008)). Section 122-2 of the Act requires that he clearly set forth the respects in which his constitutional rights were violated, and attach affidavits, records, or other evidence supporting the allegations or explain their absence. 725 ILCS 5/122-2 (West 2010); *Hodges*, 234 Ill. 2d at 9-10. We review the circuit court's dismissal of defendant's postconviction petition *de novo* (*Hodges*, 234 Ill. 2d at 9), and thus may affirm on any ground substantiated by the record, regardless of the trial court's reasons for the dismissal, if the petition patently lacks merit (*People v. Lee*, 344 Ill. App. 3d 851, 853 (2003)).

¶ 8 In this case, defendant alleged ineffective assistance of trial counsel, which is governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Pursuant to *Strickland*, a petition alleging ineffective assistance may not be summarily dismissed at the first stage of postconviction proceedings under the Act if (1) it is arguable that counsel's performance was deficient; and (2) the deficiency was prejudicial. *People v. Hughes*, 2012 IL 112817, ¶ 44.

¶ 9 Here, defendant alleged that counsel was ineffective for failing to inform him about a possible plea offer from the State. However, defendant failed to allege any facts showing that such an offer was ever made to him, and our review of the record reveals none. Defendant's petition does not contain any affidavits, records, or other evidence to support his allegations, nor does the petition explain why those documents are absent, as is required by section 122-2.

Defendant has failed to provide any materials which would allow for the objective or independent corroboration of his claims (*People v. Collins*, 202 Ill. 2d 59, 67 (2002)), and thus his claim amounts to nothing more than a broad conclusory allegation of ineffective assistance of counsel, which is not permitted under the Act (*Delton*, 227 Ill. 2d at 258). As such, we find that the circuit court's summary dismissal was proper.

¶ 10 Defendant contends, nevertheless, that the claims in his petition were "well-pleaded," and that he should be allowed to "supplement the record with evidence demonstrating the terms of the offer that his trial counsel failed to convey." He also maintains that the trial court held him to a "higher pleading standard than the act requires," and "engaged in impermissible fact finding." We disagree. Although defendant need only state the "gist of a claim" at the first stage of proceedings, the pleadings at bar are wholly insufficient. Defendant stated in his petition that he "waited and waited" for a "deal or plea, the State had on the table for him," and "*whatever* the plea was, it might have been negotiable or favorable to [him]." (Emphasis added.). Defendant does not allege that a plea was actually available to him, much less elaborate on the favorability of its terms or whether or not he would have accepted it. Stated as such, defendant's claim is merely a broad conclusory allegation, without any factual basis, and does not rise to the level of a proper pleading. *Delton*, 227 Ill. 2d at 258.

¶ 11 Defendant further contends that he "cannot be expected to obtain affidavits from [the State's attorney or defense counsel]" or "offer proof" at the first stage of proceedings. Even if we recognize the difficulty of obtaining an affidavit from either trial counsel or the State's attorney, as defendant contends (*People v. Williams*, 47 Ill. 2d 1, 4 (1970)), we observe that he has failed

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to allege any facts regarding a plea offer or his claim of ineffective assistance in his own affidavit. Moreover, he has also failed to attach any explanation of why affidavits from other parties are missing. We therefore conclude that defendant's petition has no arguable basis either in law or fact, and must be dismissed. *Delton*, 227 Ill. 2d at 259.

¶ 12 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.