2016 IL App (2d) 140387-U
No. 2-14-0387
Order filed April 25, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Respondent-Appellee,	)	
v.	)	No. 09-CF-2655
ROBERT E. WILLIAMS,	)	Honorable James C. Hallock,
Petitioner-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The summary dismissal of defendant's postconviction petition is affirmed; defendant's ineffective-assistance claims were not raised in his *pro se* petition itself and have been forfeited.

¶ 2 This is an appeal from the summary dismissal of a postconviction petition. Following a bench trial before Judge Sheldon in 2010, defendant Robert E. Williams was found guilty of armed robbery and sentenced to 25 years' imprisonment; 10 years for the underlying offense and a 15-year enhancement for possessing a firearm during the commission of the offense. Williams appealed, asserting *inter alia* that the 15-year firearm enhancement was unconstitutional and had

been improperly applied. We disagreed and affirmed Williams's conviction and sentence. *People v. Williams*, 2013 IL App (2d) 101322-U (*Williams I*). A few months later, our supreme court denied Williams's petition for leave to appeal. *People v. Williams*, No. 116353 (Sept. 25, 2013).

¶ 3 In 2014, Williams filed a nine-page, handwritten *pro se* petition for postconviction relief. In it, Williams generally argued the following three claims: (1) that the evidence was insufficient to sustain his conviction (a claim that cannot be raised in a postconviction proceeding, see *People v. Frank*, 48 Ill. 2d 500, 504 (1971)); (2) that he was not given a prompt preliminary hearing, a necessary corollary to a warrantless arrest (he was charged by indictment in this case and was arrested on several open warrants, see *County of Riverside v. McLaughlin*, 500 U.S. 44, 47 (1991)); and (3) that the 15-year firearm enhancement was neither constitutional nor applicable (a claim barred by *res judicata* since it was squarely addressed in *Williams I*, 2013 IL App (2d) 101322-U, ¶ 32 (citing *People v. Blair*, 2013 IL 114122)). That brings us to the central issue in this appeal: whether Williams did or did not raise a fourth claim in his postconviction petition.

¶ 4 The basis for the Williams's supposed fourth claim is as follows. In the middle of one paragraph in the postconviction petition—in a sentence sandwiched between a reference to the cause-and-prejudice test in federal habeas corpus proceedings (see *Martinez v. Ryan*, 132 S. Ct. 1309 (2012)), and a vague assertion that his trial counsel "improperly argued" the 15-year enhancement issue—Williams:

> "assert[ed] that [his trial counsel] and [his appellate counsel] were ineffective for failing to advance his claim of the mitigation and aggravating factors in sentencing."

Nowhere in the petition does Williams elaborate on what he meant by "his claim" concerning the "factors in sentencing." Attached to the petition are several pages of transcripts from Williams's trial and his continued preliminary hearing (the hearing was continued and as noted he was later

charged by indictment), and two pages of an argument section from a petition for leave to appeal concerning the constitutionality of the firearm enhancement, which may or may not have been from Williams's own petition for leave to appeal from 2013. Like Williams's petition, these exhibits also shed no light on what "his claim" concerning the "factors in sentencing" was.

¶ 5 The trial court, Judge Hallock, timely entered a written order that addressed Williams's three postconviction claims, and rejected them each as frivolous and patently without merit. The trial court's order did not address however Williams's single statement concerning his attorneys' ineffectiveness regarding "his claim of the mitigation and aggravating factors in sentencing." Williams timely appealed and postconviction-appellate counsel was appointed to represent him.

¶ 6 In his appellate brief, Williams (more precisely, his postconviction-appellate counsel) notes that in his *pro se* post-conviction petition Williams alleged "that his appellate counsel was ineffective for 'failing to advance his claim of the mitigation and aggravating factors in sentencing.' [Citation.]" Williams then contends that his appellate counsel was ineffective for failing to argue on direct appeal that:

> "the trial court improperly relied on [Williams's] pending charges and his refusal to admit guilt as aggravation, and then failed to give proper weight to the mitigating factors of Williams's dependents, his drug addiction, and his educational and vocational achievements."

The State contends that these arguments were forfeited because they were not raised in Williams's postconviction petition. Williams replies that he did not raise any "new" claims but was merely "support[ing]" the ineffective-assistance claim that he set forth in his *pro se* petition. We agree with the State; Williams's ineffective-assistance claims were forfeited.

¶ 7 In an appeal from the summary dismissal of a postconviction petition, a petitioner and his postconviction-appellate counsel may not raise an issue for the first time that was not included in the petition and that was never considered by the trial court. *People v. Cathey*, 2012 IL 111746, ¶

21; *People v. Pendleton*, 223 Ill. 2d 458, 470 (2006); see also *People v. Jones*, 213 Ill. 2d 498, 504-05 (2004) (noting that postconviction-appellate counsel, in his or her "zeal[]" may not raise new claims on appeal); see also 725 ILCS 5/122-3 (West 2012) ("Any claim of substantial denial of constitutional rights not raised in the original or [in] an amended petition is [forfeited]"). As our supreme court has stated, this is more than a routine matter of forfeiture; rather, it is a procedural bar that safeguards the integrity of the appellate process and as such it is a matter we cannot overlook. *Cathey*, 2012 IL 111746, ¶¶ 20-21; *Pendleton*, 223 Ill. 2d at 475; *Jones*, 213 Ill. 2d at 505; see also *id*. at 508 ("Our detailed discussion of this issue is intended to stress that our appellate court is not free, as this court is under its supervisory authority, to excuse, in the context of postconviction proceedings, an appellate [forfeiture] caused by the failure of a defendant to include issues in his or her postconviction petition.").

¶ 8 We determine that Williams's appellate briefs take unwarranted liberties with the record by asserting that the ineffective-assistance claims were raised below in any intelligible form. A postconviction petition must, among other things, "clearly set forth the respects in which [the] petitioner's constitutional rights were violated" (725 ILCS 5/122-2 (West 2012)), and, as noted, any claim not set forth in the petition is forfeited (725 ILCS 5/122-3) (West 2012)). " '[W]hile 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.' *People v. Delton*, 227 Ill. 2d 247, 254-55 (2008)." *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). Our task in reviewing a summary dismissal is to examine the petition liberally, and "with a lenient eye" (internal quotation marks omitted) (*id*. at 21), but our review should not be toothless. The claim in the petition "must bear some relationship to the issue raised on appeal" for "[l]iberal construction does not mean that we

distort reality." *People v. Mars*, 2012 IL App (2d) 110695, ¶ 32.

¶ 9 Simply stated, Williams's *pro se* petition did not raise these ineffective-assistance claims concerning his sentence; instead, he has raised for them first time in this appeal. We also reject Williams's assertion that these new arguments were somehow under the umbrella of a general ineffective-assistance argument presented in his petition, or were merely "support[ing]" his extant ineffectiveness claim. One cannot support something that did not exist in the first place.

¶ 10 At any rate, even if we could somehow say that Williams's *pro se* petition did raise an ineffectiveness claim concerning his sentence it was not general at all; although vague, Williams's claim was quite specific: he faulted *both* his trial *and* his appellate counsel "for failing to advance *his claim* [(note: singular)] of the mitigation and aggravating factors in sentencing." (Emphasis added.) Though Williams's petition did not elaborate on the nature of "his claim" and did not support "his claim" with objective corroboration that he raised the matter with his trial and appellate counsel (Williams's own affidavit to that effect would have sufficed, see *People v. Hall*, 217 Ill. 2d 324, 333 (2005)), the fact of the matter is that Williams clearly meant *something* when he claimed both his trial and appellate lawyers were constitutionally ineffective for failing to advance "his claim ***." Again, what Williams meant, we do not know. So how then can we say with any certainty that the ineffectiveness claims Williams now raises were part of "his claim"? (Maybe "his claim" concerned something else entirely.) And further, how can we fault the trial court for failing to divine these arguments from Williams's *pro se* petition and not considering them on the merits? The answer is we can't and we won't. The relationship between a single unexplained reference in Williams's petition to "his claim" and his arguments on appeal is too attenuated for us to say that these claims were meaningfully preserved.

¶ 11 In addition, we note that Williams's ineffective-assistance claims are based on sentencing contentions that were not preserved in his post-sentencing motion. Accordingly, even if we were to address those claims on the merits, we would review them only for plain error. And, since Williams does not present those issues in a plain-error framework, he has forfeited the only relief we could grant him. See *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 12 We reiterate that trial courts reviewing *pro se* petitions are not required " 'to comb through a morass of irrelevancies to try to figure out what defendant meant to raise as constitutional violations.' " *People v. Williams*, 2015 IL App (1st) 131359, ¶ 17 (quoting *Mars*, 2012 IL App (2d) 110695, ¶ 33). Postconviction claims may be raised inartfully and should be construed liberally; however, the "gist" of those claims (see *Hodges*, 234 Ill. 2d at 11), under the plain language of the Post-Conviction Hearing Act must be " 'clearly set forth' " in the petition itself. *Id.* at 9 (quoting 725 ILCS 5/122-2 (West 2006)); see also *Cathey*, 2012 IL 111746, ¶ 21. Williams's petition simply did not raise the ineffective-assistance claims concerning his sentence that he is now attempting to present on appeal and, consequently, we have no authority to act on them. See *Pendleton*, 223 Ill. 2d at 470; *Jones*, 213 Ill. 2d at 504-05.

¶ 13 Since Williams presents no other argument on the merits of his petition, we affirm the judgment of the circuit court of Winnebago County, which dismissed the petition. In addition, we grant the State's request and assess Williams $50 in statutory fees towards the cost of defending this appeal. See 55 ILCS 5/4-2002(a) (West 2012).

¶ 14 Affirmed.