

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).

2016 IL App (4th) 140470-U

NO. 4-14-0470

FILED

March 29, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
ANTOINE CARROLL,)	No. 10CF141
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's summary dismissal of defendant's postconviction petition, concluding it failed to state the gist of a meritorious constitutional claim.

¶ 2 Following a November 2010 trial, a jury found defendant, Antoine Carroll, guilty of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)). In December 2010, the trial court sentenced defendant to 26 years' imprisonment. In February 2014, defendant filed a *pro se* postconviction petition. In April 2014, the court summarily dismissed defendant's petition. Defendant appeals, arguing the trial court's dismissal was in error as his petition set forth the gist of multiple meritorious constitutional claims. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2010, the State charged defendant by information with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)). Specifically, the State alleged, on January 29, 2010, defendant knowingly possessed with the intent to deliver between 15 and 100 grams of a substance containing cocaine.

¶ 5 In November 2010, the trial court held a jury trial. We have previously set out the evidence adduced at defendant's trial in a Rule 23 order on direct appeal. *People v. Carroll*, 2012 IL App (4th) 110028-U, ¶¶ 12-16 (unpublished order under Supreme Court Rule 23). Following the presentation of the evidence, a jury found defendant guilty, and in December 2010, the court sentenced him to 26 years' imprisonment.

¶ 6 Defendant filed a direct appeal, raising 14 claims of alleged error, all of which we rejected. *Carroll*, 2012 IL App (4th) 110028-U, ¶¶ 3-4. In addressing defendant's claims, we found (1) it was clear the evidence supported a finding of guilt; (2) any conceivable error in the trial court's evidentiary ruling regarding the display of weapons to the jury was harmless given the other overwhelming evidence of guilt; (3) the court did not err in denying defendant's motion for a directed verdict at the close of the State's case as the evidence of defendant's guilt was overwhelming; (4) the court did not err in denying defendant's motion for a directed verdict at the close of all the evidence as defendant's evidence did not call into question the overwhelming evidence of guilt; (5) any error in publishing certain exhibits to the jury during deliberations was harmless in light of the overwhelming evidence of guilt; (6) any improper remarks by the State in closing argument did not present reversible error as the evidence of guilt was overwhelming and the remarks made were not likely to have swayed the verdict; and (7) defendant failed to establish plain error as to the admission of allegedly illegally obtained evidence. *Carroll*, 2012

IL App (4th) 110028-U, ¶¶ 47, 55, 68-69, 77, 82, 96, 100.

¶ 7 In February 2014, defendant filed a *pro se* postconviction petition, alleging trial counsel provided ineffective assistance by (1) "fail[ing] to move to quash his arrest and suppress prejudicial evidence obtained in violation of [his] constitutional rights," and (2) introducing prejudicial other-crimes evidence against him. Defendant further alleged appellate counsel provided ineffective assistance by failing to raise trial counsel's ineffectiveness on direct appeal.

¶ 8 In April 2014, the trial court summarily dismissed defendant's petition. In its written order, the court found defendant's claims were barred by *res judicata* and his petition failed to state the gist of a meritorious constitutional claim. The court imposed filing fees and court costs against defendant and directed the Illinois Department of Corrections to collect payment over time from defendant's commissary account.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court's summary dismissal of his postconviction petition was in error as his petition set forth the gist of multiple meritorious constitutional claims.

¶ 12 A. Postconviction Petition

¶ 13 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)) provides criminal defendants a manner by which they can assert their convictions resulted from a substantial denial of their rights under the United States Constitution, the Illinois Constitution, or both. *People v. Guerrero*, 2012 IL 112020, ¶ 14, 963 N.E.2d 909. Proceedings under the Act are commenced by filing a petition in the trial court in which the original proceeding took place.

People v. Hodges, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009).

¶ 14 At the first stage of postconviction proceedings, the legal standard used by the trial court in evaluating a postconviction petition is, when taking the allegations as true, whether "the petition is either frivolous or patently without merit." *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001). If a court determines a petition "is either frivolous or patently without merit, [it] must dismiss the petition in a written order." *Hodges*, 234 Ill. 2d at 10, 912 N.E.2d at 1209. A petition is either frivolous or patently without merit if it has no arguable basis either in law or in fact. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212.

¶ 15 In considering the petition at the first stage, "the court may examine the court file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding and any transcripts of such proceeding." 725 ILCS 5/122-2.1(c) (West 2012). Claims raised and decided on direct appeal are barred by the doctrine of *res judicata*. *People v. Harris*, 206 Ill. 2d 1, 12, 794 N.E.2d 314, 323 (2002). Where *res judicata* precludes a defendant from obtaining relief, such a claim is necessarily frivolous or patently without merit. *People v. Terry*, 2012 IL App (4th) 100205, ¶ 17, 965 N.E.2d 533. "Collateral estoppel is a branch of *res judicata* that prohibits the relitigation of an issue actually decided in an earlier proceeding between the same parties." *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 17, 958 N.E.2d 700. Where collateral estoppel precludes a defendant from obtaining relief, such a claim will also be frivolous or patently without merit. See *People v. Wright*, 2013 IL App (4th) 110822, ¶¶ 30-32, 987 N.E.2d 1051 (finding summary dismissal of a postconviction petition

appropriate where the defendant's claim was barred by collateral estoppel).

¶ 16 We review *de novo* a first-stage dismissal of a postconviction petition (*People v. Swamynathan*, 236 Ill. 2d 103, 113, 923 N.E.2d 276, 282 (2010)) and may affirm the trial court's dismissal on any grounds substantiated by the record, regardless of the trial court's reasoning. *People v. Snow*, 2012 IL App (4th) 110415, ¶ 17, 964 N.E.2d 1139.

¶ 17 B. Ineffective Assistance of Trial Counsel

¶ 18 Defendant's postconviction petition alleged trial counsel provided ineffective assistance by (1) "fail[ing] to move to quash his arrest and suppress prejudicial evidence obtained in violation of [his] constitutional rights," and (2) introducing prejudicial other-crimes evidence against him.

¶ 19 Claims of ineffective assistance of counsel are governed by the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In applying a variation of this test to first-stage dismissals of postconviction petitions, our supreme court has stated "a petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212. To avoid summary dismissal, a defendant must satisfy both the arguably-deficient and the arguably-prejudiced prongs. *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 76, 962 N.E.2d 528.

¶ 20 1. *Trial Counsel's Failure To Challenge Evidence
Obtained From Defendant's Arrest*

¶ 21 Defendant argues the trial court erred in summarily dismissing his postconviction petition as his allegation trial counsel was ineffective by failing to move to suppress evidence

obtained from his arrest presented the gist of a meritorious constitutional claim. In response, the State asserts defendant's claim is meritless as barred by the doctrines of *res judicata* and collateral estoppel.

¶ 22 On direct appeal, defendant asserted "the trial court should have 'quashed his arrest' and not allowed items seized and statements resulting from such arrest into evidence at trial." *Carroll*, 2012 IL App (4th) 110028-U, ¶ 91. Although forfeited, defendant requested we review his claim under both prongs of plain-error review. *Carroll*, 2012 IL App (4th) 110028-U, ¶ 94. As to whether the evidence was so closely balanced the jury's guilty verdict may have resulted from error (see *People v. Mullen*, 141 Ill. 2d 394, 402, 566 N.E.2d 222, 226 (1990) (first-prong error)), we determined "the evidence of defendant's guilt was overwhelming separate and apart from any supposed illegally obtained [evidence]." *Carroll*, 2012 IL App (4th) 110028-U, ¶¶ 95-96. As to whether the error was so serious defendant was denied a substantial right (see *People v. Vargas*, 174 Ill. 2d 355, 363, 673 N.E.2d 1037, 1041 (1996) (second-prong error)), we determined the complained of error was not structural but may have been harmless. *Carroll*, 2012 IL App (4th) 110028-U, ¶¶ 95-96.

¶ 23 We reject defendant's suggestion our findings on direct appeal are insufficient to render his claim meritless at the first stage of postconviction proceedings. See *Wright*, 2013 IL App (4th) 110822, ¶ 31, 987 N.E.2d 1051; 725 ILCS 5/122-2.1(c) (West 2012) (a trial court may examine any action taken by an appellate court in considering a postconviction petition at the first stage of review). Having previously determined defendant failed to demonstrate the prejudicial effect of the trial court's failure to suppress the supposedly illegally obtained evidence from defendant's arrest, defendant is collaterally estopped from asserting he was arguably

prejudiced by trial counsel's failure to seek the suppression of the same. See *People v. Taylor*, 2015 IL App (4th) 140060, ¶ 29, 44 N.E.3d 1234 (noting the appellate court cannot effectively engage in a plain-error analysis on direct appeal while reserving an ineffective-assistance-of-counsel claim for postconviction proceedings); *People v. Enis*, 194 Ill. 2d 361, 398, 743 N.E.2d 1, 22 (2000) (defendant cannot obtain postconviction relief by rephrasing an issue already addressed as one of ineffective assistance of counsel). The trial court properly rejected defendant's claim as meritless.

¶ 24 2. *Trial Counsel's Introduction of Prejudicial Other-Crimes Evidence*

¶ 25 Defendant argues the trial court erred in summarily dismissing his postconviction petition as his allegation trial counsel was ineffective by introducing prejudicial other-crimes evidence presented the gist of a meritorious constitutional claim. In his petition, defendant alleged the introduction of the prejudicial other-crimes evidence led the jury to decide the case on that evidence rather than the evidence of his guilt, which was weak.

¶ 26 The State asserts this court's findings on direct appeal—(1) the evidence was not closely balanced, (2) the evidence of guilt was overwhelming, and (3) asserted errors were harmless—preclude defendant from establishing he was arguably prejudiced by trial counsel's introduction of other-crimes evidence.

¶ 27 Defendant acknowledges the introduction of prejudicial other-crimes evidence may be harmless error where the other evidence is overwhelming (see *People v. Pelo*, 404 Ill. App. 3d 839, 865-66, 942 N.E.2d 463, 486 (2010) ("[a]n evidentiary issue is harmless when no reasonable probability exists that the jury would have acquitted the defendant absent the error")) but asserts (1) this court's previous findings cannot be sufficient to preclude his claim as the

court did not set the other-crimes evidence apart and determine the remaining evidence to be overwhelming, and (2) such a determination is improper at the first stage of postconviction proceedings.

¶ 28 On direct appeal, defendant argued the trial court erred in allowing certain evidence be displayed to the jury. *Carroll*, 2012 IL App (4th) 110028-U, ¶ 49. Defendant asserted the evidence was closely balanced and any error was not harmless. *Carroll*, 2012 IL App (4th) 110028-U, ¶ 53. After our review, we determined any conceivable error in the court's evidentiary ruling was harmless given the other overwhelming evidence of guilt. *Carroll*, 2012 IL App (4th) 110028-U, ¶ 55. Defendant further asserted on direct appeal the trial court erred in denying him the opportunity to challenge the State's witnesses' testimony regarding a controlled buy, other-crimes evidence for which defendant now complains of in this appeal. *Carroll*, 2012 IL App (4th) 110028-U, ¶ 57. After our review, we determined the trial court did not abuse its discretion as the controlled buy was a collateral issue, which the State did not rely on in proving defendant's guilt at trial. *Carroll*, 2012 IL App (4th) 110028-U, ¶¶ 59-64. Given our findings, it is clear this court did not consider other-crimes evidence in determining the evidence of defendant's guilt was overwhelming. Defendant's claim he was arguably prejudiced by trial counsel's introduction of other-crimes evidence is meritless as any introduction was harmless. See *People v. Romero*, 2015 IL App (1st) 140205, ¶ 26, 36 N.E.3d 323 (when a defendant's allegations are rebutted by the record, they are indisputably meritless legal theories).

¶ 29 *3. Combined Errors*

¶ 30 As a final matter, defendant briefly asserts, even if he cannot demonstrate arguable prejudice for each of his claims, it is arguable the combined prejudice from both of his

claims demonstrates the gist of a meritorious constitutional claim. See *People v. Vera*, 277 Ill. App. 3d 130, 141, 660 N.E.2d 9, 18 (1995). Given our findings above and those from defendant's direct appeal, we find defendant has failed to demonstrate arguable prejudice.

¶ 31 C. Fees and Costs

¶ 32 As the trial court's summary dismissal of defendant's postconviction petition was proper, we deny defendant's request to vacate the court's order imposing fees and costs. See *People v. Alcozer*, 241 Ill. 2d 248, 258, 948 N.E.2d 70, 77 (2011).

¶ 33 III. CONCLUSION

¶ 34 We affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 35 Affirmed.