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) 140706-U

NO. 4-14-0706

FILED
July 26, 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.	)	Macon County
RYAN TYUS,	)	No. 09CF1086
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's summary dismissal of defendant's postconviction petition, which failed to establish the gist of a constitutional claim that counsel was ineffective for failing to investigate and advise defendant of a potential trial defense before defendant pleaded guilty.

¶ 2 In March 2010, defendant, Ryan Tyus, pleaded guilty to aggravated fleeing or attempting to elude a peace officer and was sentenced to three years in prison. In March 2014, he filed a postconviction petition claiming that counsel was ineffective for failing to investigate the facts surrounding the charge, which would have revealed a viable defense. The trial court summarily dismissed his petition. Defendant appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges

¶ 5 In July 2009, the State charged defendant with two counts of aggravated fleeing or attempting to elude a peace officer (aggravated fleeing) (625 ILCS 5/11-204.1(a)(2), (a)(4)

(West 2008)), one count of driving without a valid driver's license (625 ILCS 5/6-101(a) (West 2008)), two counts of resisting a peace officer (720 ILCS 5/31-1(a) (West 2008)), and one count of endangering the life or health of a child (720 ILCS 5/12-21.6(a) (West 2008)).

¶ 6 B. The Guilty Plea

¶ 7 In March 2010, defendant pleaded guilty to aggravated fleeing (625 ILCS 5/11-204.1(a)(4) (West 2008)). In its factual basis, the State asserted that police officers Jason Hesse and Larner (no first name given) were driving in a fully marked police car when they observed a vehicle commit a traffic violation. The officers conducted a traffic stop of the vehicle, whose driver identified himself as defendant. When officers discovered that defendant's driver's license had expired, they approached the vehicle and asked defendant to step out. Defendant cursed at the officers and drove away. The officers followed in their vehicle with its overhead lights and siren activated. While pursuing defendant, the officers observed him disregard two stop signs. Defendant eventually stopped his vehicle, and the officers wrestled him to the ground and arrested him.

¶ 8 The trial court accepted defendant's guilty plea and sentenced defendant to two years in prison, to be served consecutively to a sentence that defendant was serving on an unrelated conviction.

¶ 9 C. The Motion To Withdraw the Guilty Plea

¶ 10 In May 2013, defendant *pro se* filed a "Petition to Withdraw Guilty Plea and Vacate Sentence." In the petition, defendant stated that he wished to withdraw his plea because of ineffective assistance of counsel and newly discovered evidence. Specifically, defendant argued that the officers who pulled him over wore plain clothes and identified themselves as employees of the Illinois Department of Transportation. When they asked defendant to step out of his vehi-

cle, defendant became scared because he did not see any badges and the officers were not wearing uniforms. Defendant drove away. He went four blocks before he saw other police cars pursuing him. Defendant then stopped his car and gave himself up.

¶ 11 The trial court's docket sheet reflects that the court dismissed defendant's filing as untimely. In June 2013, defendant filed a notice of appeal, but the appeal was later dismissed on defendant's own motion. *People v. Tyus*, No. 4-13-0495 (July 19, 2013 (dismissed on defendant appellant's motion)).

¶ 12 D. The Postconviction Petition

¶ 13 In March 2014, defendant *pro se* filed a petition for postconviction relief. The petition reiterated the facts alleged in defendant's petition to withdraw his guilty plea. Defendant argued, in pertinent part, that his counsel was ineffective for failing to investigate defendant's claim that the officers who stopped him wore plain clothes. In June 2014, the trial court summarily dismissed defendant's postconviction petition.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues that the trial court erred by summarily dismissing his petition. In support of that claim, defendant argues that his petition established the gist of a constitutional claim that counsel provided him ineffective assistance. Specifically, defendant argues that counsel failed to investigate the factual circumstances supporting the charge of aggravated fleeing. Defendant argues further that, had counsel engaged in a reasonable investigation, counsel would have discovered that the facts failed to support a charge of aggravated fleeing because the officers in question were not in uniform. Defendant concludes that, had counsel conducted a reasonable investigation, he would not have pleaded guilty.

¶ 17 A. The Post-Conviction Hearing Act

¶ 18 The Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2014)) provides a remedy for defendants whose convictions resulted from substantial violations of their constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). The Act sets up a three-stage process for adjudicating postconviction petitions. *People v. Boclair*, 202 Ill. 2d 89, 99, 789 N.E.2d 734, 740 (2002). At the first stage, the trial court shall dismiss the petition if it is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2014). A petition is frivolous or patently without merit if it fails to present the "gist" of a constitutional claim. *Edwards*, 197 Ill. 2d at 244, 757 N.E.2d at 445.

¶ 19 A gist is a low threshold. *Id.* To establish the gist of a constitutional claim, the defendant may present the claim in limited detail and need not include legal arguments or citations to legal authority. *Id.* At the first stage of proceedings, the court should take the defendant's factual allegations as true and should "liberally construe[]" those allegations. *Id.* The first stage of proceedings allows the trial court " 'to act strictly in an administrative capacity by screening out those petitions which are without legal substance or are obviously without merit.' " *People v. Tate*, 2012 IL 112214, ¶ 9, 980 N.E.2d 1100 (quoting *People v. Rivera*, 198 Ill. 2d 364, 373, 763 N.E.2d 306, 311 (2001)).

¶ 20 We review the trial court's dismissal of a postconviction petition *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009).

¶ 21 B. Ineffective Assistance of Counsel

¶ 22 To establish a claim of ineffective assistance of counsel, a defendant must show that both (1) counsel's performance was deficient in that it fell below an objective standard of

reasonableness and (2) the defendant was prejudiced by counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668 (1984). However, at the first stage of postconviction proceedings, the defendant's burden is reduced, and he must show merely that it is *arguable* that (1) counsel's performance fell below an objective standard of reasonableness and (2) the defendant was prejudiced. *Tate*, 2012 IL 112214, ¶ 19, 980 N.E.2d 1100.

¶ 23 Counsel's performance is deficient if counsel "failed to ensure that the defendant's guilty plea was entered voluntarily and intelligently." *People v. Hall*, 217 Ill. 2d 324, 335, 841 N.E.2d 913, 920 (2005). Such deficient performance can occur when counsel misadvises a defendant about a viable defense. *Id.*

¶ 24 For instance, in *Hall*, the supreme court concluded that counsel provided ineffective assistance by advising the defendant, incorrectly, that his lack of knowledge that a child was in the backseat of the car he had stolen was not a valid defense to the crime of aggravated kidnapping (720 ILCS 5/10-2(a)(2) (West 2006)). *Hall*, 217 Ill. 2d at 340-41, 841 N.E.2d at 922-23.

¶ 25 Similarly, in *People v. Armstrong*, 2016 IL App (2d) 140358, 50 N.E.3d 745, the appellate court held that trial counsel was ineffective for advising the defendant to plead guilty to failing to register as a sex offender (730 ILCS 150/6, 10 (West 2010)) when the defendant's underlying conviction for unlawful restraint was not actually a triggering offense requiring sex-offender registration (730 ILCS 150/2(B)(1.5) (West 1996)). Counsel provided deficient representation by advising the defendant to plead guilty to a charge that was "legally baseless from the outset." *Armstrong*, 2016 IL App (2d) 140358, ¶ 22, 50 N.E.3d 745, and for "induc[ing] [defendant] to plead guilty to an offense of which he would *necessarily* have been acquitted after a trial." (Emphasis added.) *Id.* ¶ 11.

¶ 26 In *People v. Mendez*, 336 Ill. App. 3d 935, 938, 784 N.E.2d 425, 427 (2003), the Third District reversed a trial court's summary dismissal of a postconviction petition because the defendant stated "the gist of a claim that counsel was ineffective for failing to investigate a potential entrapment defense or advise [the] defendant of that defense." The defendant's petition asserted that he "was approached more than 15 times before he eventually agreed to sell cocaine to an informant [and] that he repeatedly canceled meeting with the informant." *Id.* The summary dismissal of defendant's petition was erroneous because counsel failed to inform defendant of a "defense worthy of consideration" prior to defendant's pleading guilty. *Id.* at 939, 784 N.E.2d at 427.

¶ 27 C. The Offense of Aggravated Fleeing

¶ 28 As charged in this case, the driver of a motor vehicle commits aggravated fleeing or attempting to elude a peace officer when the driver "flees or attempts to elude a peace officer, after being given a visual or audible signal by a peace officer in the manner prescribed in subsection (a) of Section 11-204 of [the Illinois Vehicle Code]," and the flight or attempt to elude involves the disobedience of two or more official traffic control devices. 625 ILCS 5/11-204.1(a)(2) (West 2008). Section 11-204 of the Vehicle Code provides that the signal given by the peace officer "may be by hand, voice, siren, red or blue light. Provided, the officer giving such signal shall be in police uniform ***." 625 ILCS 5/11-204 (West 2008).

¶ 29 D. Defendant's Petition in This Case

¶ 30 On appeal, defendant argues that his postconviction petition asserted the gist of a constitutional claim that counsel was ineffective for failing to investigate the factual circumstances surrounding the charge of aggravated fleeing and to advise defendant that he could not be proved guilty of aggravated fleeing because Hesse and Larner were not in uniform.

¶ 31 In support of his argument, defendant cites *People v. Murdock*, 321 Ill. App. 3d 175, 176 (2001), for the proposition that a conviction for aggravated fleeing requires proof that the officer in question was in uniform. Defendant relies on *Murdock* to argue that the evidence contained in the factual basis in this case failed to establish that Hesse and Larner were in uniform; therefore, defendant argues, counsel was ineffective for advising defendant to plead guilty to aggravated fleeing, "a crime that he could not commit."

¶ 32 Defendant's argument fails because the record belies his assertion that Hesse and Larner were not in uniform. Hesse's sworn police statement averred that "Larner and Hesse were dressed in fully marked [Decatur police department] vests and operating a fully marked [Decatur police department] squad car." Therefore, evidence existed to establish that Larner and Hesse were "in police uniform," as required to prove defendant guilty of aggravated fleeing.

¶ 33 Defendant's argument that he "could not commit" aggravated fleeing is an overstatement. Unlike in *Hall* and *Armstrong*, the defense that defendant claims he was unaware of would not have *necessarily* acquitted him at trial. In this case, defendant potentially could have made either of the following arguments at trial: (1) contrary to Hesse's sworn statement, Hesse and Larner wore plain clothes without any markings or (2) the vests worn by Hesse and Larner labeled "DPD" did not constitute "police uniform[s]." Neither defense was a sure fire winner. That fact distinguishes this case from the circumstances addressed by *Hall* and *Armstrong*, in which the defendants clearly would not have pleaded guilty had they known about the available defense. The "defense" claimed in this case was not nearly as strong and not one "worthy of consideration." *Mendez*, 336 Ill. App. 3d at 939, 784 N.E.2d at 427.

¶ 34 We granted defendant's motion to cite additional authority, which was *People v. Maxey*, 2016 IL App[(1st) 130698. In that case, the First District Appellate Court reversed the

defendant's conviction of aggravating fleeing and eluding a peace officer on the ground that the record contained no testimony as to what the officers were wearing at the time of the stop. *Maxey*, ¶ 134. For the reasons earlier discussed, *Maxey* is clearly distinguishable from this case and provides no support for defendant's claims.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, 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).

¶ 37 Affirmed.