NOTICE
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2016 IL App (4th) 140732-U

NO. 4-14-0732

FILED
August 2, 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
DEANGELO COOK, JR.,	)	No. 10CF456
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in summarily dismissing defendant's *pro se* postconviction petition.

¶ 2 In February 2011, defendant, Deangelo Cook, Jr., pleaded guilty to one count of unlawful possession with the intent to deliver. The trial court sentenced him to 30 years in prison. In October 2013, defendant filed a *pro se* petition for postconviction relief, which the court summarily dismissed.

¶ 3 On appeal, defendant argues the trial court erred in summarily dismissing his postconviction petition. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2010, the State charged defendant by information with single counts of armed violence (count I) (720 ILCS 5/33A-2(a) (West 2010)), being an armed habitual criminal

(count II) (720 ILCS 5/24-1.7(a) (West 2010)), unlawful possession of a controlled substance with the intent to deliver while within 1,000 feet of school property (count III) (720 ILCS 570/407(b)(1) (West 2010)), and unlawful possession of a controlled substance (count IV) (720 ILCS 570/402(c) (West 2010)). In January 2011, the State amended count III to delete the language regarding school property and alleged defendant committed the offense of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(c)(2) (West 2010)).

¶ 6 In February 2011, the trial court conducted a plea hearing. Defense counsel indicated the State would recommend 30 years in prison and defendant would be given credit for time spent in custody. The State noted defendant was subject to sentencing as a Class X offender because of his criminal record. Upon hearing the court read the charge and possible penalties, defendant indicated he understood. Defendant indicated his intent to plead guilty, stated he was doing so of his own free will, and stated no one had forced him to plead guilty. After hearing the factual basis, the court found defendant's plea to be knowing and voluntary and accepted it. Thereafter, the court sentenced defendant to 30 years in prison and assessed various fines, fees, and costs.

¶ 7 In October 2013, defendant filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)). Therein, defendant alleged defense counsel was ineffective for failing to tell him about the charges he faced and for only meeting with him twice. Defendant also alleged counsel was ineffective for failing to obtain a fitness hearing. Defendant claimed he had suffered from schizophrenia before and after the guilty plea and had received social security payments for mental retardation since 1987, when he was five years old. Defendant claimed he was not fit to

enter a plea. To his petition, defendant attached his affidavit, a letter from the Social Security Administration, an October 2010 letter from defense counsel regarding his case, a June 2010 mental-health evaluation, and a September 2010 mental-health diagnostic-and-treatment note from the Department of Corrections.

¶ 8 In December 2013, the trial court summarily dismissed defendant's petition, finding "there is nothing in the record or the Defendant's documents which support the Defendant's contentions that he was not able to understand the nature of the proceedings or assist his trial counsel." Thus, the court found defendant's claims were not supported by affidavit, records, or other evidence as required by section 122-2 of the Act (725 ILCS 5/122-2 (West 2012)). The court concluded defendant's petition was frivolous and patently without merit.

¶ 9 In January 2014, defendant filed a *pro se* motion to reconsider. In July 2014, the trial court denied the motion. This court allowed defendant's motion for leave to file a late notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues the trial court erred in summarily dismissing his postconviction petition, claiming the petition presented the gist of a meritorious claim of ineffective assistance of counsel and that his guilty plea was involuntary due to his mental state. We disagree.

¶ 12 The Act "provides a mechanism for criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitutions." *People v. Morris*, 236 Ill. 2d 345, 354, 925 N.E.2d 1069, 1075 (2010). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The defendant must show he suffered a substantial deprivation of his federal or state constitutional

rights. *People v. Caballero*, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008).

¶ 13 The Act establishes a three-stage process for adjudicating a postconviction petition. *English*, 2013 IL 112890, ¶ 23, 987 N.E.2d 371. Here, defendant's petition was dismissed at the first stage. At the first stage, the trial court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2012). Our supreme court has held "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." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). A petition lacks an arguable legal basis when it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition lacks an arguable factual basis when it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Hodges*, 234 Ill. 2d at 16-17, 912 N.E.2d at 1212.

¶ 14 "In considering a petition pursuant to [section 122-2.1 of the Act], the [trial] 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). The petition must be supported by "affidavits, records, or other evidence supporting its allegations," or, if not available, the petition must explain why. 725 ILCS 5/122-2 (West 2012). Our review of the first-stage dismissal of a postconviction petition is *de novo*. *People v. Dunlap*, 2011 IL App (4th) 100595, ¶ 20, 963 N.E.2d 394. Moreover, we may affirm the dismissal of a postconviction petition on any basis supported by the record. *People v. Wright*, 2013 IL App (4th) 110822, ¶ 32, 987 N.E.2d 1051.

¶ 15 In the case *sub judice*, defendant argues his petition established the gist of a constitutional claim of ineffective assistance of counsel. In his petition, defendant alleged counsel (1) failed to request a fitness hearing after being informed he suffered from schizophrenia, (2) coerced him into pleading guilty, (3) failed to investigate his mental-health history and competency, and (4) failed to prepare a defense.

¶ 16 "To enter a voluntary plea of guilty, a defendant must understand the nature of the proceedings against him and be competent to assist in his own defense." *People v. Shanklin*, 351 Ill. App. 3d 303, 306, 814 N.E.2d 129, 142 (2004); see also 725 ILCS 5/104-10 (West 2010). "Fitness speaks only to a person's ability to function within the context of a trial; a defendant may be fit to stand trial even though the defendant's mind is otherwise unsound." *People v. Griffin*, 178 Ill. 2d 65, 79, 687 N.E.2d 820, 830 (1997).

¶ 17 A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109. To prevail on such a claim, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 687-88). "When a guilty plea is challenged on ineffective assistance grounds, the prejudice prong of *Strickland* is satisfied if a reasonable probability exists that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." *People v. Miller*, 346 Ill. App. 3d 972, 982, 806 N.E.2d 759, 767 (2004). A defendant must satisfy both prongs of the *Strickland* standard, and the failure

to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

¶ 18 In this case, the documents defendant attached to his petition fail to support his contentions he was unable to understand the nature of the proceedings or assist counsel. The letter from the Social Security Administration stated defendant became disabled in June 1987 and had a diagnosis of mental retardation. A June 2010 mental-health evaluation notes defendant had been diagnosed with schizophrenia and was using medication for mental-health and emotional issues. A September 2010 mental-health diagnostic-and-treatment note from the Department of Corrections indicated defendant stated "things are fine," he was "taking care" of himself, and was "doing pretty good." The mental-status examination found defendant "to be making good progress." Further, he was assessed as having a history of paranoid schizophrenia, now "in remission."

¶ 19 We find defendant's postconviction petition failed to raise the gist of an arguably meritorious claim of ineffective assistance of counsel related to counsel's failure to request a fitness hearing. "The mere fact that the petitioner suffers from mental disturbances or requires psychiatric treatment, however, does not necessarily raise a *bona fide* doubt of his ability to consult with counsel." *People v. Eddmonds*, 143 Ill. 2d 501, 519, 578 N.E.2d 952, 960 (1991). Defendant's documents offer little more than insight into his past medical history. They fail to show a *bona fide* doubt of his fitness at the time he pleaded guilty. As defendant failed to demonstrate counsel's performance fell below an objective standard of reasonableness or that he suffered prejudice, his claim of ineffective assistance of counsel has no merit.

¶ 20 Defendant also argues he stated the gist of a constitutional claim that his guilty plea was not knowingly and voluntarily entered due to his mental state. Appellate counsel,

apparently basing the argument on defendant's use of the term "non-knowing" in the factual background of his petition, contends defendant's mental state prevented him from entering a knowing and voluntary plea and questions the admonishments given by the trial court. We note, however, that this issue was not sufficiently raised in defendant's petition, which focused on his claim of ineffective assistance of counsel as it related to the fitness issue. Thus, as defendant did not raise the issue in his petition, he cannot argue it for the first time on appeal. See *People v. Jones*, 213 Ill. 2d 498, 505, 821 N.E.2d 1093, 1097 (2004). Based on the foregoing, we find the court did not err in summarily dismissing defendant's postconviction petition.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, 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.

¶ 23 Affirmed.