2018 IL App (2d) 150760-U
No. 2-15-0760-U
Order filed April 24, 2018



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
| | ) | of Du Page County. |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | No. 11-CF-1617 |
| | ) | |
| JORDAN RATLEY, | ) | Honorable |
| | ) | John J. Kinsella, |
| Defendant-Appellee. | ) | Judge, Presiding. |

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court properly dismissed defendant's postconviction petition as frivolous and patently without merit where overwhelming evidence supported defendant's convictions such that defendant could not establish the prejudice component of an ineffective-assistance-of-counsel claim; additionally, defendant's claim that trial court failed to investigate statements by the victim that would allegedly exculpate him was conclusory.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Jordan Ratley, appeals the first-stage dismissal of his postconviction petition (725 ILCS 5/122-1 *et seq.* (West 2016)). He stands convicted of home invasion (720 ILCS 5/12-11(a)(2) (West 2010)), aggravated kidnapping (720 ILCS 5/10-2(a)(3) (West 2010)), and

aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)). On appeal, defendant asserts that he set forth the gist of two arguably meritorious claims. First, he contends that trial counsel was ineffective for failing to investigate a telephone call between defendant and the victim that occurred while defendant was in jail awaiting trial. According to defendant, the victim's statements during the call would corroborate portions of his testimony. Second, he argues that his attorney was ineffective in that he failed to investigate the clothing he was wearing during the crime. Defendant contends that the lack of blood on the back of his shirt corroborates his testimony that he did not force the victim into a car. We disagree with both points and affirm.

¶ 4 II. BACKGROUND

¶ 5 Our disposition on direct appeal contains an extensive discussion of the testimony from defendant's jury trial, which we will not repeat here. See *People v. Ratley*, 2014 IL App (2d) 120953-U, ¶¶ 3-24. Pertinent and additional facts will be discussed as they relate to the issues raised by defendant.

¶ 6 III. ANALYSIS

¶ 7 This case comes to us following the dismissal of defendant's postconviction petition during first-stage proceedings. See *People v. Brown*, 236 Ill. 2d 175, 184 (2010). Accordingly, our review is *de novo*. *Id*. During first-stage proceedings, the trial court conducts an independent evaluation of a petition—liberally construing factual allegations and taking them as true—to determine if it is frivolous or patently without merit. *Id*. If so, the trial court must dismiss it. *Id*. A petitioner need only present the gist of a constitutional claim to avoid dismissal. *Id*. Only a limited amount of detail is necessary, and the petitioner need not cite authority or present legal argument. *Id*. These standards constitute a low threshold; a petitioner

need only plead facts that assert an arguable constitutional claim. *Id.* A petition is frivolous or patently without merit if it lacks an arguable basis in fact or law. *Id.* at 184-85.

¶ 8 Both of defendant's arguments contend that his trial attorney rendered ineffective assistance. Therefore, the well-known test, first articulated by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), controls. Under that test, a defendant must show "that counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Manning*, 241 Ill. 2d 319, 326 (2011) (citing *Strickland v. Washington*, 466 U.S. at 688). Regarding the prejudice prong, a "reasonable probability" is one sufficient to undermine confidence in the outcome of the proceedings below. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). As both prongs are necessary, either may be addressed first, and, if the defendant has failed to satisfy one prong, the other need not be considered. *People v. Irvine*, 379 Ill. App. 3d 116, 130 (2008). However, it must always be kept in mind that during the first stage of a postconviction proceeding, "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." (Emphasis in original.) *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). Our supreme court has referred to this as the " 'arguable' *Strickland* test." *People v. Tate*, 2012 IL 112214, ¶ 20. With these standards in mind, we turn to defendant's arguments. Having examined the record and defendant's submissions, it is clear to us that defendant has failed to satisfy the prejudice prong.

¶ 9 A. THE VICTIM'S ALLEGED STATEMENT

¶ 10 We first consider defendant's claim that counsel should have investigated a telephone call between him and the victim that occurred while he was in jail awaiting trial. It is true that the

failure to investigate and develop a defense can constitute ineffective assistance of counsel. *Irvine*, 376 Ill. App. 3d at 130. In his petition, defendant alleged that counsel was ineffective in that he failed to investigate "a phone conversation that took place while the defendant was in DuPage County [jail] between [the victim] and the defendant that would have collaborated [*sic*] his story that he was let into Mr. Smith's home and did not force his way into the home." According to defendant, this would have shown he was not guilty of home invasion. There are a number of problems with this allegation.

¶ 11 First, defendant has not set forth what the victim allegedly stated during the telephone conversation; rather, he has set forth the conclusion that, whatever she said, it corroborated his testimony. That is, defendant has alleged nothing but a conclusion about what the victim said. Though the threshold during first-stage proceedings is low, broad conclusory allegations are insufficient for a defendant to meet his or her burden at this point. *People v. Roman*, 2016 IL App (1st) 141740, ¶ 13. Such allegations are insufficient to establish a claim of ineffective assistance. *People v. Miller*, 393 Ill. App. 3d 629, 640 (2009). While it is true that defendant provided facts to substantiate that he had a conversation with the victim at the time he claims it to have occurred, he does not set forth the content of that conversation in anything but conclusory terms. This severely hampers and impedes our ability to assess the prejudicial impact of trial counsel's alleged failure. Indeed, defendant was a party to the conversation with the victim he now relies upon, and, as such, he has knowledge of what the victim actually said. Given defendant's firsthand knowledge of the conversation, it is not unreasonable to expect him to provide some degree of detail. See *People v. Delton*, 227 Ill. 2d 247, 258 (2008) ("Given that such information is within [the defendant's] personal knowledge, it is neither unreasonable nor unjust to expect his petition to contain supporting documentation of this caliber.").

¶ 12 Moreover, even if they were not conclusory, defendant's allegations do not establish the gist of a claim that counsel's alleged deficient performance prejudiced him. As we noted in our disposition on direct appeal, evidence of defendant's guilt on this point was overwhelming:

> "Although it is undisputed that [Damien] Hall unlocked the door to [Brian Smith's] apartment prior to defendant's entry, the evidence does not support defendant's claim that Hall did so with the intent of allowing defendant to enter. In this regard, Hall unequivocally testified that his intent in unlocking the door was to *go outside and speak with defendant* in an attempt to calm him down. The evidence establishes, however, that before Hall had the opportunity to leave the apartment, the door 'flew open' and defendant entered the apartment. Both Brian and Hall testified that Brian did not invite defendant into his apartment and he did not tell defendant that it was okay for him to come inside. Brian and Hall also testified that after defendant entered the apartment, Brian told him that he was not welcome. Even defendant's testimony suggests that he was aware that Brian did not want him in his apartment. For instance, defendant testified that Brian told him that he did not 'want that shit' in his house. Nevertheless, defendant remained in the apartment and attacked Wojtas. Accordingly, the evidence overwhelming establishes that defendant, without authority, knowingly entered Brian's apartment and committed the offense of home invasion." (Emphasis in original.) *People v. Ratley*, 2014 IL App (2d) 120953-U, ¶ 35.

Further, the record showed that defendant was pounding loudly on the door and that he covered the peep hole (indicating he knew he would not be welcome). The victim testified that she heard increasingly loud pounding on the door, observed the door "fly open," and saw defendant "[come] right at [her]" while pushing everyone "to the side."

¶ 13 Defendant now argues that the fact that the victim made some sort of statement that was inconsistent with her trial testimony and consistent with his, arguably, created a reasonable probability that the outcome of the proceedings would have been different. We disagree with defendant. Of course, the failure to establish an arguable claim of prejudice warrants the summary dismissal of a postconviction petition. See *Hodges*, 234 Ill. 2d at 17.

¶ 14 In *People v. Hernandez*, 351 Ill. App. 3d 28, 32 (2004), for example, the defendant claimed he received ineffective assistance of counsel in that his trial attorney caused him to testify without discussing the decision with the defendant and informing him that he did not have to testify. The court found that the defendant could not establish prejudice in light of the testimony of three witnesses incriminating him as well as his confession. *Id.* at 40. In *People v. Barrow*, 195 Ill. 2d 506, 522-23 (2001) (*Barrow* was a postconviction petition in a capital case that was dismissed without an evidentiary hearing; it is sufficiently similar to provide guidance here), the defendant alleged that he received ineffective assistance of counsel because trial counsel failed to investigate whether one of the State's witness's deal with the police included the dismissal of pending charges and because counsel failed to impeach that same witness with the witness's prior convictions. *Id.* at 522. Noting that it had previously determined on direct appeal that the evidence against the defendant was overwhelming (*Id.* at 521), the reviewing court held that the defendant could not establish prejudice (*Id.* at 523).

¶ 15 Like the *Barrow* court, as set forth above, we have previously held that the evidence against defendant was overwhelming. The statement defendant now points to would undermine the victim's trial testimony to an extent, and it would provide some corroboration for his testimony. Nevertheless, the testimony of Smith and Hall, which the jury apparently accepted, would stand unimpeached. Given the state of the record, we cannot conceive of the jury coming

to a different result had it been aware of the statement defendant now alludes to. In other words, he has not convinced us that it is arguable that he has shown prejudice. We therefore reject defendant's first argument.

¶ 16 B. DEFENDANT'S SHIRT

¶ 17 Defendant also contends that trial counsel was ineffective in failing to obtain the shirt he was wearing at the time of the offenses. Defendant acknowledges in his petition that the shirt in question had been placed into evidence. Thus, as the State points out, what defendant is actually arguing is not so much a failure to investigate and obtain evidence as it is a failure to develop and argue a theory at trial. Of course, this, too, could constitute ineffective assistance of counsel. *People v. Ramirez-Lucas*, 2017 IL app (2d) 150156, ¶ 42. Defendant contends that there was no blood on the back of the shirt. According to defendant, this shows that he could not have been carrying the victim over his shoulder, as argued at trial, because she was bleeding from the face and this would have resulted in blood being on his back. This, defendant asserts, would have undermined the State's claim that the victim did not voluntarily accompany him and negated an element of the aggravated kidnapping count. See 720 ILCS 5/10-2(a)(3) (West 2010). We find this argument unpersuasive.

¶ 18 Initially, we note that the victim testified that she did not start bleeding until she was in the car. Specifically she stated that, while in the car, defendant punched her in the face, that her lip "busted apart," and that there was no blood there before this time. He also punched her in the nose at this time, and it started bleeding as well. Defendant himself testified that he saw no blood on the victim until he was driving the car. Thus, the inference defendant seeks to draw from the lack of blood on the back of his shirt is already supported by other evidence in the record. In other words, defendant's shirt would be cumulative evidence in this respect. In

*People v. Phyfiher*, 361 Ill. App. 3d 881, 886-87 (2005), the court held, "Defendant cannot make out a claim of ineffectiveness where the testimony he claims should have been offered was cumulative to evidence already in the record." *Cf. People v. Jarnagan*, 154 Ill. App. 3d 187, 194 (1987) ("Failure to call or investigate a witness whose testimony is cumulative does not demonstrate ineffective assistance of counsel.").

¶ 19 Moreover, the inference defendant seeks to nullify here is that the victim did not voluntarily accompany him after he beat her in Smith's apartment. Like defendant's first point, overwhelming evidence supports defendant's conviction here. Defendant himself testified that he beat the victim in Smith's apartment. He further acknowledges that he picked up the victim and carried her out of Smith's apartment. Defendant stated he carried her halfway to the car, set her down, and pushed her. He then said, "[W]hat the fuck is wrong with you bitch" and "come on, let's go." According to defendant, she then "started walking with me." He added that she was walking on her own and that he was not dragging her.

¶ 20 However, Robert Silliman testified that he heard screaming coming from Smith's apartment and saw a man leaving the apartment with a woman over his shoulders. Stillman was a bystander. The victim testified defendant dragged her, ordered her into his car, and pushed her into the vehicle. Furthermore, she testified that when she first heard defendant knocking on the apartment door, she was scared because [she] thought that [defendant] was going to hurt [her.]" She backed away from the door. When defendant ultimately entered the apartment, she observed that he was furious. He then beat her.

¶ 21 Defendant would now have us find that it is arguable that the victim voluntarily accompanied him (at least that there was a reasonable doubt to that effect) based on the lack of blood on the back of his shirt. This is far too slender a reed to make this an arguable point.

Quite simply, the evidence was overwhelming that the victim did not voluntarily accompany him. The record shows that the victim feared defendant. He beat her, severely, shortly before she supposedly voluntarily accompanied him. It defies credulity to suggest that the victim would voluntarily leave with defendant under such circumstances. Further, defendant removed her from Smith's apartment by force—carrying her over his shoulder—which is confirmed by Stillman. Defendant himself acknowledges this as well. The victim testified that defendant pushed her into his car. It is simply not arguable that the victim voluntarily accompanied defendant, and, therefore, defendant has not demonstrated prejudice due to his attorney's failure to pursue it. See *Hodges*, 234 Ill. 2d at 17.

¶ 22 IV. CONCLUSION

¶ 23 In light of the following, the order of the circuit court of Du Page County summarily dismissing defendant's postconviction petition is affirmed.

¶ 24 Affirmed.