

2014 IL App (2d) 130258-U
No. 2-13-0258
Order filed August 26, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-2699
)	
MICHAEL M. HALL,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly summarily dismissed defendant's postconviction petition, which alleged that his guilty plea was induced by ineffective assistance of counsel: defendant did not attach affidavits of the witnesses whom counsel allegedly should have investigated, and defendant's assurances at his plea hearing refuted his claim that counsel had promised him a particular sentence.

¶ 2 Defendant, Michael M. Hall, appeals the dismissal of his postconviction petition, which alleged ineffective assistance of counsel in connection with his guilty plea to home invasion (720 ILCS 5/12-11(a)(2) (West 2010)) and armed violence with a category II weapon (720 ILCS 5/33A-2(a) (West 2010)). We affirm.

¶ 3

I. BACKGROUND

¶ 4 On June 27, 2012, defendant pleaded guilty to home invasion and armed violence. In exchange, other charges against him were dismissed, but there was no agreement as to sentencing. The charges were based on defendant's accountability for the actions of Shane Smith and Francisco Esparza, who entered a home with weapons and struck a resident.

¶ 5 The trial court admonished defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 1997). Defendant replied "Yes" when asked if he was pleading guilty freely and voluntarily. He also answered "Yes" when asked if he was satisfied with his attorney's representation. He stated "No" when asked if anyone made any promises to him as to what the sentence would be in order to get him to plead guilty. The court explained the sentencing range to defendant, who said that he understood it.

¶ 6 Defendant stipulated to the following factual basis. He had driven Smith and Esparza to the victim's home. Smith and Esparza then entered the home wearing masks and carrying a knife and a hammer. Inside they threatened and struck the victim. They later fled the home. Defendant admitted to the police that he knew that Smith and Esparza had been discussing robbing the victim, and he saw that they had masks and weapons with them. According to the factual basis, he gave the police a written statement detailing those facts. A witness at the scene saw the vehicle stopped near the house, saw two masked men exit the vehicle, and then saw the vehicle drive away. The court accepted the plea, finding that it was voluntary.

¶ 7 Before the sentencing hearing, the court reviewed the presentence report, which included a statement from defendant that he dropped off Smith and Esparza at a friend's house and "didn't think nothing of it." The court expressed concern about that statement, and the following colloquy occurred:

“THE COURT: Mr. Hall, I need to know, when you entered the plea of guilty, I admonished you about your rights regarding your right to continue with your plea of not guilty, your right to proceed to trial in this case, and you indicated to me at that time that you understood all of that and that you were voluntarily pleading guilty. Now, what is the situation here?

[DEFENDANT]: Your Honor, I plead guilty, your Honor.

THE COURT: So what you’re saying in this report is not the case?

[DEFENDANT]: Your Honor, I did say that because, your Honor, I did just drop them off and, you know, went home to be with my kid and I didn’t really do nothing wrong except—but, you know, I had no other choice but to plead.

THE COURT: When you say no other choice, I don’t understand what that means. You did have a choice. Your choice was go to trial, make the State prove the case against you.

[DEFENDANT]: Uh-huh. I just—

THE COURT: If you’re telling me, sir, that you had no idea that they were going to do this, that you had no, you know, pre-knowledge that you assisted them by even taking them there, then I don’t know why you’re pleading guilty.

[DEFENDANT]: I am just trying to see if I could get a lesser charge, you know.

THE COURT: Well, you understand you’re looking at Class X sentencing here, sir. There is no lesser charge involved. And my notes—on the other count, was there—my notes—was there a minimum on that?

[THE STATE]: There is, Judge. On the armed violence that he pled guilty to, the mandatory minimum is ten.

THE COURT: Do you understand that, sir?

[DEFENDANT]: Yes, sir.

THE COURT: So I need to know, sir, is this what you really want to do? If you're telling me that you had no knowledge about any of this, I don't understand why you would be pleading guilty. You're looking at a minimum of ten, minimum of ten, ten to 30 years.

[DEFENDANT]: Uh-huh. I just want to plead guilty and get it over with, sir.

THE COURT: Okay. Are you satisfied with the representation?

[DEFENDANT]: Yes.”

¶ 8 Defendant's counsel then also questioned defendant, and defendant agreed that counsel told him what the plea offer was and that counsel told him that he could choose a bench trial or a jury trial, take an offer, or enter a blind plea.

¶ 9 The court sentenced defendant to concurrent 13-year terms of incarceration. Defendant moved to reconsider the sentences, and the trial court denied that motion. We affirmed the sentences on appeal. *People v. Hall*, 2014 IL App (2d) 121041-U.

¶ 10 On December 27, 2012, defendant filed a *pro se* postconviction petition alleging that his plea was induced by ineffective assistance of counsel. He alleged that counsel should have investigated a defense, given that Smith and Esparza would testify on his behalf, as would the witness who saw him drive away. Defendant next alleged that counsel forced him to plead guilty by promising him a six-year sentence and drug treatment. Defendant did not include any affidavits or other evidence with his petition.

¶ 11 On February 13, 2013, the trial court summarily dismissed the petition as frivolous and patently without merit. The court noted the lack of affidavits to support the petition and that the record contradicted defendant's allegations. Defendant appeals.

¶ 12

II. ANALYSIS

¶ 13 On appeal defendant essentially contends that his plea was involuntary because his counsel was ineffective for promising him a six-year sentence and for failing to investigate a defense.

¶ 14 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2012)) establishes a three-stage process for adjudicating a postconviction petition. *People v. Carballido*, 2011 IL App (2d) 090340, ¶ 37 (citing *People v. Jones*, 213 Ill. 2d 498, 503 (2004)). “At the first stage, the trial court must review the petition within 90 days of its filing to determine whether it is either frivolous or patently without merit.” *Id.* (citing 725 ILCS 5/122-2.1(a)(2) (West 2008)). “If the trial court determines that the petition is either frivolous or patently without merit, it must dismiss the petition in a written order.” *Id.*

¶ 15 A *pro se* postconviction petition is frivolous or patently without merit when it has “no arguable basis either in law or in fact.” *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). “A petition has no basis in law when it is based on an ‘indisputably meritless legal theory,’ meaning that the legal theory is ‘completely contradicted by the record.’ ” *Carballido*, 2011 IL App (2d) 090340, ¶ 37 (quoting *Hodges*, 234 Ill. 2d at 16). “A petition has no basis in fact when it is based on ‘fanciful factual allegation[s],’ meaning that the factual allegations are ‘fantastic or delusional.’ ” *Id.* (quoting *Hodges*, 234 Ill. 2d at 17). “We review *de novo* a trial court’s first-stage dismissal.” *Id.*

¶ 16 Here, defendant’s petition was properly dismissed at the first stage.

¶ 17 A defendant may challenge the voluntariness of a plea by showing that the plea was based on ineffective assistance of counsel. See *People v. Hall*, 217 Ill. 2d 324, 341 (2005). However, the allegations in a postconviction petition must be based on factual allegations and not mere conclusory statements. *People v. Ivy*, 313 Ill. App. 3d 1011, 1019 (2000). Further, a postconviction petition must be supported by “affidavits, records, or other evidence supporting its allegations,” or, if they are not available, the petition must explain why. 725 ILCS 5/122-2 (West 2012).

¶ 18 Because most petitions at the first stage are drafted by petitioners with little legal knowledge or training, the threshold of required information is low. *People v. Delton*, 227 Ill. 2d 247, 254 (2008). A petitioner need present only a limited amount of detail and need not make legal arguments or cite to legal authority. *Id.* However, this does not mean that a *pro se* petitioner is excused from providing any factual detail at all. *Id.* “Such a position would contravene the language of the Act that requires some factual documentation which supports the allegations to be attached to the petition or the absence of such documentation to be explained.” *Id.* (citing 725 ILCS 5/122-2 (West 2004)). “[T]he purpose of section 122-2 is to establish that a petitioner’s allegations are capable of ‘objective or independent corroboration.’” *Id.* (quoting *Hall*, 217 Ill. 2d at 333). Thus, “the affidavits and exhibits which accompany a petition must identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petitioner’s allegations.” *Id.* While a *pro se* petition is not expected to set forth a complete and detailed factual recitation, it must set forth some objective facts that can be corroborated, or contain some explanation as to why those facts are absent. *Id.* at 254-55. The failure to attach the necessary affidavits, records, or other evidence or explain their absence is fatal to a petition and by itself justifies the petitioner’s summary dismissal. *Id.*

¶ 19 Here, as to his alleged defense, defendant failed to attach any affidavits or other evidence to his petition. He also provided no explanation as to why he could not do so. He stated only the bare conclusion that he was not accountable for the crimes and that three people would testify.

¶ 20 Defendant argues that he is not required to provide affidavits when only the affidavit of his counsel would support his claim. When a postconviction petition contains facts from which it could be inferred that “the only affidavit that petitioner could possibly have furnished, other than his own sworn statement, would have been that of his attorney,” the defendant may be excused from the otherwise mandatory requirement of section 122-2. *People v. Williams*, 47 Ill. 2d 1, 4 (1970). However, “[a] claim that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness.” *People v. Harris*, 224 Ill. 2d 115 (2007) (quoting *People v. Enis*, 194 Ill. 2d 361, 380 (2000)). “The reason for such a requirement is clear. ‘In the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary.’” *Id.* (quoting *Enis*, 194 Ill. 2d at 380).

¶ 21 Here, defendant alleged that counsel failed to investigate and call witnesses who could support a defense. However, absent affidavits from the proposed witnesses, defendant cannot present the gist of a claim of ineffective assistance of counsel.

¶ 22 Defendant relies on *Hodges* to support his argument. There, the court reversed the summary dismissal of a petition alleging ineffective assistance of counsel. But the defendant in *Hodges* supplied affidavits from potential witnesses that recounted in detail the testimony that each witness would offer, thereby providing independent corroboration of the allegations in the petition. *Hodges*, 234 Ill. 2d at 18. That is not present here.

¶ 23 As to defendant's claim that his counsel coerced his plea by promising that he would receive a six-year sentence, it is well settled that a defendant's acknowledgment in open court, during a plea proceeding, that there were no promises regarding his plea serves to contradict a postconviction claim that he pleaded guilty in reliance upon an alleged promise by counsel regarding the sentence. *People v. Torres*, 228 Ill. 2d 382, 396-97 (2008) (citing *People v. Greer*, 212 Ill. 2d 192, 211 (2004)). Generally, when a defendant is asked in open court whether any promises had been made to cause him to enter his guilty plea, and he answers "no," his own words refute any postconviction allegations to the contrary. *Greer*, 212 Ill. 2d at 211.

¶ 24 Here, during the pleas hearing, defendant specifically agreed that he had not been promised anything and was not coerced into pleading guilty. He further was specifically told the sentencing range and stated that he understood it. Thus, his own words refuted his claim.

¶ 25

III. CONCLUSION

¶ 26 The trial court properly summarily dismissed the postconviction petition. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 27 Affirmed.