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2014 IL App (3d) 120814-U

Order filed June 16, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois. |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal Nos. 3-12-0814 and 3-12-0815 Circuit Nos. 06-CF-347 and 07-CF-38 |
| DONNELL EGGLESTON, |) | |
| Defendant-Appellant. |) | Honorable Clark E. Erickson, Judge, Presiding. |

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing defendant's first-stage postconviction petition.

¶ 2 Defendant, Donnell Eggleston, appeals the summary dismissal of his *pro se* postconviction petition. Defendant argues that the trial court erred in dismissing his petition because it was at least arguable that he received ineffective assistance of appellate counsel. We affirm.

¶ 3 **FACTS**

¶ 4 In case No. 06-CF-347, defendant was charged by indictment with two counts of attempted first degree murder (720 ILCS 5/8-4, 9-1(a)(1) (West 2006)), two counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)), and one count each of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2006)), aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2006)), and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2006)). In case No. 07-CF-38, defendant was also charged by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)). The cases were consolidated for trial. On the second day of the trial, defendant changed his defense from an alibi to self-defense.

¶ 5 At trial, Carlos Everett testified that after 10 p.m. on May 26, 2006, he was at a friend's house when he decided to go to the Plaza liquor store in Kankakee. At the liquor store, Everett saw defendant standing near a maroon Concord. Thereafter, Everett stopped to speak with David Davis and Logene Newton. During the conversation, Everett heard gunshots and ran. Everett received a gunshot wound to the foot and was transported to the hospital by Quentin Hardrict. Davis testified that he was also shot in the foot during the Plaza liquors shooting.

¶ 6 Robert Johnson testified that after the shooting at the Plaza liquor store, he and Hardrict went to visit Everett at the hospital but did not enter because of the police presence. Instead, Hardrict drove to Lee's Lounge and parked the car in the third parking spot from the street. When Hardrict and Johnson exited the vehicle, Johnson did not notice a gun in Hardrict's hands. After walking past one or two parking spots, Hardrict made a comment, and Johnson turned to see defendant in the passenger seat of a parked car. Defendant grabbed a gun from underneath the seat, and Hardrict pushed Johnson to run. Hardrict ran toward his car, and Johnson heard a gunshot. Johnson ran back toward Hardrict, who was lying on the ground, and defendant pointed

a gun at Johnson. Defendant pulled the trigger, but the gun seemed to jam. Defendant drove away. Hardrict died by the rear driver's side door of his car. Johnson retrieved a .38-caliber revolver from underneath a nearby car and a Tech 9 semi-automatic gun near Hardrict. Johnson placed the weapons inside Hardrict's car. Johnson thought that Hardrict had been shot while he was running.

¶ 7 Corrina Morris testified that after 11p.m., on May 26, 2006, she was parked outside of Lee's Lounge and saw Hardrict walk past her car. Hardrict made some hand gestures, spoke toward the car parked next to Morris, and then began to run. Defendant exited the car next to Morris and pointed a gun. Morris heard a gunshot and ducked. Morris did not notice that Hardrict was carrying a gun.

¶ 8 Defendant testified that he and Hardrict had been close friends but had experienced a falling out. On the night of the shooting, defendant saw Everett in the alley by the Plaza liquor store and noticed Hardrict nearby. People started running toward defendant, and defendant felt as though he was being ambushed and started shooting. Defendant was not trying to shoot anyone.

¶ 9 After the liquor store shooting, defendant drove to Lee's Lounge and parked his car. While he was talking to his friends in the parking lot, defendant saw Hardrict run toward him with a Tech 9 in his right hand. Defendant grabbed the gun from under his seat and fired a single shot. Defendant then moved into the driver's seat and drove off. The day after the shooting, defendant went to Milwaukee and later traveled to Tennessee, where he stayed until his arrest.

¶ 10 While incarcerated, defendant wrote a letter to Danyil Taylor. Defendant's letter summarized various witnesses' testimony and urged Taylor to testify that Hardrict came toward his position with a gun because he was switching his defense to self-defense.

¶ 11 Officer Robin Passwater testified that he arrived at the scene around 1:27 a.m. on the date of the incident. Passwater found Hardrict lying on the ground and bleeding from his mouth. There was no blood trail. A nine-millimeter shell casing was discovered at the scene. The casing was fired from the same weapon as the four casings recovered from an alley near the Plaza liquor store.

¶ 12 Officer James Alrandi testified that he processed the crime scene. Inside the vehicle that was located next to Hardrict, Alrandi found a Tech 9 with a fully loaded magazine next to it and a fully loaded revolver.

¶ 13 Forensic pathologist John Scott Denton testified that Hardrict died from a single gunshot wound. The bullet grazed Hardrict's chin, entered his neck, and was recovered from his right upper back. There was no evidence of a close range shot. Denton opined that Hardrict's body was at least slightly angled toward the shooter at the time of the shooting.

¶ 14 Dwane Osborne testified that he was employed at Prisoner Transportation Services. During defendant's extradition from Tennessee, defendant told Osborne that he had shot someone in the face outside of a nightclub for disrespecting him.

¶ 15 The trial court found that although defendant had a reason to believe he was in danger, the belief was unreasonable for self-defense purposes. The court found defendant guilty of second degree murder, two counts of aggravated battery with a firearm, and one count each of aggravated discharge of a firearm, aggravated unlawful use of a weapon, and unlawful possession of a weapon by a felon. The trial court sentenced defendant to 20 years' imprisonment for second degree murder and a consecutive term of 20 years' imprisonment for the remaining convictions.

¶ 16 In defendant's direct appeal, we held that trial counsel was not ineffective for presenting

an alibi defense and failing to present cumulative evidence of Hardrict's aggressive acts toward defendant in support of a self-defense theory. *People v. Eggleston*, No. 3-09-0067 (2011) (unpublished order under Supreme Court Rule 23). We also vacated defendant's conviction and sentence for unlawful possession of a weapon by a felon under the one-act, one-crime doctrine. *Id.*

¶ 17 On June 22, 2007, defendant filed a petition for postconviction relief. The trial court summarily dismissed the petition, and defendant appeals.

¶ 18 ANALYSIS

¶ 19 Defendant argues that the trial court erred in summarily dismissing his *pro se* postconviction petition because appellate counsel was ineffective for failing to raise a reasonable doubt issue. Defendant argues that such an argument would arguably succeed because the evidence established that his belief in the need for self-defense was reasonable.

¶ 20 We review the summary dismissal of a postconviction petition *de novo*. *People v. Hodges*, 234 Ill. 2d 1 (2009). A postconviction petition may be summarily dismissed if "the court determines the petition is frivolous or is patently without merit[.]" 725 ILCS 5/122-2.1(a)(2) (West 2006). A petition is frivolous or patently without merit only if it has no "arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 16.

¶ 21 A postconviction petition alleging ineffective assistance of appellate counsel may not be dismissed at the first stage of proceedings if: (1) counsel's performance arguably fell below an objective standard of reasonableness; and (2) the petitioner was arguably prejudiced as a result. *Hodges*, 234 Ill. 2d 1. The failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Wilborn*, 2011 IL App (1st) 092802. Appellate counsel is not required to raise every conceivable issue on appeal, and counsel is not incompetent for refraining

from raising meritless issues. *Id.*

¶ 22 In a challenge to the sufficiency of the evidence, a reviewing court will only overturn a guilty verdict if, after viewing the evidence in the light most favorable to the State, the court determines that no " 'rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court will not reweigh the evidence or substitute its judgment on matters reserved for the fact finder. *People v. Hayes*, 2011 IL App (1st) 100127.

¶ 23 In the instant case, defendant was charged with first degree murder and raised a defense of self-defense. He was ultimately convicted of second degree murder. A person commits second degree murder when he or she commits the offense of first degree murder (720 ILCS 5/9-1 (West 2006)) while believing the circumstances to be such that they justified or exonerated the killing, but his or her belief was unreasonable. 720 ILCS 5/9-2(a)(2) (West 2006). An individual may use force against another in self-defense when the user reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force. 720 ILCS 5/7-1(a) (West 2006). The use of lethal force is only permissible when the user reasonably believes that such force is necessary to prevent imminent death or great bodily harm. *Id.* The threatened individual's belief in the need to use force must be objectively reasonable. *People v. Jeffries*, 164 Ill. 2d 104 (1995).

¶ 24 Defendant's petition has not alleged the gist of a claim of ineffective assistance of appellate counsel. Defendant's argument that appellate counsel should have raised a sufficiency of the evidence issue fails because defendant could not show prejudice resulting from appellate counsel's decision. If appellate counsel raised a sufficiency of the evidence issue, defendant's

second degree murder conviction likely would have been affirmed. At trial, Johnson and Morris stated that they did not see a gun in Hardrict's hands as he walked in defendant's direction. Both individuals also stated that Hardrict ran immediately before a gunshot was fired. After the gunshot, Johnson ran toward Hardrict when he saw defendant attempt to fire a second shot. The physical evidence corroborated testimony of Hardrict's retreat. Denton testified that Hardrict was not shot at close range. Hardrict's body was found near his vehicle, which Johnson reported was three parking spots away from defendant's location. Additionally, the reasonableness of defendant's belief in the need to use lethal force was eroded by Osborne's testimony that defendant stated he shot an individual for disrespecting him.

¶ 25 Defendant argues that his testimony explaining his belief that Hardrict came at him with two guns made his version of events more credible than the testimony of Johnson and Morris. However, defendant's argument would require us to reweigh the evidence and reassess the credibility of the witnesses. Such determinations are left to the trial judge in a bench trial. *People v. Siguenza-Brito*, 235 Ill. 2d 213 (2009). Viewed in the light most favorable to the State, the evidence was sufficient to sustain defendant's second degree murder conviction. As a result, appellate counsel was not ineffective for failing to raise this issue on direct appeal, and the trial court did not err in summarily dismissing defendant's postconviction petition.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Kankakee County is affirmed.

¶ 28 Affirmed.