2014 IL App (5th) 130046-U

NO. 5-13-0046

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	Nos. 06-CF-1612 &
	)	07-CF-415
	)	
TIFFANY HALL,	)	Honorable
	)	Michael N. Cook,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Chapman and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: Summary dismissal of defendant's *pro se* postconviction at the first stage of proceedings is reversed where petition's claim that petitioner received ineffective assistance of guilty plea counsel because counsel failed to properly investigate her mental health condition presents the gist of a constitutional claim. Remanded for further proceedings.

¶ 2 The defendant, Tiffany Hall, appeals the summary dismissal, by the circuit court of St. Clair County, of her *pro se* postconviction petition at the first stage of proceedings. For the reasons that follow, we reverse the dismissal and remand for further proceedings on the petition.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal are as follows. On June 9, 2008, before the Honorable Milton S. Wharton, the defendant entered pleas of guilty to five charges: three counts of first degree murder in case number 07-CF-415, and one count of first degree murder and one count of intentional homicide of an unborn child in case number 06-CF-1612. The State explained that in exchange for the pleas of guilty, the State had agreed to withdraw its notice of intent to seek the death penalty. The parties agreed that because there were multiple decedents, the minimum sentence the court could impose following conviction on the first degree murder counts was mandatory life in prison without the possibility of parole. Judge Wharton then inquired, as he had each previous time the defendant appeared before him, as to how the defendant was being treated at the St. Clair County jail and as to her level of satisfaction with the representation of her by her attorneys. The defendant did not voice any concerns with regard to either matter. Judge Wharton then admonished the defendant with regard to the charges against her and the penalties she faced. Following that, the State presented its factual basis in support of the five charges, to which the defendant stipulated.

¶ 5 After giving additional admonishments regarding the defendant's rights, Judge Wharton inquired of the defendant's two trial attorneys whether there had "been anything that might have created a doubt in your mind as to her fitness to enter a plea of guilty in this case?" One of her attorneys, James A. Gomric, replied in the negative, and added that psychologist Dr. Daniel J. Cuneo had been appointed "to conduct examinations as to both sanity as well as fitness." Gomric noted that the record contained Dr. Cuneo's

report, and that "not only by way of that documentation, but by way of subsequent analysis, the independent experts from Chicago, we have confirmed that in point of fact she was then and is now and has been throughout this process both fit and sane," and that she was fit to enter a plea of guilty on that date. We note that Dr. Cuneo's report is indeed contained in the record on appeal, and that contrary to the inaccurate assertions of Gomric, and of the State on appeal, it is completely silent on the matter of the defendant's sanity at the time of the murders she allegedly committed, instead limiting itself, by the plain and explicit language of its first sentence, to "establishing an opinion as to [the defendant's] fitness to stand trial." The penultimate sentence of the report reiterates the limited scope of Dr. Cuneo's report, stating Dr. Cuneo's opinion that the defendant "is presently fit to stand trial" and offering not a word about the defendant's sanity at the time of the offenses.

¶ 6 Still more admonishments from Judge Wharton followed, and then the defendant waived her right to a presentence investigation. With regard to her prior criminal history, the State conceded that the defendant had "no significant criminal history, certainly no felony criminal history." Gomric then represented to Judge Wharton that "in mitigation," he would note that "while the reports came back indicating that she was both fit to stand trial and that there were no legal defenses involving insanity, we do believe *** there are some issues that not only involve mental health issues," but also the limited intellectual functioning of the defendant. Judge Wharton accepted the defendant's pleas of guilty and sentenced her to four concurrent life sentences on the first degree murder charges, to be served concurrently with a 60-year sentence on the intentional homicide of an unborn

child charge.

¶ 7 On September 19, 2008, the defendant filed an untimely motion to withdraw her guilty plea, which was dismissed by the trial court. On November 13, 2012, the defendant filed the *pro se* petition for relief pursuant to the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2012)) that is the subject of the present case, as well as a request for appointment of counsel. In her petition, she raised multiple issues, including "ineffective assistance of counsel" and "mental incompetency." Specifically, she alleged, *inter alia*, that "Gomric failed to investigate my mental health condition properly and actually didn't receive documentation of my psychiatric evaluation until two days after my guilty plea was entered." In support of this allegation, the defendant attached to her petition the report of psychologist Dr. Robert L. Heilbronner, which was stamped "RECEIVED JUN 11 2008." We note that unlike Dr. Cuneo's report, which by its own terms limits itself to the question of the defendant's fitness to stand trial, Dr. Heilbronner's report states that the results of the report "may be used to assist in the guilt/innocence phase, or in mitigation should a sentence of death be considered as punishment." Dr. Heilbronner's report states that the defendant "has a prominent mental health history that began when she was a young child and includes several psychiatric hospitalizations," and that Dr. Heilbronner believes the results of his evaluation are "reliable and valid" because the results suggest that on the dates he interviewed her, the defendant "did not attempt to feign or exaggerate cognitive impairment." Later in the report, Dr. Heilbronner states that the Structured Interview of Reported Symptoms (SIRS) "was also administered to assess the reliability and validity

of her apparent psychiatric symptoms," and that "there was *no evidence* of any attempt to feign or maligner psychopathology at this moment." (Emphasis in original.) After detailing the various psychiatric symptoms described by the defendant, the report concludes that "mental health factors are the predominant issues in this case," and "are relevant to the commission of the crime(s) as well as mitigation." The report notes that the defendant's "history includes serious problems in the psychiatric domain including two psychiatric hospitalizations for suicidal ideation," and that "there is longstanding evidence of psychiatric and behavioral problems that play an important role in understanding [the defendant's] history and her mental status around the time in which the crimes were committed." The report also advises that "[i]t might be of use to have [the defendant] undergo additional medical and radiologic (PET scan or brain MRI) studies to ascertain whether there is any objective evidence of disruption to other neurobiological functions as a result of developmental issues," and that "[p]sychiatric examination would also be helpful to assist in further differential diagnosis and to ascertain whether the voices she claims to hear represent actual auditory command hallucinations or some form of obsessive thinking."

¶ 8 In further support of this allegation in her petition, the defendant alleged that postplea psychiatric evaluations of her at Dwight Correctional Center led to the following diagnoses: psychotic disorder, posttraumatic stress disorder, schizophrenia, mood disorder, and bipolar disorder, as well as a diagnosis of "mild mental retardation." On January 2, 2013, Judge Michael N. Cook entered a two-sentence, hand-scribbled order in which he ruled that the defendant's petition "failed to state the [g]ist of a [c]onstitutional

[d]eprecation [*sic*]" because "the record refutes the allegations" found in the petition. This timely appeal followed.

¶ 9 ANALYSIS

¶ 10 The Act sets forth a procedural mechanism through which a defendant can claim that "in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2012). The Act provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Boclair*, 202 Ill. 2d 89, 99 (2002). At the first stage, the trial court independently assesses the defendant's petition, and if the court determines that the petition is "frivolous" or "patently without merit," the court can summarily dismiss it. 725 ILCS 5/122-2.1(a)(2) (West 2012); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). To survive the first stage, "a petition need only present the gist of a constitutional claim." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). "This is a purposely low threshold for survival because most petitions are drafted at this stage by defendants with little legal knowledge or training." *People v. Ligon*, 239 Ill. 2d 94, 104 (2010). A *pro se* petition for postconviction relief is considered 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, 16 (2009). "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Id.* "A claim completely contradicted by the record is an example of an indisputably meritless legal theory." *People v. Brown*, 236 Ill. 2d 175, 185 (2010). If a petition is not dismissed at

the first stage, it advances to the second stage, where an indigent petitioner can obtain appointed counsel and the State can move to dismiss the petition. 725 ILCS 5/122-2.1(b), 122-4, 122-5 (West 2012). At the second stage, the trial court determines whether the defendant has made a substantial showing of a constitutional violation, and if a substantial showing is made, the petition proceeds to the third stage for an evidentiary hearing; if no substantial showing is made, the petition is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 245 (2001). "The dismissal of a postconviction petition without an evidentiary hearing is reviewed *de novo*." *People v. Hall*, 217 Ill. 2d 324, 334 (2005).

¶ 11 On appeal, the defendant presents numerous contentions supporting her claim that the summary dismissal of her petition was error. However, as she notes, because partial summary dismissals are not permissible under the Act, if we conclude that even one of the defendant's contentions presents the gist of a constitutional claim, the entire petition must be remanded for further proceedings, regardless of the merit of any other contentions presently contained therein, because the entire petition is subject to amendment by appointed counsel on remand. See, *e.g.*, *People v. Cathey*, 2012 IL 111746, ¶ 34. One of the defendant's contentions on appeal is that the trial court erred in summarily dismissing her *pro se* petition because the petition set forth the gist of a constitutional claim that guilty plea counsel was ineffective for failing to properly investigate the defendant's mental health condition before advising her to plead guilty.

¶ 12 A challenge to a guilty plea that alleges ineffective assistance of plea counsel is subject to the same two-prong standard as other claims of ineffective assistance of counsel: "a defendant must establish that counsel's performance fell below an objective

standard of reasonableness and the defendant was prejudiced by counsel's substandard performance." *People v. Hall*, 217 Ill. 2d 324, 334-35 (2005). The prejudice prong is satisfied if the defendant demonstrates "there is a reasonable probability that, absent counsel's errors, the defendant would have pleaded not guilty and insisted on going to trial." *Id*. at 335. This requires more than a bare allegation: "the defendant's claim must be accompanied by either a claim of innocence or the articulation of a plausible defense that could have been raised at trial." *Id*. at 335-36. "At the first stage of postconviction proceedings under the Act, 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." (Emphases added.) *People v. Hodges*, 234 Ill. 2d 1, 17 (2009).

¶ 13 The State contends the summary dismissal of the defendant's claim, detailed above, should be affirmed for multiple reasons. First, the State contends the defendant's theory is contradicted by the record because the defendant was repeatedly asked if she was happy with the representation of her by her attorneys and she repeatedly answered that she was. Therefore, according to the State, there could be no ineffective assistance of counsel. Implicit in this argument is the idea that a defendant should and will always know when he or she is receiving ineffective assistance of counsel, and will vocalize that to the court. We reject this idea. First, it is not supported by any legal authority, and has therefore been forfeited by the State. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be

raised in the reply brief, in oral argument, or in a petition for a rehearing). Second, it is not supported by reason or common sense, particularly where, as here, the defendant admittedly has cognitive impairments that impact her intellectual capacity. Were it as simple for a defendant to manage his or her own case, and to navigate that case through the criminal justice system, as the State so glibly maintains it is, there would be no need for criminal defense attorneys, or for the constitutional protections that guarantee defendants access to those attorneys.

¶ 14 The State next contends that the defendant's "insanity argument should be held to be waived or forfeited" as it was not raised in her *pro se* petition. However, as noted above, in her petition the defendant very clearly alleged, *inter alia*, that "Gomric failed to investigate my mental health condition properly and actually didn't receive documentation of my psychiatric evaluation until two days after my guilty plea was entered." As also noted above, the allegation was supported by documentation.

¶ 15 The State then presents a detailed argument in which it attempts to convince this court that the defendant would not have prevailed on an insanity defense at trial. The question, however, at this stage of proceedings is whether the defendant's petition presented the gist of a constitutional claim of ineffective assistance of plea counsel, and therefore whether it is arguable that plea counsel's performance fell below an objective standard of reasonableness and that the defendant was prejudiced thereby. The State also contends the defendant was "fit to plead guilty." This argument, too, misses the point. The legal question at this juncture isn't whether the defendant was "fit" to plead guilty; as explained in detail above, it is the extent to which she has presented a claim of ineffective

assistance of guilty plea counsel.

¶ 16 As also noted above, the "gist of a constitutional claim" threshold is purposely low. In this case, on the basis of the facts detailed above, and the relevant law detailed above, we conclude the defendant's petition set forth the gist of a constitutional claim that guilty plea counsel was ineffective for failing to properly investigate the defendant's mental health condition before advising her to plead guilty. At the time they advised her to plead guilty, plea counsel had in their possession Dr. Cuneo's report, which by its own explicit terms addressed only the defendant's fitness to stand trial, not her sanity at the time of the alleged offenses. Counsel were awaiting Dr. Heilbronner's report, which explicitly addressed the issue of the defendant's sanity at the time of the alleged offenses, but had not received it at the time they advised the defendant to plead guilty. As the defendant points out on appeal, it was Dr. Heilbronner's report, not Dr. Cuneo's, which if followed up on might have supported a possible insanity defense at trial, which in turn might have led to a finding of not guilty by reason of insanity, a crucial distinction that would not have been lost on capable and diligent plea counsel. At this point, it is arguable that plea counsel's performance fell below an objective standard of reasonableness and that the defendant was prejudiced thereby. Accordingly, the defendant's contention merits further development, and the defendant's *pro se* petition should not have been summarily dismissed for failure to state the gist of a constitutional claim.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, we reverse the summary dismissal of the defendant's *pro se* petition and remand for further proceedings on the entire petition.

¶ 19 Reversed and remanded.