

No. 1-09-2593

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FOURTH DIVISION
April 28, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 87 CR 11296
)	
DANIEL VAUGHN,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

O R D E R

HELD: Summary dismissal of *pro se* post-conviction petition affirmed where defendant failed to provide sufficient support to state the gist of a claim that he was entitled to a new suppression hearing based on *Miranda* violations and coercion.

Defendant Daniel Vaughn appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West 2008)). He

contends that the circuit court erred in summarily dismissing his petition where he presented new evidence corroborating his claim of systematic abuse and torture by Area 2 detectives who coerced his custodial statement.

On August 7, 1987, two-month-old Matthew Tayborn died of severe blunt force trauma to his head while in defendant's care. Matthew was the child of Constance Tayborn, defendant's girlfriend. Defendant was not Matthew's biological father, but he helped care for Matthew and Constance's other children. Defendant initially denied being at his girlfriend's apartment on the night of Matthew's death, but later admitted that he accidentally dropped Matthew while lifting him out of the crib. Forensic evidence, however, showed that Matthew's injuries were severe and inconsistent with a fall to the ground.

Before trial, defendant unsuccessfully sought to suppress his statement about dropping Matthew claiming that it was coerced and made without the benefit of *Miranda* warnings. Following a hearing, the trial court denied the motion finding that defendant voluntarily went to the police station for questioning about Matthew's death, that he was advised of his *Miranda* rights by Detective McDermott and the assistant State's Attorney, that he waived these rights, and did not ask for an attorney. The court concluded that defendant's oral and written statements were voluntary, and noted, that "if [Detective Yucaitis] hit

[defendant] twice in the face with his fist, we wouldn't be talking about some puffed lip that mysteriously went away by the time he got down to Cook County Department of Corrections."

At trial, the State presented evidence that defendant waived his *Miranda* rights prior to providing oral and written statements to law enforcement personnel. This evidence came through the testimony of the detectives and the assistant State's Attorney who were present at the relevant times.

Defendant testified that he voluntarily accompanied Detectives McDermott and Yucaitis to Area 2 for questioning regarding Matthew's death. However, he claimed that the detectives placed him in an interrogation room and, without warning, Detective Yucaitis punched him in the mouth twice. The detectives never advised him of his *Miranda* rights and his right to have counsel present during questioning, and although he asked for an attorney several times, he did not receive a response.

On cross-examination, defendant viewed a photograph taken of him after the assistant State's Attorney took his written statement and a photograph taken the following day at Cook County Jail. No signs of physical injury were evident in the photographs, and he admitted that he had not sustained any injury to his mouth. He told the doctor at Cook County Jail that the police did not beat him up, but that he was hit in the mouth a couple of times and his lip swelled. He added that Detective

McDermott was a "nice guy" and did not hit him. He also admitted that he signed a *Miranda* waiver after being advised of his rights by the assistant State's Attorney who then took his written statement.

A jury subsequently found defendant guilty of first degree murder and the trial court sentenced him to natural life imprisonment without parole. On direct appeal, this court affirmed defendant's conviction and sentence, but declined to address his request for a new suppression hearing because it was based on matters outside the record and, therefore, should be raised in a post-conviction petition. *People v. Vaughn*, No. 1-06-0127 (2008) (unpublished order under Supreme Court Rule 23).

Thereafter, defendant filed the subject *pro se* post-conviction petition alleging, in pertinent part, that he should be granted a new suppression hearing in light of new information that bolsters his claims that he was not given *Miranda* warnings before being interviewed by police, and that his statement was coerced by Detectives McDermott and Yucaitis. In support, defendant attached portions of the 2006 Report of the Special State's Attorney regarding an allegation of police misconduct stemming from Detective McDermott's interrogation of Alfonso Pinex at Area 2 on June 28, 1985, and two Chicago Tribune articles from 1993 reporting that Detective Yucaitis was

reinstated after being suspended from the police department for his alleged involvement in the torture of Andrew Wilson in 1982.

In a written order, the circuit court summarily dismissed defendant's petition as frivolous and patently without merit. The court observed that generalized claims of abuse, without any link to defendant's case, *i.e.*, some evidence corroborating his allegations, or some similarity between the type of alleged abuse and that presented by the evidence of other cases of abuse, are insufficient to support his claim of coercion. The court noted that there was no evidence that defendant sustained injuries consistent with his claim, and the "new evidence" did not show that he himself was tortured or was not given *Miranda* warnings.

In this court, defendant contends that the circuit court erred in summarily dismissing his petition because he alleged an arguable claim that his custodial statement was coerced and that the "new evidence" cited and included in his petition conclusively "establishes that [Detectives] McDermott and Yucaitis participated in similar cases of abuse against Area 2 suspects around the same time as [his] arrest." This new evidence, he argues, "severely damages the credibility of the officers who denied his allegations at the suppression hearing."

A post-conviction petition may be summarily dismissed as frivolous and patently without merit only if it has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1,

16 (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. We review the summary dismissal of defendant's post-conviction petition *de novo*. *Hodges*, 234 Ill. 2d at 9.

We recognize that the first stage of post-conviction review presents merely a pleading issue (*People v. Reyes*, 369 Ill. App. 3d 1, 18 (2006)), but disagree with defendant that his petition "easily satisfies this standard because it includes conclusive evidence that the same Area 2 detectives whom he has consistently accused of coercing his statement also participated in similar cases of mistreatment." The "low threshold" pleading standard (*People v. Edwards*, 197 Ill. 2d 239, 244 (2001)) or "gist" describes what defendant must allege at the first stage of proceedings, and it is not the legal standard used by the circuit court to evaluate the petition (*Hodges*, 234 Ill. 2d at 11). In *Hodges*, 234 Ill. 2d at 9, the supreme court stated, "in our past decisions, when we have spoken of a 'gist,' we meant only that the section 122-2 pleading requirements are met, even if the petition lacks formal legal arguments or citations to legal authority."

However, a *pro se* petitioner is not excused from providing any factual detail at all surrounding the alleged constitutional violation despite the "low threshold" at the first stage of

proceedings. *Hodges*, 234 Ill. 2d at 10. Section 122-2 of the Act specifically requires some factual documentation which supports the allegations to be attached to the petition or an explanation as to why they have not been included. 725 ILCS 5/122-2 (West 2008).

Here, the documents that defendant attached to his petition do not provide the requisite factual support for his post-conviction allegations that he was not given *Miranda* warnings before being interviewed by police, and that his statement was coerced by Detectives McDermott and Yucaitis. *Delton*, 227 Ill. 2d at 256. The selected portions from the 2006 Report of the Special Prosecutor document an allegation of abuse committed by Detective McDermott in June 1985, and the two newspaper articles regarding the reinstatement of Detective Yucaitis describe his involvement in the 17-hour torture of Andrew Wilson, who then confessed to fatally shooting two police officers. These documents, standing alone, do not support an inference that defendant was not *Mirandized* or provided with counsel, and that his custodial statement was coerced by the detectives. *Delton*, 227 Ill. 2d at 257.

Moreover, the relevance of these documents is tangential considering defendant's own testimony that Detective McDermott was a nice guy and did not hit him, coupled with the lack of evidence in the record that defendant suffered any injuries

consistent with his claim of coercion. In these respects, defendant's present allegations are contradicted by the record and subject his petition to dismissal at the first stage of proceedings. *People v. Rogers*, 197 Ill. 2d 216, 222 (2001). As a final point, we briefly note defendant's misplaced reliance on *Reyes*, where "we found no such contradiction of defendants' claims [of police coercion] in the record at trial." *Reyes*, 369 Ill. App. 3d at 24.

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

Affirmed.