

THIRD DIVISION
September 12, 2012

No. 1-10-2467

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).

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. 02 CR 10939
)	
PARIS THOMAS,)	Honorable
)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Salone and Justice Steele concurred in the judgment.

ORDER

¶ 1 *Held:* Summary dismissal of defendant's *pro se* post-conviction petition affirmed over claims that trial counsel was ineffective for failing to request separate verdict forms for first degree murder, and that appellate counsel was ineffective for failing to raise that issue and challenge the sufficiency of the evidence to convict him of murder.

¶ 2 Paris Thomas, the defendant, 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 2010). He contends that the circuit court erred in dismissing his petition where he stated cognizable claims of

ineffective assistance of trial and appellate counsel.

¶ 3 The record shows, in relevant part, that on April 1, 2002, defendant, Steven Jackson, Bishara Thomas, and Terrell Sims went to the apartment of Tonette Waters at 3128 West Lexington Street to commit a "lick," *i.e.*, a robbery. After tricking Waters into opening her door, they forcefully entered the apartment, and defendant and Terrell searched for money while Bishara and Steven, who had the handgun, restrained Waters. According to defendant's videotaped statement, Bishara and Steven brought Waters, naked, to the front of the apartment at one point, and when she began screaming, he and Terrell ran out the back door and waited for Steven in the alley. Once all the co-defendants returned to the car, they drove off, and defendant later learned that a girl from the neighborhood had been shot and killed. Varielle Edwards, Waters' eight-year-old daughter, who was home during the robbery, testified that three men left the apartment out the back door, and the fourth man shot Waters in the head. Following a jury trial, defendant was found guilty of first degree murder and home invasion, then sentenced to consecutive, respective terms of 40 and 10 years' imprisonment.¹

¶ 4 On direct appeal, defendant argued, *inter alia*, that the State failed to prove him guilty of murder beyond a reasonable doubt, specifically, the *corpus delicti* of the crime. *People v. Thomas*, No. 1-04-2741, at 11 (2007) (unpublished order under Supreme Court Rule 23). In rejecting defendant's claim, this court noted that defendant's conviction was based on a theory of accountability and concluded as follows:

"The aforementioned independent evidence, the testimonial evidence coupled with the photographs, established that [defendant] aided Steve Jackson, Bishara Thomas, and Terrell Sims in the home

¹ The essential facts have been taken from this court's order in *People v. Thomas*, No. 1-04-2741 (2007) (unpublished order under Supreme Court Rule 23).

invasion and murder of Tonette Waters. The same evidence also established that [defendant] was present during the planning of the crime with his codefendants, was present at the scene of the crime, aided his codefendants in the commission of the murder and home invasion and fled from the scene of the crime. [Citation.] The aforementioned evidence makes [defendant] accountable for the murder and home invasion committed by [defendant] and his codefendants. [Citation.] Accordingly, we hold that the aforementioned testimony of the witnesses and the photographs admitted in evidence, together with the defendant's confession, were sufficient, when viewed in the light most favorable to the prosecution, to establish the *corpus delicti* of the crime of murder and to establish the crime of home invasion."

Thomas, No. 1-04-2741, at 13-16.

¶ 5 Following our affirmance of defendant's conviction and sentence (*Thomas*, No. 1-04-2741, at 36), defendant filed a *pro se* petition for post-conviction relief alleging, as pertinent to this appeal, that trial counsel was ineffective for failing to request separate verdict forms on each count of murder, and that appellate counsel was ineffective for failing to raise this issue on direct appeal. He also claimed that appellate counsel was ineffective for failing to challenge the sufficiency of the evidence to convict him of murder under an accountability theory. The circuit court summarily dismissed defendant's petition as frivolous and patently without merit, finding, *inter alia*, that trial counsel was not ineffective for failing to request separate verdict forms, and that defendant's sufficiency of the evidence claim was raised and rejected on direct appeal, and thus *res judicata*. This appeal follows.

¶ 6 The Act provides a mechanism by which a criminal defendant may assert that his conviction was the result of a substantial denial of his constitutional rights. *People v. Delton*, 227 Ill. 2d 247, 253 (2008). At the first stage of proceedings, defendant need only set forth the "gist" of a constitutional claim (*Delton*, 227 Ill. 2d at 254); however, the circuit court must dismiss the petition if it finds that the petition is frivolous or patently without merit (725 ILCS 5/122-2.1(a)(2) (West 2010)), *i.e.*, it has no arguable basis either in law or in fact (*People v. Hodges*, 234 Ill. 2d 1, 16 (2009)). We review the summary dismissal of a post-conviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388 (1998).

¶ 7 In this case, defendant maintains that he set forth claims of ineffective assistance of counsel warranting further proceedings under the Act. To establish a claim of ineffective assistance of counsel, defendant must first show that counsel's performance was deficient, *i.e.*, it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Secondly, defendant must show that counsel's deficient performance resulted in prejudice to the defense, *i.e.*, a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687, 694. Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel. *People v. Flores*, 153 Ill. 2d 264, 283 (1992).

¶ 8 Defendant first claims that appellate counsel was ineffective for failing to argue that the State did not prove him guilty of murder on a theory of accountability beyond a reasonable doubt. The State responds that appellate counsel raised this issue, and that defendant's claim is therefore *res judicata*.

¶ 9 The record shows that counsel challenged the sufficiency of the evidence to convict defendant of murder on direct appeal. Although appellate counsel's argument specifically focused on the *corpus delicti* of that crime, rather than the evidence of defendant's accountability, this court

nonetheless considered the sufficiency of the evidence as a whole and found that the evidence presented at trial established that defendant was "accountable for the murder and home invasion committed by [him] and his codefendants." We therefore find, contrary to defendant's claim, that appellate counsel raised a challenge to the sufficiency of the evidence to convict him of murder, that this court ruled on the issue, and, consequently, that the issue is *res judicata* and his claim of ineffective assistance of appellate counsel is unavailing. *People v. Ward*, 187 Ill. 2d 249, 268 (1999).

¶ 10 Defendant next claims that trial counsel was ineffective for failing to request separate verdict forms for first degree murder, and that appellate counsel was ineffective for failing to raise this issue on direct appeal. The State responds that this same argument has been rejected by this court in *People v. Calhoun*, 404 Ill. App. 3d 362 (2010), *People v. Mabry*, 398 Ill. App. 3d 745, 755 (2010), and *People v. Braboy*, 393 Ill. App. 3d 100 (2009).

¶ 11 The State correctly points out that this court has repeatedly held that trial counsel's decision to opt for a general verdict form, over specific verdict forms, is a matter of trial strategy and will be considered objectively reasonable where there is no mandatory burden on counsel to request separate verdict forms. *Calhoun*, 404 Ill. App. 3d at 383; accord *Mabry*, 398 Ill. App. 3d at 756; *Braboy*, 393 Ill. App. 3d at 108. Here, defendant has failed to overcome the presumption that counsel's failure to request separate verdict forms was the product of sound trial strategy where requesting separate verdict forms may have made it easier for the jury to find defendant guilty of murder under a theory of felony murder due to the overwhelming evidence of his participation in the underlying home invasion. *Calhoun*, 404 Ill. App. 3d at 383-84. We therefore find that defendant has failed to make the requisite showing that trial counsel's performance was deficient under *Strickland*, and we need not address the prejudice prong of that test. *Calhoun*, 404 Ill. App. 3d at 384. Since the underlying issue has no merit, we necessarily find that appellate counsel was not ineffective for failing to raise

this issue on direct appeal. *People v. Enis*, 194 Ill. 2d 361, 381 (2000).

¶ 12 For the reasons stated, we affirm the summary dismissal of defendant's *pro se* post-conviction petition by the circuit court of Cook County.

¶ 13 Affirmed.