SIXTH DIVISION
June 28, 2013

No. 1-10-3357

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	05 CR 6322
	)	
CHARLES WASHINGTON,	)	Honorable
	)	James M. Obbish,
Petitioner-Appellant.	)	Judge Presiding._

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

ORDER

HELD: Trial court did not err in summarily dismissing defendant's *pro se* postconviction petition claiming ineffective assistance of trial counsel for failing to pursue an entrapment defense.

¶ 1 On or about March 16, 2001, Ms. Wardella Winchester was kidnaped and held for

ransom. The kidnaping stemmed from an attempt to retrieve money and drugs Winchester's son, Larry J. Holocomb, allegedly stole from defendant Charles Washington. Winchester's body was eventually found with a fatal bullet wound to the head.

¶ 2 Defendant was being held in Cook County jail awaiting trial for the murder of Ms. Winchester, when he was accused of soliciting an undercover officer to kill Holcomb, who was expected to testify in the pending murder trial. The matter before this court pertains to charges of solicitation. Following a jury trial, defendant was found guilty of solicitation of murder and solicitation of murder for hire. Defendant filed a motion for a new trial and a motion for judgment of acquittal notwithstanding the verdict. The trial court denied both motions. Defendant was sentenced to concurrent thirty-year prison terms for solicitation of murder and solicitation of murder for hire.

¶ 3 On direct appeal, we affirmed defendant's convictions and sentences. *People v. Washington*, No. 1-06-0786 (2008) (unpublished order under Supreme Court Rule 23). Defendant's petition for leave to appeal was denied by our supreme court. *People v. Washington*, 234 Ill. 2d 549 (2009).

¶ 4 Defendant filed a *pro se* postconviction petition alleging, among other claims, that his trial counsel provided ineffective assistance by failing to raise an entrapment defense. The trial court summarily dismissed the petition at the first stage of the post-conviction proceedings, finding that the claims were frivolous and patently without merit. Defendant filed a motion for reconsideration and an amended motion for reconsideration. Both motions were denied.

¶ 5 Defendant now contends on appeal that the trial court erred in summarily dismissing his

pro se postconviction petition. He argues that the allegations in the petition stated the gist of a meritorious claim of ineffective assistance of trial counsel regarding counsel's failure to raise an entrapment defense. We disagree.

¶ 6 ANALYSIS

¶ 7 The Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2000)), provides a procedure by which an imprisoned criminal defendant can collaterally attack his conviction or sentence based on a substantial denial of his federal or state constitutional rights. *People v. Tenner*, 175 Ill. 2d 372, 377 (1997). The Act provides defendants the opportunity to present claims that were neglected on direct appeal or based on matters outside the record. *People v. Chatman*, 357 Ill. App. 3d 695, 698 (2005).

¶ 8 A post-conviction proceeding not involving the death penalty is divided into three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). We review this case at the first stage of the postconviction process. At the first stage, the trial court evaluates the petition on its face and determines whether the allegations in the petition "sufficiently demonstrate a constitutional infirmity which would necessitate relief under the Act." *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). At this stage, the trial court may summarily dismiss the petition if it finds that the allegations in the petition are frivolous and patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2000).

¶ 9 A petition is considered frivolous and patently without merit if the allegations in the petition, when taken as true and liberally construed, fail to present the "gist" of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The "gist" standard is low, since in many

cases a defendant initially files his postconviction petition *pro se* without the aid of counsel. See *Gaultney*, 174 Ill. 2d at 418.

¶ 10 In order to set forth the "gist" of a constitutional claim, the postconviction petition need only present a limited amount of detail and need not include legal arguments or citations to legal authority. *Gaultney*, 174 Ill. 2d at 418. However, the "gist" of a meritorious claim is more than a bare allegation of a deprivation of a constitutional right. *People v. Lemons*, 242 Ill. App. 3d 941, 946 (1993). Rather, a defendant must plead sufficient facts from which the trial court could find a valid claim of deprivation of a constitutional right. *Lemons*, 242 Ill. App. 3d at 946. A trial court's summary dismissal of a defendant's postconviction petition is reviewed *de novo*. *People v. Barrow*, 195 Ill. 2d 506, 519 (2001).

¶ 11 In the instant case, defendant contends his petition stated the gist of a meritorious claim of ineffective assistance of trial counsel. In order for a defendant to obtain reversal of a conviction based on an ineffective assistance of counsel claim, he or she must show that: (1) counsel's performance was so deficient as to fall below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance so prejudiced defendant that there is a reasonable probability that, absent the errors, the outcome would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525 (1984).

¶ 12 Applying these principles to the instant case, we find defendant has failed to set forth the gist of a claim that his trial counsel was deficient for failing to raise an entrapment defense. Entrapment has been defined as " 'the conception and planning of an offense by an officer, and

his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion, or fraud of the officer.' " *People v. Lewis*, 26 Ill. 2d 542, 545 (1963) (quoting *Sorrels v. United States*, 287 U.S. 435, 454 (1932)).

¶ 13 Entrapment is a statutory defense, the parameters of which are set forth in section 7-12 of the Criminal Code of 1961:

> "A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was pre-disposed to commit the offense and the public officer or employee, or agent of either, merely affords to that person the opportunity or facility for committing an offense." 720 ILCS 5/7-12 (West 2004).

¶ 14 "Entrapment requires that a defendant show both that the State improperly induced him or her to commit a crime and that he or she was not otherwise predisposed to commit the offense." *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006) (citing *People v. Placek*, 184 Ill. 2d 370, 380-81 (1998)). Our supreme court has "consistently held that the entrapment defense is not available to a defendant who denies committing the offense charged." *People v. Gillespie*, 136 Ill. 2d 496, 501 (1990). The logical reasoning behind this long-standing rule is that it is both factually and legally inconsistent for a defendant to deny committing the offense and then to assert as a defense that he committed the offense, but only because of incitement or inducement by the authorities. *Id*.

¶ 15 The entrapment defense was not available to defendant because he denied committing any

offense. During his trial testimony, defendant consistently maintained that he never requested or solicited anyone to kill Larry Holcomb.

¶ 16 In order to rely on the defense of entrapment, a defendant must admit to committing all the elements of the charged offense. *People v. Landwer*, 166 Ill. 2d 475, 488 (1995). To sustain a conviction for solicitation of murder, the State must prove that the defendant intended that the offense of first-degree murder be committed and that he commanded, encouraged, or requested another person to commit the murder. 720 ILCS 5/8-1.1(a) (West 2000). In order to prove that a defendant committed the offense of solicitation of murder for hire, the State must establish that the defendant procured another to commit a murder with the intent that the offense of first-degree murder be committed. 720 ILCS 5/8-1.2 (West 1992).

¶ 17 In the instant case, defendant steadfastly denied ever requesting or procuring another person to kill Larry Holcomb. Defendant refused to admit an essential element of the offenses of solicitation of murder and solicitation of murder for hire. In light of defendant's refusal to admit to all the elements of the offenses, we cannot say that trial counsel was deficient for failing to raise an entrapment defense.

¶ 18 Defendant has failed to set forth the gist of a claim that his trial counsel was deficient for failing to raise the defense of entrapment. Accordingly, the trial court did not err in summarily dismissing defendant's *pro se* postconviction petition claiming ineffective assistance of trial counsel for failing to pursue an entrapment defense.

¶ 19 For the foregoing reasons, we affirm the trial court's summary dismissal of defendant's *pro se* postconviction petition as frivolous and patently without merit.

¶ 20 Affirmed.