

No. 1-11-0945

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 29532
	)	
CHRISTOPHER MOORE,	)	Honorable
	)	Arthur F. Hill, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HARRIS delivered the judgment of the court.  
Justices Connors and Simon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Summary dismissal of defendant's *pro se* post-conviction petition affirmed where he failed to present an arguable claim of ineffective assistance of counsel.

¶ 2 Defendant Christopher Moore appeals from an order of the circuit court of Cook County summarily dismissing 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 he presented a claim of ineffective assistance of trial counsel which had an arguable basis in fact and in law.

¶ 3 The record shows that the victim, Tayaab Larry, was attacked with a bat in a Chicago park on July 25, 2004, and died from his injuries on August 2, 2004. Following a jury trial,

defendant was convicted of first degree murder and armed robbery, then sentenced to respective, consecutive terms of 30 and 6 years' imprisonment. On direct appeal, defendant argued, in relevant part, that his trial counsel was ineffective for failing to tender jury verdict forms specifying the basis for the murder verdict, thereby allowing an improper conviction of armed robbery in addition to a felony murder conviction based upon the same offense. This court rejected defendant's claims and affirmed his convictions and the sentences imposed thereon. *People v. Moore*, 397 Ill. App. 3d 555 (2009).

¶ 4 Defendant subsequently filed the instant *pro se* post-conviction petition alleging, in relevant part, that his trial counsel was ineffective for failing to thoroughly cross-examine the medical examiner, Dr. Michelle Jorden, who testified at trial regarding the autopsy performed by Dr. An for which Dr. Jorden was not present. Defendant specifically cited counsel's failure to question Dr. Jorden regarding the victim's medical records, the Emergency Medical Technician (EMT) reports, and the police reports, as well as her qualifications and those of Dr. An. Defendant alleged that Dr. Jorden was "little more than an intern-fellowship," and that the jury was left to accept Dr. An's report as true and accurate in violation of his sixth amendment rights. Defendant further maintained that the damage to the victim's cranium could have been increased by the victim's fight with the EMT in the ambulance, or from his subsequent surgery.

¶ 5 The trial court summarily dismissed defendant's petition as frivolous and patently without merit. As pertinent to this appeal, the court initially found that defendant had waived his claim of ineffective assistance of trial counsel because it was a matter of record which defendant failed to raise on direct appeal. The court then determined that defendant's specific claim that trial counsel was ineffective for failing to thoroughly cross-examine the medical examiner failed on the merits because it was based on defendant's own belief and devoid of factual support.

¶ 6 On appeal, defendant maintains that he presented an arguable claim of ineffective assistance of trial counsel for failing to challenge the testimony of Dr. Jorden where her

conclusions were based on testimonial hearsay, namely, Dr. An's autopsy report. He further maintains that the admission of the autopsy report through the testimony of Dr. Jordan, who did not perform the autopsy, violated his confrontation rights as he did not have the opportunity to cross-examine Dr. An, and thus his counsel was ineffective for failing to challenge the admission of the report. Defendant raises no issue regarding the other allegations in his petition, and has thus waived them for review. *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006).

¶ 7 At the first stage of post-conviction proceedings, a *pro se* defendant need only present the gist of a meritorious constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The gist standard is a low threshold, requiring that defendant only plead sufficient facts to assert an arguably constitutional claim. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). If a petition has no arguable basis in law or in fact, it is frivolous and patently without merit, and the trial court must summarily dismiss it. *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Our review of a first-stage summary dismissal is *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998).

¶ 8 To prevail on a claim of ineffective assistance of counsel, defendant must show that counsel's performance was objectively unreasonable and that he was prejudiced as a result thereof. *Hodges*, 234 Ill. 2d at 17, citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). However, at the first stage of post-conviction proceedings, a petition alleging ineffective assistance of counsel may not be summarily dismissed if it is arguable that counsel's performance fell below an objective standard of reasonableness, and it is arguable that he was prejudiced thereby. *People v. Tate*, 2012 IL 112214, ¶19.

¶ 9 Here, defendant maintains that the autopsy report was testimonial in nature, and that trial counsel was ineffective for failing to object to its admission through the testimony of a medical examiner, who was not present when it was performed. We observe that the circuit court found that these allegations were ascertainable from the record filed on direct appeal, and therefore subject to forfeiture because defendant failed to raise these matters on direct appeal. In an

attempt to avoid this outcome, defendant maintains here that appellate counsel was ineffective for failing to raise this issue on direct appeal. Although he acknowledges that he did not "specifically tie the Confrontation Clause claim to appellate counsel's ineffectiveness" in his petition, he maintains that a liberal construction of his *pro se* petition, provides sufficient facts to support a claim of ineffective assistance of appellate counsel. The State makes no argument regarding the forfeiture potential raised by the record. Instead, the State maintains that defendant's entire argument is premised upon an incorrect assertion of law which renders his allegation of ineffective assistance of either counsel frivolous and patently without merit.

¶ 10 Defendant's underlying claim was that the testimony of Dr. Jorden regarding the autopsy report of Dr. An, was testimonial hearsay, and that his confrontation rights were violated by the presentation of this unchallenged testimony because he did not have the opportunity to cross-examine Dr. An. The supreme court, however, recently held otherwise.

¶ 11 In *People v. Leach*, 2012 IL 111534, ¶¶135-37, the supreme court found that autopsy reports prepared by a medical examiner's office in the normal course of its duties are nontestimonial in nature, and may be admitted into evidence without the testimony of the attending pathologist without violating defendant's rights under the confrontation clause. In reaching that conclusion, the supreme court explained that autopsy reports are distinct from a certificate from the State laboratory attesting that the substance analyzed was a controlled substance and the report regarding blood-alcohol analysis by a police laboratory, which are testimonial, because, unlike those reports, the primary purpose of preparing an autopsy report is not to accuse a targeted individual engaging in criminal conduct or to provide evidence in a criminal trial. *Leach*, ¶¶86-90, 108-09, 117, 130. Instead, an autopsy report is prepared in the normal course of operation of the medical examiner's office to determine the cause and manner of death. *Leach*, ¶130. *Leach* therefore negates the basis for defendant's claims of ineffective assistance of trial and appellate counsel, and, as a result, we conclude that defendant failed to set

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forth an arguable claim of ineffective assistance of counsel, subjecting his petition to summary dismissal.

¶ 12 In light of the foregoing, we affirm the order of the circuit court of Cook County summarily dismissing defendant's post-conviction petition.

¶ 13 Affirmed.