

No. 1-12-3559

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. 07 CR 17676
)	
SHAWN LUCAS,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

O R D E R

¶ 1 *Held:* Court did not err in summarily dismissing post-conviction petition. Sufficiency of factual basis for guilty plea is a matter of discretion, and trial court did not abuse its discretion in finding that defendant's charged act of shaking baby caused at least some of her fatal injuries, thus rendering child endangerment a felony.

¶ 2 Pursuant to a negotiated guilty plea, defendant Shawn Lucas was convicted of involuntary manslaughter and child endangerment and sentenced to consecutive prison terms of 14 and 6 years. Defendant now appeals from the summary dismissal of his post-conviction petition, contending that his conviction for felony child endangerment is void, so that he should

be convicted of and sentenced upon the misdemeanor version, where the factual basis for his plea did not include evidence of the aggravating or enhancing factual allegation.

¶ 3 Defendant was charged with first degree murder in that he allegedly killed four-month-old Kiyarah Taylor on or about July 15, 2007, by intentionally or knowingly inflicting blunt force trauma.

¶ 4 On August 7, 2009, the parties told the court that a plea agreement had been reached: the murder charges would be amended by agreement of the parties to involuntary manslaughter and endangering the life or health of a child, and defendant would receive consecutive prison terms of 14 and 6 years. The involuntary manslaughter charge was that he recklessly performed an act likely to cause death or great bodily harm to household member Kiyarah by inflicting blunt trauma that killed her. The child endangerment charge was that he willfully caused Kiyarah's life to be endangered by placing gum in her mouth and shaking her, proximately causing her death.

¶ 5 The court noted that first degree murder is punishable by 20 to 100 years' imprisonment "actual time." Defendant told the court that he was 23 years old and had attended one year of college. The court determined from Kiyarah's mother Markiana that she was "okay with" the plea agreement and that defendant had been her boyfriend but was not Kiyarah's father. The court admonished defendant that these convictions could render a non-citizen deportable, and the State informed the court that defendant had five prior misdemeanor convictions for cannabis offenses, criminal damage to property, and battery. The court read the amended charges and potential sentences, reminding defendant that the State was dismissing the murder charges and that he was receiving consecutive prison terms of 14 and 6 years. Defendant pled guilty to the amended

charges. The court admonished defendant of, and he waived, his rights to a bench and jury trial, and the court ascertained that he was pleading guilty freely, without threat or promise.

¶ 6 The court was informed of the stipulated factual basis for the plea. Police detective William Sullivan would testify that he interviewed defendant in the course of investigating the suspected battery of Kiyarah on July 15, 2007. Defendant told Detective Sullivan that he was playing a video game with Kiyarah seated in his lap when the game "froze" and he became upset. He immediately stood up and Kiyarah fell to the floor. She was not moving, and did not move after defendant shook her "to see if she would move." He put a piece of gum in her mouth "to make it appear as if she had choked" and then shook her for about 30 seconds before deciding to remove the gum "but in trying to take it out he actually pushed it in further." Forensic pathologist Dr. Kendall Crowns would testify that he performed Kiyarah's autopsy after she died on July 18, 2007, and that she died of blunt force trauma due to child abuse. Her injuries included hemorrhages of her brain, both optic nerves, and along the spinal column; contusions of both lungs and pulmonary congestion; a fractured right rib and right clavicle, and healing fractures of left ribs and left clavicle. The court found that there was a factual basis for the plea.

¶ 7 Defendant waived his right to a pre-sentencing investigation, and the court found that his plea was voluntary and understanding. The court sentenced him as agreed and advised him of his appeal rights, including that a successful motion to withdraw his plea would cause the first degree murder charges to be reinstated.

¶ 8 In late July or early August of 2012, defendant filed a *pro se* post-conviction petition alleging that trial counsel rendered ineffective assistance when counsel "denied" his request to withdraw his plea within 30 days, and by not raising or advising him of a one-act-one-crime

issue with his plea bargain. He noted that he pled guilty to two charges based on or aggravated by the victim's death, and argued that the endangerment was not the proximate cause of the victim's death so that his offense of child endangerment should be a misdemeanor and not a felony. Defendant sought to vacate the child endangerment count, reduce it to a misdemeanor, or modify the sentences to run concurrently. The petition was supported by defendant's affidavit to the effect that trial counsel had not informed him of the one-act-one-crime issue and "would not withdraw my guilty plea within 30 days;" defendant did not aver that he asked or told counsel to withdraw his plea.

¶ 9 On October 19, 2012, the court summarily dismissed the petition, expressly finding it frivolous and patently without merit. The court noted that defendant faced a minimum of 20 years' imprisonment for first degree murder, not eligible for "good time" credit, while trial counsel negotiated a 20-year sentence eligible for such credit, so that "[n]ot only was trial counsel *not ineffective*, she was *extremely effective*." (Emphasis in original.) Noting that defendant was not claiming that his plea was involuntary nor seeking to withdraw his plea, the court found that his plea was indeed voluntary and that he was "unilaterally attempting to deprive the State of the benefit of their bargain and also attempting to get much more of a bargain than he agreed to." This appeal timely followed.

¶ 10 On appeal, defendant contends that his conviction for felony child endangerment is void, so that he should be convicted of and sentenced upon the misdemeanor version, where the factual basis for his plea did not include evidence of the aggravating or enhancing factual allegation: that his actions of putting gum in Taylor's mouth and shaking her proximately caused her death.

¶ 11 A post-conviction petition may be summarily dismissed if it is frivolous or patently without merit; that is, lacks an arguable basis in law or fact. *People v. Hommerson*, 2014 IL 115638, ¶ 7; *People v. Domagala*, 2013 IL 113688, ¶ 32. Evidentiary questions are not resolved but only the legal sufficiency of the petition, and all well-pleaded facts not positively rebutted by the trial record are to be taken as true. *Domagala*, 2013 IL 113688, ¶¶ 34-35. Our review of the dismissal of a post-conviction petition is *de novo*. *Hommerson*, 2014 IL 115638, ¶ 6.

¶ 12 A court cannot impose judgment upon a guilty plea without finding a factual basis for the plea. Ill. S. Ct. R. 402(c) (eff. July 1, 2012). However, unlike a trial upon a not-guilty plea, proof beyond a reasonable doubt of all elements of the offense is not required to establish a factual basis for a guilty plea. *People v. Bassette*, 391 Ill. App. 3d 453, 457 (2009); *People v. Calva*, 256 Ill. App. 3d 865, 871-72 (1993). Instead, the court properly finds a factual basis where there are reasonable grounds to conclude that the defendant, with the requisite mental state, committed acts constituting the offense to which he pled guilty. *Id.* Even at trial, the trier of fact is not required to elevate any exculpatory possibility to reasonable doubt, and in a guilty-plea proceeding the court is similarly not required to ferret out any possible defenses. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60; *Bassette*, 391 Ill. App. 3d at 457. The standard of review is whether the trial court abused its discretion in determining that there was a factual basis for the plea, and we find an abuse of discretion only when no reasonable person would agree with the trial court or its decision was arbitrary, unreasonable, or unconscionable. *Bassette*, 391 Ill. App. 3d at 457; *Calva*, 256 Ill. App. 3d at 871-72.

¶ 13 A person commits involuntary manslaughter by unintentionally killing another if he recklessly performs acts likely to cause death or great bodily harm to another that cause the death

of another. 720 ILCS 5/9-3(a) (West 2012). Involuntary manslaughter is a Class 2 felony, punishable by imprisonment for 3 to 14 years, if the victim is family or household member of the offender. 720 ILCS 5/9-3(f) (West 2012). A person commits the offense of endangering the life or health of a child when he knowingly causes or permits (1) the life or health of a child under the age of 18 to be endangered, or (2) a child to be placed in circumstances that endanger the child's life or health. 720 ILCS 5/12-21.6(a) (West 2012)(now 720 ILCS 5/12C-5(a)). Child endangerment is generally a Class A misdemeanor but is a Class 3 felony punishable by imprisonment for 2 to 10 years if the offense is a proximate cause of the child's death. 720 ILCS 5/12-21.6(d) (West 2012)(now 720 ILCS 5/12C-5(d)).

¶ 14 Here, the trial court was apprised of defendant's confessed acts: dropping Kiyarah to the floor, shaking her repeatedly and at length, putting a piece of gum in her mouth as a subterfuge to hide his acts, and then lodging that gum more firmly in his effort to remove it. The court was informed of Dr. Crowns's conclusion that Kiyarah died of blunt force trauma but also of her injuries leading to that conclusion: extensive hemorrhaging of the brain, optic nerves, and spine, and fractures of ribs and both clavicles accompanied by contusions of both lungs and pulmonary congestion. Defendant argues "the irrefutable fact that neither the words 'gum' nor 'shake' were ever uttered by the State as part of the factual basis establishing Kiyarah's cause of death." However, the trial court could reasonably conclude that her extensive injuries did not result from a single drop to the floor. More specifically, the court could conclude that defendant's act of shaking her, alleged in the child endangerment charge and included in the factual basis, caused at least some of her fatal injuries. The trial court did not abuse its discretion in finding a factual basis for defendant's plea to (in relevant part) the felony version of child endangerment.

1-12-3559

¶ 15 Accordingly, the judgment of the circuit court summarily dismissing the post-conviction petition is affirmed.

¶ 16 Affirmed.