2015 IL App (1st) 130042-U

SIXTH DIVISION
DATE: March 31, 2015

No. 1-13-0042

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. 04 CR 4074
	)	
ABRAHAM WILLIAMS,	)	Honorable
	)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

O R D E R

¶ 1 *Held*: Second-stage dismissal of defendant's post-conviction petition affirmed where defendant failed to make a substantial showing of a violation of his right to the effective assistance of counsel.

¶ 2 Defendant, Abraham Williams, appeals from an order of the circuit court of Cook County dismissing his petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)) at the second stage of proceedings. Defendant contends that his petition made a substantial showing that he was denied the effective assistance of trial counsel because counsel failed to file a motion to quash his arrest. We affirm.

¶ 3 The record shows that defendant was charged with multiple counts of first degree murder and aggravated unlawful use of a weapon in connection with the December 1, 2003, shooting death of the victim, Deon Williams. He was ultimately convicted of first degree murder and sentenced to 40 years' imprisonment, with an additional 20-year term based on the jury's finding that he personally discharged a firearm during the offense. The evidence presented at trial is set forth in detail in *People v. Williams*, No. 1-07-0458 (2009), and will be repeated only to the extent it is relevant to this appeal.

¶ 4 At trial, the State presented the testimony of four eyewitnesses to the incident, who saw the offenders drive up in a white van, and chase the victim while shooting at him. One of those witnesses, Alvester Mormon, identified defendant as one of the shooters.

¶ 5 Dean Miranda testified that he had loaned his van, which was identified as the one used by the perpetrators, to defendant on the morning of the incident. He maintained that he could not remember telling an assistant State's Attorney (ASA) that defendant later called him and told him that "somebody was trying to get at him and he got back at him and that the police were chasing the van" or that he had left pistols in the van. He acknowledged, however, that the handwritten statement he signed did say that, and that he may have testified before a grand jury that defendant said he had left some guns in his van.

¶ 6 Charles Green testified that he was driving in a white van with defendant and Raynell Davis on the day of the incident, but denied seeing them shoot at, or chase, anyone. He denied, or stated that he could not recall, saying that he had, but he acknowledged signing a written statement and testifying before the grand jury. The State then called two ASAs to testify to

Green's handwritten statement and grand jury testimony, which described the incident and implicated defendant and Davis as the shooters.

¶ 7 The evidence further showed that, on January 16, 2004, defendant was arrested at his home at 17841 Yale Lane in Country Club Hills, and brought to police headquarters. There, he was interviewed several times over the course of the day by Sergeant David Friel and Detective Terrence O'Connor. About 10 a.m., defendant was advised of his *Miranda* rights, agreed to waive them, and was informed that he would be placed into lineups. Around 2:30 p.m., after the second lineup was completed, defendant asked Sergeant Friel how the investigation was going. Sergeant Friel reminded defendant of his *Miranda* rights, and, after defendant indicated his understanding, Sergeant Friel responded that he had been identified in one of the lineups and that Miranda had implicated him in the shooting. Defendant then told Sergeant Friel that he wanted to talk to him, that he was aware of the murder and that he knew that it involved rival gangs. Defendant, however, denied any personal involvement in the murder.

¶ 8 Later that evening, about 11:30 p.m., defendant again spoke with Sergeant Friel, who again reminded him of his *Miranda* rights. After reiterating his understanding of those rights, defendant admitted that he was present when the shooting occurred and described events leading up to and including the incident. He acknowledged some involvement, but alleged that Davis and a man whose name he did not know, were the shooters. Sergeant Friel testified that he then confronted defendant with inconsistencies in his statement, including the fact that the evidence showed that a 9-millimeter handgun had been used in the shooting. Defendant then admitted that he had a 9-millimeter handgun and that he fired two shots at the victim's car, and saw him slump over and his car crash. Defendant then fired one or two more shots, before his gun jammed and

the victim exited the car and ran. Defendant stated that he saw Davis and the unknown man chase the victim and shoot him as he fell to the ground.

¶ 9 Defendant was subsequently interviewed by an assistant State's Attorney (ASA), to whom he repeated essentially the same story regarding the events that led to and included the victim's murder. Defendant also told the ASA that he called Miranda after the shooting and told him that the police had recovered guns from inside of the van. He informed Miranda that he had used the van to "take care of a problem" but he did not want Miranda to "get in trouble because of it."

¶ 10 Defendant was ultimately found guilty of first degree murder, and, on direct appeal, he contended that the State had improperly impeached Miranda with a prior consistent statement, and bolstered the out-of-court statements of Green by introducing his handwritten statement and grand jury testimony. He further maintained that the State made improper closing and rebuttal arguments. This court affirmed. *Williams*, No. 1-07-0458 (2009) (unpublished order under Supreme Court Rule 23).

¶ 11 On December 15, 2009, defendant filed the *pro se* petition for post-conviction relief at bar, in which he alleged that, *inter alia*, he was denied his right to the effective assistance of trial counsel because counsel failed to file a motion to quash his warrantless arrest. In support, defendant attached his own affidavit, in which he averred that, on January 16, 2004, he was inside of his home in Country Club Hills when Chicago police detectives "rush[ed] into the room that [he] was in" and arrested him. Defendant asked the detectives why they were there and they told him that he was wanted for murder. Defendant asked if they had a warrant, and they "ignored [his] question" and "never showed [him] a warrant for [his] arrest."

¶ 12 Defendant further stated that he was taken from his home in handcuffs, placed in a police car "for a while," then placed in a police "detective's car," before being taken to the police station. He told counsel of "these facts, and that [his] live-in girlfriend Kimberly Adams would testify to the facts of [his] arrest." Counsel, however, "did not contact Kimberly Adams," so defendant "had Ms. Adams come to [his] trial, to testify on [his] behalf[.]" Defendant told his counsel that Adams was in the courtroom, but counsel "did not talk to" her.

¶ 13 Counsel was appointed for defendant, and, on October 23, 2012, the State filed a motion to dismiss defendant's petition, contending that his claims were barred by *res judicata* and waiver, and that he failed to establish a cognizable claim of ineffective assistance. After hearing argument from both parties, the court granted the State's motion, concluding, *inter alia*, that the issues could have been raised on appeal, and were therefore waived, and that his ineffective assistance claims did not require a hearing because even the first prong of the *Strickland* analysis had not been met. Defendant filed a notice of appeal from that ruling, and in this court contends that his petition should be remanded for third-stage proceedings because he made a substantial showing of a violation of his right to the effective assistance of counsel.

¶ 14 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) provides a three-stage process for the adjudication of post-conviction petitions and permits a defendant to mount a collateral attack on his conviction and sentence based on violations of his constitutional rights. *People v. Erickson*, 183 Ill. 2d 213, 222 (1998). Here, defendant's petition was dismissed at the second stage of proceedings. An appeal from a second-stage dismissal is reviewed *de novo* (*People v. Adams*, 373 Ill. App. 3d 991, 993 (2007)), and defendant must make a "substantial showing" of a constitutional violation (*People v. Addison*, 371 Ill. App. 3d 941, 946 (2007)). In

determining whether a substantial showing of a constitutional violation has been made, "all well-pleaded facts in the petition and affidavits are to be taken as true, but nonfactual and nonspecific assertions which merely amount to conclusions are not sufficient." *People v. Rissley*, 206 Ill. 2d 403, 412 (2003).

¶ 15 In this appeal, defendant contends that he made a substantial showing that counsel provided ineffective assistance by failing to file a motion to quash his arrest. He specifically maintains that his petition shows that he was illegally arrested, that the police did not have a warrant, and that there were no exigent circumstances for a warrantless arrest apparent in either the record or his affidavit. Defendant adds that "it was all the more important that [his] trial counsel file a motion to quash his illegal arrest since there was a reasonable probability that his inculpatory statement would have been suppressed under the fruit of the poisonous tree doctrine, because it flowed directly from his illegal arrest."

¶ 16 To succeed on a claim of ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). To do so, a defendant must show, first, that his attorney's performance fell below an objective standard as measured by prevailing professional norms (*People v. Miller*, 346 Ill. App. 3d 972, 982 (2004)), and second, that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (*Strickland*, 466 U.S. at 694). A "reasonable probability" is one sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694. A defendant must satisfy both prongs of the *Strickland* test in order to prevail on

a claim of ineffective assistance of counsel. *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992). However, it is well-settled that if the claim can be disposed of on the ground that defendant did not suffer prejudice from the alleged ineffective performance, the court need not determine whether counsel's performance was constitutionally deficient. *Strickland*, 466 U.S. at 697; *People v. Edwards*, 195 Ill. 2d 142, 163 (2001).

¶ 17 As defendant appears to acknowledge in this appeal, the relevance of his proposed motion is not that his arrest would have been "quashed," but instead that it is possible that the evidence of his later inculpatory statements would have been suppressed at trial. See *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 63 (observing that the defendant's motion to quash arrest, which merely requested a finding that the "arrest and/or detention was illegal" and that the motion be granted, was of questionable meaning, and that it "failed to serve as a motion to suppress evidence under section 114–12 of the Code [where] it never identified the evidence it sought to suppress")). Indeed, had counsel filed and succeeded on the proposed motion to quash his arrest, but failed on a subsequent motion to suppress, the evidence ultimately presented at trial would have been the same. Under those circumstances, there is no reasonable possibility that the outcome of the proceedings would have been different. *People v. Harris*, 206 Ill. 2d 293, 307 (2002). It therefore follows that, in order to show prejudice from counsel's failure to file a motion to quash his arrest, defendant must make a substantial showing that, not only would the proposed motion have been granted, but that a subsequent suppression motion was meritorious, *and* that a reasonable probability exists that the outcome of his trial would have been different had the evidence been suppressed. See *People v. Henderson*, 2013 IL 114040370 ¶ 15; *People v. Givens*, 237 Ill. 2d 311, 331 (2010). In this case, we conclude that defendant has not done so.

¶ 18 Under the doctrine known as " 'the fruit of the poisonous tree,' a violation of the fourth amendment is considered to be, metaphorically, the poisonous tree, and any evidence the government obtained by exploiting that violation is subject to suppression as fruit of the poisonous tree." *People v. Henderson*, 2013 IL 114040, ¶ 33. However, "evidence which comes to light through a chain of causation that began with an illegal seizure is not *per se* inadmissible." *Henderson*, 2013 IL 114040, ¶ 34 (citing *People v. Harris*, 495 U.S. 14, 17 (1990)).

¶ 19 In determining whether evidence is fruit of the poisonous tree, the question is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). In other words, a court must consider "whether the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the 'taint' imposed upon that evidence by the original illegality." *Henderson*, 2013 IL 114040, ¶ 33, quoting *United States v. Crews*, 445 U.S. 463, 471 (1980). The United States Supreme Court has identified four factors used in assessing whether the taint of an illegal arrest was sufficiently attenuated from an inculpatory statement such that the statement could be admitted despite the illegality of the underlying arrest: (1) whether defendant was given *Miranda* warnings; (2) the temporal proximity of the statements to the arrest; (3) the presence of intervening circumstances; and (4) the purpose and flagrancy of the police misconduct. *Brown v. Illinois,* 422 U.S. 590, 603–04 (1975).

¶ 20 Even assuming the illegality of defendant's arrest, we determine that defendant has presented absolutely no allegations that would suggest that his subsequent inculpatory statements

would have been suppressed under the fruit of the poisonous tree doctrine. In fact, defendant's affidavit describes only his version of events relating to his arrest, and does not refer to his subsequent interrogation or statements in any manner.

¶ 21 Further, our examination of the record reveals nothing to show that defendant's statements would have been suppressed, and instead reveals that defendant's statements were made despite repeated *Miranda* warnings, and after significant time passed and intervening events had occurred. Specifically, the evidence presented at trial showed that defendant was arrested on January 16, 2004, at about 8:45 a.m. Sergeant Friel first spoke to defendant over an hour later, around 10 a.m., at police headquarters. At that time, defendant was advised of his *Miranda* rights, he stated that he understood those rights and agreed to waive them, and he was informed that he would be placed into lineups.

¶ 22 Four-and-a-half hours later, around 2:30 p.m., defendant asked Sergeant Friel if he could talk to him. The sergeant reminded defendant of his *Miranda* rights, and defendant stated again that he understood them. Defendant asked how the investigation was going, and Friel told him that he had been twice implicated in the shooting. Defendant admitted knowledge of the murder, but denied participating in the crime. Finally, about 11:30 p.m., nearly 15 hours after defendant's arrest, defendant had another conversation with Sergeant Friel. After Sergeant Friel again advised defendant of his *Miranda* rights, defendant admitted his involvement in the murder. Given these facts, we find nothing in the record to support a conclusion that a motion to suppress the statements would have been meritorious. In the absence of any such facts in the record or allegations in defendant's petition, defendant has not met his burden of making a substantial showing of prejudice from counsel's allegedly deficient performance.

¶ 23 Moreover, based on the strong evidence of defendant's guilt presented at trial, we also conclude that defendant has not made a substantial showing that the outcome would have been different had his statements actually been suppressed. As noted above, defendant was identified by an eyewitness, Alvester Mormon, as one of the shooters, and Mormon's testimony was generally corroborated by three other witnesses who testified regarding the incident. There was also testimony showing that defendant had borrowed the van used in the shooting from Miranda on that morning, and, although Miranda later recanted his statements, there was evidence that defendant told him that "somebody was trying to get at him and he got back at him and that the police were chasing the van." Defendant was also placed in the van at the time in question by Green, who testified that he was driving in it with defendant and Davis. Although he also recanted his statements, the State produced evidence showing that Green had described the incident and identified defendant and Davis as the shooters. Given this evidence, we find no reasonable probability that the result of the proceeding would have been different if his statements had been suppressed. *People v. Johnson*, 183 Ill. 2d 176, 192 (1998), citing *Strickland*, 466 U.S. at 694.

¶ 24 For the reasons stated, we affirm the second-stage dismissal of defendant's post-conviction petition by the circuit court of Cook County.

¶ 25 Affirmed.