

FOURTH DIVISION
July 30, 2015

No. 1-13-2584

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 8616
)	
EDWON CARTER,)	Honorable
)	Steven J. Goebel,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

O R D E R

¶1 *Held:* Court did not err in summarily dismissing post-conviction petition based on recanting affidavits by two witnesses; defendant not deprived of fair trial where jury heard witnesses deny being eyewitnesses to offense as well as their earlier statements to the contrary.

¶2 Following a jury trial, defendant Edwon Carter was convicted of first degree murder and sentenced to 60 years' imprisonment. We affirmed the judgment on direct appeal. *People v.*

Carter, No. 1-10-1488 (2011)(unpublished order under Supreme Court Rule 23). Defendant now appeals from the March 2013 summary dismissal of his *pro se* post-conviction petition, contending that he stated the gist of a meritorious claim that he was deprived of a fair trial by the false and coerced written statements and grand jury testimony of two witnesses.

¶ 3 The evidence at the 2010 trial was that, on the early morning of June 17, 2006, three people including Jesse Franklin were on a porch on Winchester Avenue near 56th Street in Chicago, during Franklin's birthday party, when the group was fired upon several times and Franklin was fatally shot.

¶ 4 Codefendant Alton Spann testified – in exchange for pleading guilty to attempted first degree murder – that he and defendant were long-time members of the Vice Lords gang, which was "at war" with the Black Stones gang in June 2006; that is, that members of one gang would attack the other. On the night in question, defendant armed himself with a hidden Vice Lords gun, then he and Spann and defendant drove through Black Stones "territory" in a tan sedan until they saw a group of people on a front porch on Winchester. (Spann denied that they drove eastbound on westbound-only 56th Street, as they did not want to call attention to themselves.) While Spann noted the group included women, explaining that he considered women to be uninvolved in the gang war, defendant disagreed and noted that there were also men, who he presumed to be Black Stones members. Defendant and Spann parked nearby, defendant took the gun, and they walked back to the house, where defendant fired several shots at the group on the porch. Defendant and Spann then fled in the car, and defendant returned the gun. A short time later, defendant and Spann were with Cordero Sims in Sims's home during a party when defendant opined that "I think I got one" of the people on the porch. Spann later learned that

Franklin had been killed; he knew Franklin for many years but did not notice him on the porch that night, and defendant did not know Franklin. Spann admitted to a prior conviction for a drug offense. He also admitted that, before he identified defendant as the shooter, he gave accounts to the police exonerating himself and implicating another Vice Lords member.

¶ 5 Timothy Wright testified under subpoena that he was about a block away from the scene on the night in question and heard the gunshots but saw nothing. He admitted to a 2009 conviction for aggravated robbery and that he was in the Gangster Disciples gang, which he claimed to be unaligned with the Black Stones or Vice Lords. He did not recall seeing a brown car driving the wrong way on one-way 56th Street, nor could he make an in-court identification of anyone he knew as "Man-Man" or "Pee-Wee." He did not recall being arrested on a drug charge several months later, telling the police that he had information about a murder, identifying defendant in a photo array several months later, meeting with an Assistant State's Attorney (ASA), signing a written statement prepared by the ASA, or testifying before a grand jury a month later. He admitted that a document purporting to be his statement bore his signature, and he "remember[ed] the police's harassments" before his memory again lapsed when asked follow-up questions.

¶ 6 Wright was impeached with his signed statement and his grand jury testimony; both were to the same effect, and his grand jury testimony acknowledged his written statement. Wright knew both Franklin and defendant (nicknamed Man-Man) from the neighborhood, and he had seen but not spoken with a man known as Pee-Wee. On the night of the shooting, Wright was outside a house on Winchester when he saw a brown sedan drive eastbound on 56th Street, a westbound one-way street, with defendant driving and Pee-Wee in the front passenger seat;

Wright saw them and they saw him. The sedan driven by defendant passed about 10-20 minutes later, stopped on 56th near Winchester, and defendant exited and walked through some bushes. Several minutes later, Wright heard several gunshots and then heard tires squeal and saw the brown sedan fleeing along 56th Street.

¶ 7 Darian Parker testified that he was home, about a block from the scene, the entire night in question. However, when he was in custody in December 2006 on a drug charge, the police told him that the drug charge would be dismissed if he implicated someone in Franklin's murder. Parker thus told police that he saw defendant (who he knew from the neighborhood as Man-Man) shoot Franklin and identified defendant as the shooter in a photo array. In March 2007, he met with an ASA and signed a written statement prepared by the ASA. At trial, he admitted to making some of the assertions in his statement while he denied making others. He also testified before the grand jury in April 2007. When asked why he maintained his initial account though his charge had not been dismissed, he replied that "I had to stick to my story." He admitted to being in the Gangster Disciples, that he received an early February 2007 conviction with 18 months' probation for the late December 2006 drug offense, and that in said offense the police "had [him] dead to rights" for selling narcotics to an undercover police officer.

¶ 8 Parker was impeached with his signed statement and his grand jury testimony; both were to essentially the same effect, and his grand jury testimony acknowledged his written statement. Parker and Franklin were good friends, and Parker was arriving at Franklin's party when he saw Franklin on the porch with two other people. Parker also saw two men, who he knew as Man-Man and Alton, appear from a gangway across the street; Parker identified them in photographs and by name. When Alton and Man-Man reached the curb on the other side of the street,

standing next to each other, Man-Man fired several shots at the porch. Parker ran home. His grand jury testimony added, upon juror questioning, that he was a couple of houses away from Franklin when the shooting occurred and that Man-Man did not say anything before he fired.

¶ 9 Cordero Sims testified for the defense that he did not see defendant or Spann in his home on the day in question, nor would they have been admitted to his party because Sims was in a gang other than the Vice Lords and his guests could have clashed with defendant or Spann. Sims had prior convictions for conspiracy to commit murder and possession of a controlled substance.

¶ 10 The jury found defendant guilty of first degree murder and that he personally discharged a firearm in committing that offense. The court sentenced defendant to 60 years' imprisonment, including a 25-year firearm enhancement.

¶ 11 On direct appeal, defendant contended in relevant part that the court erred in admitting the prior inconsistent statements of the recanting Wright and Parker as substantive evidence under section 115-10.1 of the Code of Criminal Procedure. 725 ILCS 5/115-10.1 (West 2012). He sought plain-error review, admitting that he did not preserve this claim for appeal, and we noted that the first step in plain-error analysis is determining whether there was an error at all. Defendant contended that admission of either a handwritten statement or grand jury testimony contradicting a witness's trial testimony is proper but the introduction of multiple statements inconsistent with trial testimony but consistent with each other is improper bolstering. As that argument had been previously rejected on appeal, we also rejected it here.

¶ 12 In the instant petition, mailed by defendant in late December 2012 and received by the circuit court in early January 2013, defendant alleged in relevant part that he was deprived of a fair trial by false and misleading evidence from Wright and Parker that the State knew to be

false. Attached to the petition were affidavits by Wright and Parker. Wright averred that he was threatened by a particular detective that "things would start to happen to me and my family that I would regret" if he did not recite the account provided by the detective, and that "everybody knew" the detective "to be crooked and aggressive with people, and always forced people to say what he wanted them to say." He averred that he lied when he described seeing the brown sedan with defendant and codefendant and seeing them go towards the scene followed by hearing gunshots. He averred that "I did all I could to reveal what the Chicago Police made me do in this case but for some reason nobody really wanted to hear me" and "when I tried to tell the court what really happened and why that statement was made, and why I lied to the grand jury, the judge was more interested in believing the Detective and the State and not me, since the judge allowed the lie to stand, and used the lie to make me appear as if I was lying." Parker averred that a detective "told me what I had to say to get my deal and I did it," reiterated that he "was not there" and thus did not see defendant or Spann, and opined that the trial "judge is on the side of the corrupt police" by admitting his earlier statements.

¶ 13 The court summarily dismissed the petition on March 25, 2013. In relevant part, the court noted that Wright testified at trial pursuant to subpoena and claimed to not recall any interaction with police, ASAs or the grand jury, while Parker testified that his earlier statements were the result of a deal with police. Because the jury already heard "the prior statements inculcating petitioner and extemporaneous statements recanting that previous testimony" by Wright and Parker, defendant was not deprived of due process nor did their affidavits constitute newly-discovered evidence of actual innocence. This appeal followed.

¶ 14 On appeal, defendant contends that his *pro se* post-conviction petition stated an arguably meritorious claim that he was deprived of a fair trial by the false and coerced written statements and grand jury testimony of Wright and Parker.

¶ 15 A post-conviction petition provides a defendant a method for redressing substantial violations of his constitutional rights in his original trial or sentencing. *People v. Allen*, 2015 IL 113135, ¶ 20. A defendant has a right to a fair trial, but not a perfect one. *People v. Coleman*, 2014 IL App (5th) 110274, ¶ 177, citing *People v. Bull*, 185 Ill. 2d 179, 214-15 (1998). The issue in determining whether a defendant was denied a fair trial is whether a substantial right was affected to such a degree that the reviewing court cannot confidently state that the trial was fundamentally fair. *People v. Howard*, 374 Ill. App. 3d 705, 716 (2007), citing *People v. Blue*, 189 Ill. 2d 99, 138 (2000).

¶ 16 A post-conviction petition may be summarily dismissed within 90 days of filing and docketing if the court finds that the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). A petition is frivolous or patently without merit if it fails to present the gist of a meritorious claim because it has no arguable basis in law or fact. *Allen*, 2015 IL 113135, ¶ 25. At this stage, all well-pled facts must be taken as true unless positively rebutted by the record. *People v. Brown*, 236 Ill. 2d 175, 189 (2010). A petition has no arguable basis in law or fact when based on an indisputably meritless legal theory or fanciful factual allegation. *Allen*, 2015 IL 113135, ¶ 25. A claim completely contradicted by the record is an example of an indisputably meritless legal theory, while fanciful factual allegations include those that are fantastic or delusional. *Id.* Our review of a summary dismissal is *de novo*. *Allen*, 2015 IL 113135, ¶ 19.

¶ 17 Here, the jury heard Wright and Parker each testify that he was not at the scene of the Franklin shooting and thus not an eyewitness thereto, and then heard the statements and grand jury testimony of Wright and Parker to the contrary. The jury also heard Parker's explanation of the discrepancy: facing unrelated criminal charges, he told the police what they wanted to hear about the Franklin shooting in hopes of leniency. The jury did not hear such an explanation from Wright because he did not do "all I could to reveal what the Chicago Police made me do in this case" nor "tried to tell the court what really happened and why that statement was made, and why I lied to the grand jury" as he averred. Instead, Wright maintained at trial that he could not recall giving statements to police, ASAs or the grand jury, much less the content or circumstances of those statements, though he curiously did recall "the police's harassments."

¶ 18 Regarding Wright and Parker, the substance of their affidavits does not contradict the substance of their trial testimony, and the jury was already presented with the choice the affidavits present: accepting their earlier sworn accounts implicating defendant or their later sworn accounts that they did not see the shooting. The issue before us is not whether the affidavits add anything to the defense case but whether it is arguable that their absence (that is, absence of the matters averred therein) deprived defendant of a fair trial. Under these circumstances, we can confidently state that defendant's trial was fundamentally fair and therefore conclude that summary dismissal of the post-conviction petition was proper.

¶ 19 Accordingly, the judgment of the circuit court is affirmed.

¶ 20 Affirmed.