2016 IL App (1st) 142027-U

SECOND DIVISION
October 11, 2016

No. 1-14-2027

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. 13 CR 11532
	)	
CHARLES TAYLOR,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the summary dismissal of defendant's postconviction petition where plea counsel's performance was not arguably deficient and no arguable claim of prejudice resulted from alleged ineffective assistance of counsel; fines and fees order corrected.

¶ 2 Following a negotiated guilty plea, defendant Charles Taylor was convicted of burglary and sentenced to nine years' imprisonment as a Class X offender. Taylor did not challenge his conviction on direct appeal, but filed a petition under the Post-Conviction Hearing Act, alleging

ineffective assistance of counsel, which the trial court summarily dismissed. On appeal, Taylor contends the court erred in (i) dismissing his petition because it raised an arguable claim that plea counsel was ineffective for coercing him to plead guilty while he was under the influence of drugs, and (ii) imposing a $250 State DNA ID System fine. We affirm the dismissal of Taylor's petition as he has not demonstrated an arguable factual basis for his claim that plea counsel coerced him to plead guilty while he was under the influence of drugs. We also order the fines and fees order corrected.

¶ 3 Background

¶ 4 We set forth the facts necessary to understand the issue on appeal. Taylor was arrested in Chicago on June 2, 2013, and charged with one count of burglary and one count of possession of burglary tools. The arrest report indicated that Taylor was neither "[u]nder the influence of alcohol/drugs" nor exhibiting "[s]igns of alcohol/drug withdrawal" when an officer performed a "visual check" at the holding facility on the date of his arrest. A pretrial services bond assessment form, dated the next day, stated that Taylor did not display indicia of "[c]urrent alcohol/substance abuse" or a "possible need for evaluation/treatment."

¶ 5 On July 1, 2013, the trial court appointed an assistant public defender to represent Taylor and provided him with a copy of the "charging document" and "preliminary hearing." The trial court told Taylor that "[t]hrough your attorney[ ] *** it's my understanding that you have read, signed and understood the document, which explains your rights according to Supreme Court Rule 402 about the pre-trial conference." Taylor confirmed that he wanted a pretrial conference, which occurred off the record. After the conference, the trial court asked Taylor whether he accepted "the negotiated settlement that has been worked out for you." Taylor answered in the affirmative. The trial court asked Taylor whether he understood that he was charged with

burglary, a Class 2 felony, but would be sentenced as a Class X felon due to his criminal record. Taylor stated that he "didn't know that." The court explained the law as to Class X sentencing and asked the prosecutor to provide the "factual basis" for Taylor's Class X sentencing eligibility. The prosecutor stated that Taylor had prior convictions for aggravated robbery (2003) and residential burglary (1998 and 1982). The court explained the range of penalties for Class X sentencing and Taylor stated he understood.

¶ 6 Next, the trial court admonished Taylor that a guilty plea would waive his right to a bench trial or jury trial, explained the nature of a jury trial, and stated that neither plea counsel nor the trial court could compel Taylor to "give up your right to a jury trial." The court confirmed that Taylor signed a jury waiver, and that he waived his right to "remain silent," "to force the State to prove you guilty beyond a reasonable doubt," "to present evidence on your own behalf," and "to cross examine the witnesses who would testify against you." Taylor stated that he understood each admonition. Then the following colloquy occurred:

"THE COURT: Other than the agreement made to you by your attorney, [have] any other promises or agreements been made to you to make you plead guilty today?

THE DEFENDANT: No.

THE COURT: Has anybody forced you to plead guilty?

THE DEFENDANT: No.

THE COURT: Are you pleading guilty of your own free will?

THE DEFENDANT: Yes.

THE COURT: We have had a 402 conference on this case. Your attorney was present at the 402 conference when the State put forth a factual basis, which I deemed sufficient at law to support a plea of guilty in this case. I further find that Mr. Taylor

understands the nature of the charges, the possible penalties, his legal rights and that he is pleading guilty voluntarily and knowingly and I accept his plea of guilty to the charge of burglary and enter judgment on the plea."

¶ 7 Taylor waived his right to a presentence investigation report. In allocution, he "apologize[d] to the court" and stated that he "just ruined my whole life with drugs." And he stated that he was "in a drug stupor" during the burglary and wanted "treatment." The court sentenced Taylor to nine years' imprisonment, and the State indicated it was "dropping" the charge of possession of burglary tools. Taylor indicated that he understood the court's postplea admonitions.

¶ 8 On July 25, 2013, Taylor filed a *pro se* motion to withdraw his guilty plea and vacate his sentence. In the motion, Taylor alleged that he had been "under the influence of illegal drugs" when he pled guilty and that plea counsel had "threat[ened]" that he would receive a "20 year sentence" unless he "pled out." Taylor also stated that plea counsel's "words and demeanor" had made him "afraid and paranoid and unable to think clearly." The trial court appointed new counsel and Taylor later withdrew his motion.

¶ 9 On January 22, 2014, Taylor filed a *pro se* motion to reduce sentence, stating, in relevant part, that he was "dealing" with the drug addiction that "caused him to commit the burglary." The court denied the motion as untimely.

¶ 10 Taylor did not file a direct appeal, but mailed a *pro se* postconviction petition to the circuit court on February 28, 2014. In it, Taylor alleged that (i) he was "under the influence of illegal drugs" when plea counsel advised him to plead guilty; (ii) he told counsel that he wanted "to tell his side of the situation," but counsel "stated that it would be useless" and "encouraged" him to plead guilty without "hearing" his defense; and (iii) counsel "disregarded" his "drug

induced state of mind." Taylor provided a notarized affidavit stating that he "read and underst[ood]" the petition and that the facts presented were "true and correct."

¶ 11 The trial court docketed Taylor's postconviction petition on March 14, 2014, commenting that Taylor "alleged that he was under the influence of illegal drugs" after "30 days" in Cook County jail. The prosecutor remarked that "[m]arijuana stays in your system 30 days."

¶ 12 On May 14, 2014, the trial court dismissed Taylor's petition as "frivolous and patently without merit." The court stated that Taylor produced no "affidavits, records, or evidence" establishing that plea counsel knew or had reason to believe that Taylor was under the influence of illegal drugs and, therefore, could not demonstrate that counsel "was objectively unreasonable" for advising him to plead guilty. Additionally, the court found that Taylor produced no evidence that he had a defense or that counsel "had any knowledge that [Taylor] had a defense to present." Thus, the court held that Taylor did not establish that counsel's performance was "objectively unreasonable," and his claim for ineffective assistance failed.

¶ 13 ANALYSIS

¶ 14 Ineffectiveness of Plea Counsel

¶ 15 Taylor contends that the trial court erred in dismissing his postconviction petition because it raised an arguable claim that plea counsel was ineffective for coercing him to plead guilty while he was under the influence of drugs that he consumed before his arrest or in jail. According to Taylor, that counsel's appointment, the Rule 402 conference, and the guilty plea all occurred on the same day suggests counsel inadequately advised him of his rights, particularly where, during admonitions, Taylor told the trial court that he was unaware of his eligibility for Class X sentencing. Taylor maintains that counsel's performance caused prejudice, as counsel

failed to investigate the "plausible defense" of voluntary intoxication and "encouraged" Taylor to plead guilty despite being under the influence of drugs. Taylor acknowledges that his petition lacks supporting evidence but maintains that "the only other affidavit" he could have procured was from plea counsel, and that he was not obliged to obtain an affidavit from the attorney whose performance was allegedly ineffective.

¶ 16 The State responds that the petition's dismissal was proper because he failed to provide supporting affidavits, records, or other evidence, and did not explain the lack of supporting evidence, as the Act requires. As Taylor presented no evidence that he pled guilty while he was under the influence of drugs, such as "laboratory results" or affidavits from arresting officers, jail staff, the bond assessment officer, inmates, courtroom personnel, or plea counsel, the State maintains that his claim depends "solely on his self-serving assertions." The State argues, however, that police records establish that Taylor was not using drugs near the time of his arrest and that he could not have consumed drugs while incarcerated. As Taylor did not plead guilty while he was under the influence of drugs, and the trial court confirmed that his plea was knowingly and voluntarily made, the State submits that counsel was not ineffective. The State also claims that no prejudice occurred where Taylor has not alleged actual innocence and the defense of voluntary intoxication had been repealed at the time the burglary was committed.

¶ 17 In reply, Taylor maintains that his failure to produce supporting evidence is not fatal to his postconviction petition at this stage of proceedings, as his allegations must be taken as true and no other party, including plea counsel, could be expected to produce evidence on his behalf. Taylor maintains that the police records cited by the State are neither admissible as evidence nor establish that he was not under the influence of drugs when he pled guilty. Taylor concedes that the defense of voluntary intoxication was unavailable when he committed the burglary, but

maintains that counsel was nonetheless ineffective for failing to investigate whether his drug use could have negated the element of specific intent.

¶ 18 The Act provides a three-stage process for a defendant to challenge a conviction based on alleged violations of his constitutional rights that were not, and could not have been, adjudicated on direct appeal. *People v. English*, 2013 IL 112890, ¶¶ 21-23. Taylor's petition was dismissed at the first stage when the allegations in the petition are taken as true, liberally construed, and need only present the "gist" of a constitutional claim. *People v. Allen*, 2015 IL 113135, ¶¶ 24-25. Notwithstanding, the trial court must summarily dismiss a petition that "is frivolous or is patently without merit" (725 ILCS 5/122-2.1(a)(2) (West 2012)), meaning that "the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). A petition lacks an arguable legal basis when it is based on an "indisputably meritless legal theory," such as one that is "completely contradicted by the record." *Id.* at 16. "We review a circuit court's dismissal of a postconviction petition *de novo*." *Allen*, 2015 IL 113135, ¶ 19.

¶ 19 At the first stage of postconviction proceedings, a claim of ineffective assistance must demonstrate that (i) it is arguable that counsel's performance fell below an objective standard of reasonableness, and (ii) it is arguable there exists a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Hodges*, 234 Ill. 2d at 17. "A defendant's failure to establish either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel." *People v. Henderson*, 2013 IL 114040, ¶ 11.

¶ 20 Initially, we note that Taylor's postconviction petition provides no evidence in support of his claim of ineffective assistance. Under section 122-2 of the Act, postconviction petitions must be supported with "affidavits, records, or other evidence" or "state why the same are not

attached." 725 ILCS 5/122-2 (West 2012); see also *People v. Collins*, 202 Ill. 2d 59, 66-67 (2002) (verification affidavit not "substitute" for evidentiary support). Where a defendant alleges ineffective assistance of counsel, his or her noncompliance with this provision may be excused "where the petition contains facts sufficient to infer that the only affidavit the defendant could have furnished, other than his [or her] own sworn statement, was that of his [or her] attorney." *People v. Hall*, 217 Ill. 2d 324, 333 (2005). But, a postconviction petition still "must supply sufficient factual basis to show the allegations in the petition are 'capable of objective or independent corroboration.' " *Allen*, 2015 IL 113135, ¶ 24 (quoting *Collins*, 202 Ill. 2d at 67).

¶ 21 Taylor has not demonstrated that a factual basis exists for his claim that plea counsel coerced him to plead guilty while he was under the influence of drugs, and, accordingly, has not raised a claim that counsel was arguably ineffective. Taylor's petition provided no evidence that he was under the influence of drugs when he pled guilty or that counsel had reason to know that he was under the influence of drugs. Consequently, his claim of ineffective assistance depends entirely on the bald assertion that he was "under the influence of illegal drugs" during plea proceedings, with no indication that his assertion is "capable of objective or independent corroboration." *Collins*, 202 Ill. 2d at 67. Contrary to Taylor's argument, neither the prosecutor's remark regarding the length of time that marijuana remains in the human body, nor a newspaper article describing inmates' access to illegal drugs, has any bearing on whether Taylor was actually under the influence of drugs when he conferred with counsel and pled guilty. Additionally, the newspaper article, cited in defendant's brief on appeal, does not qualify as relevant authority on appeal. See, *e.g.*, *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993).

¶ 22 We note, moreover, that Taylor did not represent to the trial court that he was under the influence of drugs during plea proceedings, but rather, indicated that he understood each

admonition. See *People v. Ferrance*, 32 Ill. App. 3d 358, 361 (1975) (finding no indication defendant pled guilty while under the influence of drugs where transcript demonstrated defendant "was at all times aware of what was occurring and answered all of the trial judge's questions in a clear and comprehensive fashion"). As Taylor has not demonstrated an arguable factual basis for his claim, we cannot say that counsel was ineffective.

¶ 23 Even if counsel was ineffective, however, Taylor has not raised an arguable claim of prejudice. To establish prejudice, a defendant must demonstrate a reasonable probability that, but for counsel's errors, defendant would have pleaded not guilty and demanded trial. *Hall*, 217 Ill. 2d at 335. Prejudice is not established unless the defendant also raises a "claim of innocence" or articulates a "plausible defense that could have been raised at trial." *Id*. at 335-36. See *People v. McCoy*, 2014 IL App (2d) 100424-B, ¶ 17 (Reasoning in *Hall* applies to first-stage dismissals).

¶ 24 Taylor has not raised a claim of actual innocence, and his reply brief correctly concedes that the defense of voluntary intoxication was unavailable when he committed the burglary. 720 ILCS 5/6-3 (West 2012) (added by Pub. Act 92-466 § 5, eff. Jan. 1, 2002) (removing involuntary intoxication as affirmative defense). Taylor provides no evidence that he was under the influence of drugs when he committed the burglary, yet argues plea counsel caused prejudice by failing to investigate whether a defense of voluntary intoxication would negate the specific intent for burglary. *McCoy*, 2014 IL App (2d) 100424-B, ¶ 18 ("no prejudice to defendant could have existed unless exculpatory evidence did exist"). Thus, Taylor was not arguably prejudiced by counsel's performance, and dismissal of his postconviction claim was proper.

¶ 25 State DNA ID System Fee

¶ 26 Next, Taylor contends that his $250 State DNA ID System fee should be vacated as he already submitted a DNA sample in conjunction with a prior felony conviction. A DNA analysis

fee may not be imposed if Taylor's DNA has already been taken. *People v. Marshall*, 242 Ill. 2d 285, 301-02 (2011). Taylor appended to his brief a record from the Illinois State Police Division of Forensic Services, indicating that his "[b]lood [l]iquid" was collected in December 2003. We take judicial notice of this document as a public record, and find that the $250 State DNA ID System fee was improperly imposed. See *People v. Hill*, 2014 IL App (3d) 120472, ¶ 18 (taking judicial notice that defendant submitted DNA sample, as indicated by "information sheet provided by the ISP Division of Forensic Services").

¶ 27 Taylor did not challenge this fee at sentencing or in a postsentencing motion. Generally this fails to preserve a claim of error for review. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). But, in *People v. Caballero*, 228 Ill. 2d 79, 88 (2008), the court determined that a claim for monetary credit under section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 2002)), may be considered an "application of the defendant" made under statute, available to be raised at any time, including in an appeal of postconviction proceedings.

¶ 28 In the interests of the orderly administration of justice, we vacate Taylor's $250 State DNA ID System fee. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) (reviewing court may "modify the judgment or order from which the appeal is taken"); see, *e.g.*, *People v. Bryant*, 2016 IL App (1st) 140421, ¶¶ 22-23 (vacating improperly imposed assessments and ordering clerk of circuit court to correct fines and fees order without remand).

¶ 29 We affirm the dismissal of Taylor's postconviction petition and order the fines and fees order corrected.

¶ 30 Affirmed as modified.