2014 IL App (2d) 121225-U
No. 2-12-1225
Order filed October 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of WinnebagoCounty.
Respondent-Appellee,	)	
v.	)	No. 06-CF-338
RONNIE R. WATTS,	)	Honorable John R. Truitt,
Petitioner-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: We held that pursuant to *People v. Washington*, 38 Ill. 2d 446 (1967) and *People v. Collins*, 202 Ill. 2d 59 (2002), petitioner's allegation that he could not furnish affidavits to support his post-conviction petition because he was indigent and incarcerated constituted sufficient compliance with section 122-2 of the Post-Conviction Hearing Act. 725 ILCS 5/122-2 (West 2012). We affirmed the trial court's dismissal of the *pro* se post-conviction petition as frivolous and patently without merit because his claims of ineffective assistance of counsel and a due process violation were frivolous and patently without merit.

¶ 2 Petitioner, Ronnie Watts, was convicted of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004)) and aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1) (West 2004)). He was sentenced to a term of natural life imprisonment, along with a

concurrent term of six years' imprisonment. On direct appeal his convictions were affirmed. *People v. Watts*, 2-09-0821 (2011) (unpublished order under Supreme Court Rule 23). He subsequently filed a post-conviction petition which was dismissed as being frivolous and patently without merit. On appeal, petitioner argues that the trial court erred in summarily dismissing his *pro se* post-conviction petition where he presented an arguable claim that his rights to both the effective assistance of counsel and due process were violated. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 At trial, the victim, 10-year-old C.S., testified that petitioner was married to her Aunt Jackie. From Kindergarten through third grade, C.S. had overnight visits with her aunt and a cousin. C.S. referred to her vagina as her "private." She said that petitioner touched her private under her clothes while they were in his bedroom on one occasion. Another time, petitioner touched her private underneath her clothes while she was in the bathroom. C.S. also said that petitioner touched the outside of her private with his penis one night while she was lying on the couch in the living room and everyone else was sleeping. C.S. said that when petitioner touched her it made her feel bad.

¶ 5 On cross-examination, C.S. said that when she was in Kindergarten she spoke to a woman at the Carrie Lynn Children's Center (Center) about petitioner. At that time she told the interviewer that petitioner had not touched her. C.S. also said that her mother told her that petitioner was a child molester and a sex offender. On re-direct examination, C.S. testified that she did not tell the truth when she said that petitioner did not touch her inappropriately the first time she went to the Center. However, when she went back to the Center the second time she told the truth—that petitioner had touched her inappropriately.

¶ 6 Winnebago police detective Pete Dal Pra testified that he questioned petitioner on October 6, 2005. Dal Pra told petitioner that he thought petitioner had attempted to put his penis in C.S. 's vagina. In response, petitioner said that he could not remember. On January 24, 2006, Dal Pra again questioned petitioner. Throughout his interrogation, petitioner nodded his head in response to questions. When Dal Pra told him that he wanted him to say something, petitioner said that he did not care about C.S. He also said, "if you want me to say – if you want me to admit something, fine, I screwed her for about five seconds, so put that in a statement." When asked to sign a typed admission, petitioner refused and said that he was being sarcastic. He said that "maybe he was a hideous awful monster." Dal Pra arrested petitioner for sexual contact with C.S. and he then left the room. Dal Pra returned to the interrogation room about twenty minutes later, along with detective Heidenreich. Del Pra said Heidenreich asked petitioner how many times he had had sex with C.S., and petitioner replied that he could not remember.

¶ 7 Dr. Raymond Davis, Jr. testified that he was a pediatrician and the medical director of the Center. On January 18, 2006, Davis examined C.S. at the Center. During the genital examination, Davis found an abnormality that he referred to as a hymenal transsection. Davis explained that a hymenal transsection was a tear in the hymen. The tear was located near C.S. 's anus, which Davis opined was consistent with sexual abuse. Davis said that the tear could have been caused by another type of injury, but noted that C.S. 's mother, who was present during the exam, did not mention any other type of injury that C.S. had sustained. Davis also said that such a tear could be caused by an object being inserted into C.S. 's vagina.

¶ 8 Samantha H., 19 years old at the time of trial, testified that petitioner was a friend of her parents. According to Samantha, one day between January and March 1998, she and her brother spent the night at petitioner's apartment. At one point, Samantha's brother watched a movie in

the living room while she watched a movie in petitioner's bedroom. While she was on the bed petitioner put his mouth on her vagina and rubbed his penis on her vagina. Samantha was eight-years-old at the time. When she was 17 years old, she told her parents what had happened.

¶ 9 Yukondra S., 30 years old at the time of trial, testified that when she was a young girl, petitioner was married to her mother. Yukondra said that between the ages of three and eight years old, petitioner would make her suck his penis, and that he would lick her vagina and fondle her with his fingers. He also put his penis into her vagina. She could not testify as to how many times the assaults occurred, but she said that it felt like every day. It made her feel horrible, and she was frightened of petitioner. Yukondra said that petitioner also beat her, her sisters, her brother, and her mother.

¶ 10 Catherine McDermott, a social worker, testified that she was a sexual assault counselor at Riverview Sexual Assault Center in Galena, Illinois. McDermott said that she provided counseling services for adults primarily, but also children and adolescents as needed. According to McDermott, children who are victims of sexual abuse are typically frightened, which explains delays in reporting. Victims of child sexual abuse may suffer from Child Sexual Abuse Accommodation Syndrome. This syndrome is studied in order for lay people to understand how children cope with sexual abuse. The syndrome has five distinct features which include secrecy, helplessness, entrapment and accommodation, delayed or confined disclosure, and recantation.

¶ 11 The jury found petitioner guilty of predatory criminal sexual assault of a child (720 ILCS 5/12─14.1(a)(1) (West 2004)) and aggravated criminal sexual abuse (720 ILCS 5/12─16(c)(1) (West 2004)).

¶ 12 On July 30, 2012, petitioner filed a *pro se* post-conviction petition. In his petition, petitioner alleged many claims of error. However, petitioner only appeals the dismissal of his

post-conviction petition based upon two of those allegations: (1) he received ineffective assistance of counsel when trial counsel did not call witnesses to refute Dr. Davis' testimony that C.S.'s hymenal transsection was caused by sexual abuse where C.S.'s mother, great-aunt and others[1] knew that C.S.'s older sister had been caught putting objects into C.S.'s vagina; and (2) his due process rights were violated when he was denied the right to a fair and impartial trial when the State knowingly used false and perjured testimony at trial. With regard to the second allegation, in his motion to reconsider petitioner specifically alleged that C.S. and her mother "would now testify they were threatened and intimidated by the State's Attorney and Detective Del Pra to lie against petitioner or [C.S.] would be put into foster care and [C.S.'s mother] would go to prison." Petitioner asserted that he had attempted to get affidavits from Jackie Watts, Fern Watts, Danielle Thompson, David Carrie, Lonnie Watts, Leslie Sample, Haley Sample, C.S., and Steve Lee, but he was unable to do so without assistance of the trial court due to his indigence and incarceration. The petition was signed by petitioner and notarized.

¶ 13 The trial court dismissed the petition as frivolous and patently without merit. Petitioner filed a motion to reconsider, which was also denied.

¶ 14 II. ANALYSIS

¶ 15 On appeal, petitioner argues that the trial court erred in summarily dismissing his *pro se* petition where he presented arguable claims that: (1) he received ineffective assistance of trial counsel; and (2) his due process rights were violated. Specifically, petitioner argues that taken as true, as is required, his petition shows that there were witnesses who could have testified to an

[1] In his motion to reconsider, petitioner specifically named these individuals as Leslie Sample (C.S.'s mother, with a different last name), Jackie Watts (petitioner's ex-wife) and David Carrey.

innocent reason for C.S.'s hymenal disruption and that C.S. was forced into testifying falsely against him. Petitioner acknowledges that he did not attach affidavits to his petition, but notes that he explained in his petition that he was unable to do so because of his indigence and incarceration. That explanation, he contends, was sufficient to satisfy the requirements of section 122-2 of the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-2 (West 2012). In response, the State asserts that the trial court properly dismissed the *pro se* post-conviction petition because the claims that petitioner made were both conclusory and not supported by affidavit.

¶ 16 The Post-Conviction Hearing Act (Act) provides a method by which a criminal defendant may assert that his or her conviction was the result of "a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122–1(a)(1) (West 2012); *People v. Tate*, 2012 IL 112214, ¶ 8. The Act establishes three stages to the proceedings. Tate, 2012 IL 112214, ¶ 9. At the first stage, the trial court must independently review the petition and summarily dismiss it if it "is frivolous or is patently without merit." 725 ILCS 5/122–2.1(a)(2) (West 2012); *Tate*, 2012 IL 112214, ¶ 9. If a petition survives to the second stage, counsel may be appointed to an indigent defendant, and the State will be allowed to file responsive pleadings. 725 ILCS 5/122–4, 122–5 (West 2012); *People v. Hodges*, 234 Ill. 2d 1, 10–11 (2009). If the court determines that the defendant made a substantial showing of a constitutional violation, the petition advances to the third stage for an evidentiary hearing. 725 ILCS 122–6 (West 2012); *Tate*, 2012 IL 112214, ¶ 10. Because this appeal concerns the dismissal of a petition at the first stage, our review is *de novo*. *Tate*, 2012 IL 112214, ¶ 10.

¶ 17 A. Affidavit Requirement

¶ 18 Before we address the merits of the post-conviction petition we must first determine whether the petition is fatally flawed for petitioner's failure to attach any affidavits to it. Again, petitioner argues that his petition complied with section 122-2 of the Act because in it, he alleged that he could not obtain affidavits without the help of the trial court due to his indigence and incarceration. 725 ILCS 5/122-2 (West 2012). As support for this proposition petitioner cites to *People v. Washington*, 38 Ill. 2d 446 (1967).

¶ 19 Whether a post-conviction petition survives the first stage of the proceedings is dependent upon whether the petition conforms to the requirements of the Act. *People v. Brown*, 2014 IL App (1st) 122549, ¶ 46. The Act requires that a post-conviction petition must be supported by "affidavits, records or other evidence in support of its allegations, or that the petition shall state why the same are not attached." 725 ILCS 5/122-2 (West 2012). If at first-stage review the affidavits do not comply with the requirements of section 122-2, then the petition must comply with the pleading requirements of that section by at least providing an explanation as to why the documents or affidavits are unattainable. *People v. Collins*, 202 Ill. 2d 59, 66-67 (2002). The purpose of section 122-2 is to establish that a petition's allegations are capable of "objective or independent corroboration." *People v. Hall*, 217 Ill. 2d 324, 333 (2005).

¶ 20 Based upon our review of supreme court precedent we are compelled to hold that petitioner's excuse that he could not furnish any affidavits to corroborate the allegations in his petition because of his "indigence and incarceration" satisfied the requirement in section 122-2 of the Act that he provide an explanation for failing to attach "affidavits, records or other evidence" to his petition. 725 ILCS 5/122-2 (West 2012).

¶ 21 In *Washington*, after pleading guilty to murder and being sentenced to 25 years' in prison, the petitioner filed a post-conviction petition and alleged that he had been beaten by two named

police officers until he told them that he had murdered the victim during a robbery. He also alleged that his attorney advised him that in his opinion, the jury would convict him of murder because of the confession. He claimed that his attorney told him that he had discussed the case with the trial judge and the prosecutor and the three of them agreed that if he pled guilty he would only be sentenced to 14 years in prison. *Washington*, 38 Ill. 2d at 447-48. According to the petitioner, he pled guilty in reliance on his attorney's promise, and that after he had been sentenced to 25 years' imprisonment, his attorney told him that he would have him called back to court and have the sentence reduced to 14 years. *Id.* at 448. Finally, he alleged that because of his indigence and incarceration he was not able to obtain affidavits from his sister and his attorney, but that the allegations of the petition would be substantiated by the trial record, the testimony of the police officers who beat him, the testimony of defendant's attorney, and the testimony of defendant's sister who was present during his conversations with his attorney. *Id.* The trial court dismissed the petition on the State's motion without a hearing. *Id.* Petitioner appealed, and the State argued that the post-conviction petition was insufficient because it lacked supporting affidavits, citing to section 122-2 of the Act. *Id.* Our supreme court held that that the petition was not insufficient because it lacked supporting affidavits. Instead, the court held that the petition stated why affidavits were not attached, it identified every person involved by name, and the petitioner's allegations were verified by his own affidavit. *Id.* at 449.

¶ 22 Thirty-five years later, in *Collins*, our supreme court had the opportunity to address the *Washington* case again. *Collins*, 202 Ill. 2d at 67-68. In *Collins*, the supreme court upheld the decision of the trial court which dismissed a post-conviction petition at the first stage for petitioner's failure to either attach the necessary "affidavits, records, or other evidence" or explain their absence. *Id.* at 66. The *Collins* court recognized that requiring a petitioner to attach

"affidavits, records, or other evidence" may place an unreasonable burden on post-conviction petitioners, but held that such a burden did not relieve them of bearing any burden whatsoever. Instead, it held that section 122-2 of the Act made it clear that a petitioner who is unable to obtain the necessary corroboration for his allegations "must at least explain why such evidence is unavailable." *Id*. at 68. In distinguishing *Washington*, the *Collins* court specifically held that the explanation provided by the petitioner in *Washington* "explicitly complied with section 122-2's mandate that a post conviction petition 'shall have attached thereto affidavits, records, or other evidence supporting its allegations *or shall state why the same are not attached*.'" (Emphasis in original.) *Id*.

¶ 23 The State argues that petitioner's reliance on *Washington* is misplaced because in both *Washington* and *People v. Williams*, 47 Ill. 2d 1 (1970), the supreme court held that the petitioners were only excused from attaching affidavits to support their claims because the claims related to off-the-record discussions between the petitioners and their trial attorneys. As support, the State points to the court's comment in *Williams* where it said, "the only affidavit that petitioner could possibly have furnished, other than his own sworn statement, would have been that of his attorney who allegedly made the misrepresentation to him. The difficulty or impossibility of obtaining such an affidavit is self-apparent." *Williams*, 47 Ill. 2d at 4.

¶ 24 We are not persuaded. We disagree with the State's argument that the *Washington* court held that the petitioner in that case was only excused from attaching affidavits to support his claim because those claims related to off-the-record discussions between the petitioner and his attorney. Instead, as we have noted, in *Washington* the petitioner provided the "indigent and incarcerated" excuse as to why he could not attach affidavits to his post-conviction. In accepting that excuse, the court held that the petition stated why affidavits were not attached, it identified

every person involved by name, and the petitioner's allegations were verified by his own affidavit. *Washington*, 38 Ill. 2d at 449. In this case, like *Washington*, petitioner said he could not obtain affidavits because he was indigent and incarcerated, he identified the persons that he wanted to receive affidavits from by name, and his petition was verified. If there was any confusion with regard to the holding in *Washington* the supreme court made it clear in 2002 that *Washington* was still good law and the explanation for the lack of affidavits provided in that case complied with the requirements of section 122-2 of the Act. *Collins*, 202 Ill. 2d at 68.

¶ 25 We agree with the State that the supreme court has carved out an exception to the requirements of section 122-2 of the Act and held that where a petitioner's claims are based on what occurred in consultations between the petitioner and his attorney, no explicit explanation is required. *People v. McCoy*, 2014 IL App (2d) 100424, ¶ 17 (citing *People v. Hall*, 217 Ill.2d 324, 333-34 (2005) and *People v. Williams*, 47 Ill. 2d at 4). However, the exception to that rule does not come into play here because: (1) this is not a case where petitioner's claims were based on what occurred in discussions between petitioner and his attorney; and (2) petitioner did not fail to provide any explanation for the lack of any "affidavits, records or other evidence" attached to his post-conviction petition. Instead, petitioner here *did* provide an explanation for the lack of any affidavits to corroborate the allegations in his petition. Pursuant to *Washington*, and reiterated in *Collins*, the explanation that petitioner provided in his petition as to why he failed to attach affidavits to his post-conviction petition meets the statutory requirement in section 122-2 of the Act.

¶ 26 We are not unsympathetic to the State's valid concerns that to hold that incarceration automatically excuses the affidavit requirement in section 122-2 of the Act "would essentially nullify the affidavit requirement as post-conviction relief is almost inherently limited by statute

to those who, like [petitioner], are incarcerated." We are also concerned that in addition to providing no corroboration for his allegations, petitioner's allegations themselves provide no facts to support his claims; *i.e.*, how petitioner knew that Leslie Sample, Jackie Watts and David Carrey had direct knowledge that C.S.'s sister put objects in C.S.'s vagina, or how he knew that Detective Dal Pra or the State's Attorney pressured C.S. or her mother into testifying against him falsely. Nevertheless, it is well-settled that when our supreme court has declared law on any point, only it can modify or overrule its previous decisions, and all lower courts are bound to follow supreme court precedent until such precedent is changed by the supreme court. *Rosewood Care Center, Inc. v. Caterpillar, Inc.*, 366 Ill. App. 3d 730, 734 (2006).

¶ 27 We now turn to the merits of the post-conviction petition to determine whether it was properly dismissed at the first stage of proceedings.

¶ 28 B. Ineffective Assistance of Trial Counsel

¶ 29 We initially note that although petitioner raised many issues of ineffective assistance of counsel in his petition, on appeal he only argues that the trial court erred in dismissing his petition based upon one of these allegations. Specifically, petitioner contends that trial counsel was ineffective for failing to call witnesses at trial to refute the testimony of Dr. Davis. Petitioner claims that Leslie Sample, Jackie Watts, and David Carrey would all testify that C.S.'s hymenal tear was likely caused by C.S.'s older sister, who had been caught sticking soap, crayons and doll parts into C.S.'s vagina in the past.

¶ 30 At the first stage of post-conviction proceedings, an ineffective assistance of counsel claim may not be dismissed if it is arguable that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) petitioner was prejudiced by counsel's substandard performance. *People v. Hodges*, 234 Ill. 2d 1, 17 (2009) (citing *Strickland v. Washington*, 466

U.S. 668, 687-88 (1994). The first prong requires us to consider whether, applying a strong presumption that counsel's representation fell within the wide range of reasonable assistance, there is an arguable basis to find that counsel's performance was "objectively unreasonable under prevailing professional norms." *People v. Cathey*, 2012 IL 111746, ¶ 23. The second prong requires an inquiry into whether there is an arguable basis to conclude that, but for counsel's errors, there exists a reasonable probability that the result of the proceeding would have been different. *Id*. The failure to satisfy either prong will defeat an ineffective assistance claim. *People v. Williams*, 193 Ill. 2d 306, 375 (2000).

¶ 31 Here, petitioner has not made an arguable claim that he received ineffective assistance of trial counsel for counsel's alleged failure to investigate and present witnesses that could offer an innocent explanation for the tear in C.S.'s hymen. Even if these witnesses were called for such a purpose they would not be able to refute Dr. Davis' testimony. The record is clear that Dr. Davis testified that the tear in C.S.'s hymen could have been caused by having an object inserted into her vagina. Moreover, petitioner does not allege in his post-conviction petition, or in his motion to reconsider: (1) how he knew that these individuals had knowledge that C.S.'s sister had inserted objects into C.S.'s vagina; or (2) that he ever told trial counsel that these individuals may have had such knowledge. Without more factual support for these conclusory allegations petitioner has failed to demonstrate that he was prejudiced by counsel's alleged failure to call these witnesses for the purpose stated in his post-conviction petition. See *People v. Delton*, 227 Ill. 2d 247, 258 (2008) (allegations of ineffective assistance of counsel that are "broad" and "conclusory" are not permitted under the Act). Accordingly, the trial court properly found this issue to be without merit.

¶ 32 C. Violation of Due Process Rights

¶ 33 Next, petitioner argues that the trial court erred in summarily dismissing his petition where he presented an arguable claim that his right to due process was violated when C.S. and her mother were threatened and intimidated by the police and the State's Attorney and thereby forced to implicate him. As support for this claim, petitioner alleged that Detective Dal Pra had a "vendetta" against him, which stemmed from an allegation of abuse from 2004 that was later dropped. Petitioner claims that consistent with Dal Pra's desire to see him prosecuted, Dal Pra pressured C.S. and her mother to implicate him in the instant offense. Taken as true, petitioner contends, this constitutes a conviction obtained through false evidence and is therefore a violation of his due process rights. Additionally, petitioner claims that there is support in the record for this allegation since in her first recorded interview C.S. stated that she had never been abused by anyone, and she also told the interviewer that her mother had described petitioner as a "sex offender" and "child molester." However, petitioner alleges, C.S.'s "story" changed by the time of trial.

¶ 34 The introduction of false evidence, known to be such by the State, constitutes a violation of due process. U.S. Const., amend. XIV; *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

¶ 35 We have reviewed petitioner's claims and find them to be conclusory allegations that are insufficient to constitute constitutional claims of deprivation. First, even if Detective Dal Pra had a "vendetta" against him, petitioner never explained how he knew that Dal Pra pressured C.S. or her mother into implicating him in the instant offense. Second, he also provided no explanation as to how he knew that the State's Attorney also intimidated C.S. and her mother into testifying falsely. Finally, the fact that C.S.'s testimony at trial contradicted the information that she provided in her recorded interview in no way supports petitioner's claim that C.S. changed her testimony at trial due to intimidation tactics by the police and State's Attorney.

Petitioner makes these conclusory assertions without providing any facts as support for his allegations. As such, his allegation of a due process violation was insufficient to survive a first stage dismissal under the Act. *People v. Hodges*, 234 Ill. 2d 1, 16 (2009) (under the Act, a petition containing nonspecific and nonfactual allegations that merely amount to conclusory statements will not survive dismissal).

¶ 36 III. CONCLUSION

¶ 37 In sum, petitioner's failure to attach affidavits to his post-conviction petition was not fatal where he explained that he could not obtain affidavits without the trial court's help because he was indigent and incarcerated, he specifically listed the name of the people whose affidavits he needed, and his petition was verified. See *People v. Washington*, 38 Ill. 2d 446 (167); *People v.* Collins, 202 Ill. 2d 59 (2002). Nevertheless, the trial court properly dismissed the post-conviction petition at the first stage of proceedings because it was frivolous and patently without merit.

¶ 38 Accordingly, The judgment of the circuit court of Winnebago County is affirmed.

¶ 39 Affirmed.