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2012 IL App (3d) 100738-U

Order filed October 16, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 21st Judicial Circuit,
Plaintiff-Appellee,	) Kankakee County, Illinois,
	)
v.	) Appeal No. 3-10-0738
	) Circuit No. 98-CF-256
	)
AARON GANDY,	) Honorable
	) James B. Kinzer,
Defendant-Appellant.	) Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Wright and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Defendant's postconviction petition was properly dismissed as frivolous or patently without merit.

¶ 2 Defendant, Aaron Gandy, was convicted of the first degree murder of three individuals (720 ILCS 5/9-1(a)(1) (West 1992)) and sentenced to three concurrent terms of natural life imprisonment. His convictions and sentences were affirmed on appeal. *People v. Gandy*, No. 3-05-0180 (2006) (unpublished order under Supreme Court Rule 23). Thereafter, defendant filed a

postconviction petition that was dismissed by the trial court after a finding that the petition was frivolous and patently without merit. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant with first degree murder following the shooting deaths of Deon Porter, Lemond Jones, and Eugene Torrey (720 ILCS 5/9-1(a)(1), (a)(2) (West 1992)). Defendant's first trial ended in a deadlocked jury. The cause then proceeded to a second trial where defendant was found guilty of the first degree murders of Porter, Jones, and Torrey. Following the convictions, defendant filed a posttrial motion alleging that trial counsel was ineffective for failing to interview Keith Wright and Kenneth Murrell and for failing to call them to testify. The motion included affidavits from the two men. The trial court denied defendant's motion after finding that counsel was not ineffective. Defendant was sentenced to three concurrent terms of natural life imprisonment.

¶ 5 Defendant appealed his conviction. On appeal, defendant argued, among other things, that the trial court erred by not appointing counsel to investigate his posttrial claims of ineffective assistance of counsel. In affirming defendant's conviction, this court found that trial counsel was not ineffective for failing to interview Wright and Murrell or for failing to call them to testify. *Gandy*, No. 3-05-0180.

¶ 6 Thereafter, defendant filed a postconviction petition. The petition alleged that trial counsel was ineffective for: (1) failing to interview Wright and Murrell and for failing to call them to testify; (2) introducing evidence that affirmatively damaged defendant's case; and (3) stipulating to the admission of transcripts without consulting defendant. The petition included the same affidavits from Wright and Murrell that defendant had included in his posttrial motion.

The circuit court dismissed defendant's postconviction petition as frivolous and patently without merit. Defendant appeals.

¶ 7

#### ANALYSIS

¶ 8 Defendant argues that the circuit court erred in dismissing his postconviction petition at the first stage because it contained the gist of a constitutional claim. In a postconviction proceeding, the trial court does not redetermine a defendant's guilt or innocence, but instead examines constitutional issues which escaped earlier review. *People v. Rogers*, 197 Ill. 2d 216 (2001). Therefore, any issues which were decided on direct appeal are barred by *res judicata*; any issues which could have been raised on direct appeal are forfeited. *Id.* At the first stage, the trial court must independently determine whether the petition is frivolous or patently without merit. *People v. Morris*, 236 Ill. 2d 345 (2010). A petition is frivolous or patently without merit if its allegations, when taken as true, fail to present the gist of a constitutional claim. *People v. Brooks*, 233 Ill. 2d 146 (2009). The supreme court has specifically found that issues that are barred by *res judicata* or forfeiture are frivolous or patently without merit. *People v. Blair*, 215 Ill. 2d 427 (2005). A petition alleging ineffective assistance of counsel, that is not barred, may not be summarily dismissed if it is arguable that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) defendant was prejudiced. *People v. Hodges*, 234 Ill. 2d 1 (2009). A trial court's dismissal of a postconviction petition at the first stage is reviewed *de novo*. *Morris*, 236 Ill. 2d 345.

¶ 9 Here, defendant claims that his postconviction petition stated the gist of a constitutional claim when it alleged that trial counsel was ineffective for: (1) failing to interview Wright and Murrell and call them to testify; (2) introducing evidence that affirmatively damaged defendant's

case; and (3) stipulating to the admission of transcripts without consulting defendant or securing his consent to waive his sixth amendment confrontation rights.

¶ 10 We find that all three of defendant's allegations are frivolous and patently without merit.

First, we note that this court already determined, on direct appeal, that trial counsel was not ineffective for failing to interview Wright and Murrell or call them to testify. Therefore, that claim is barred by *res judicata*. Second, we find that the allegation that counsel introduced damaging evidence could have been raised on direct appeal; therefore, it was forfeited and cannot be brought in a postconviction petition.

¶ 11 Lastly, defendant's claim that counsel did not consult him prior to stipulating to the admission of trial transcripts was a reasonable decision by counsel. In his petition, defendant's claim focused on the manner in which the witnesses' statements were read to the jury. Defendant contended that the reading of the statements by someone other than the court reporters who had transcribed them deprived him of the ability to cross-examine the reporters about the demeanor of the witnesses. This claim is meritless. The result of the proceeding would not have been different had the court reporters read the transcripts at trial. Therefore, this argument does not supply an arguable basis that counsel's performance fell below an objective standard of reasonableness or that defendant was prejudiced. Thus, we find that the trial court did not err in dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 12 CONCLUSION

¶ 13 The judgment of the circuit court of Kankakee County is affirmed.

¶ 14 Affirmed.