

NOTICE

Decision filed 05/09/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 110494-U

NO. 5-11-0494

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

BRYON KEIDEL,

Defendant-Appellant.

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Appeal from the
Circuit Court of
Madison County.

No. 06-CF-1686

Honorable
Charles V. Romani, Jr.,
Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed the defendant's postconviction petition for failing to attach affidavits, records, or other evidence supporting his claims or an explanation as to why such supporting evidence was lacking.

¶ 2 The defendant filed a *pro se* petition for postconviction relief after pleading guilty to predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)). The circuit court of Madison County summarily dismissed the petition. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 On July 28, 2006, the defendant was charged by information with three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)) and three counts of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2006)). On January 7, 2007, the circuit court appointed Dr. Daniel Cuneo to evaluate the defendant's fitness to stand trial. In Dr. Cuneo's report dated January 9, 2007, he noted that the defendant had been

admitted to the Madison County jail on July 29, 2006, and had attempted to hang himself in his cell on December 29, 2006. Dr. Cuneo also noted that the defendant had been transported to a local hospital for medical evaluation and treatment and had been returned to the jail later that day. Dr. Cuneo's report revealed that the defendant had stated in a suicide letter that "he had to kill himself" because the "court system is corrupt [and] *** he is not guilty." Dr. Cuneo concluded that the defendant was fit to stand trial. Dr. Cuneo's report made no reference to allegations of abuse in the Madison County jail.

¶ 5 On June 4, 2007, the circuit court again appointed Dr. Cuneo to evaluate the defendant's fitness to stand trial. In his report dated the same day, Dr. Cuneo noted that on May 18, 2007, the defendant had again attempted suicide by strangulation. Dr. Cuneo noted that the defendant had again been transported to the hospital and underwent medical testing, including an MRI, which was negative for brain damage. Dr. Cuneo concluded that the defendant was unfit to stand trial but noted "the possibility that [the defendant] is malingering and exaggerating his current level of confusion." Again, Dr. Cuneo's report made no reference to allegations of abuse in the Madison County jail.

¶ 6 On June 29, 2007, the defendant was transferred to the Alton Mental Health Center. In a Department of Human Services (DHS) report dated July 23, 2007, DHS noted that the defendant had alleged "that guards were spitting in his food and hitting him while he was in jail." In an August 23, 2007, report, concluding that the defendant had become fit to stand trial, DHS noted that the defendant sought to enter a not-guilty-by-reason-of-insanity plea because he wanted to stay at the Alton Mental Health Center. The defendant stated that it was "like a death sentence for him to go to a County jail or to Corrections" and that he would kill himself if he returned to the county jail. DHS noted that the defendant "appear[ed] to be exaggerating his symptoms to avoid the legal consequences of his charges." On October 4, 2007, the circuit court found the defendant fit to stand trial and remanded him to the custody

of the Madison County jail.

¶ 7 On August 8, 2008, as part of a negotiated plea agreement, the defendant pled guilty to one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)), and the remaining charges were dismissed. After determining that the defendant's guilty plea was both voluntary and supported by a sufficient factual basis, the circuit court accepted the plea and sentenced the defendant to 18 years in prison. The defendant did not file a direct appeal of his conviction and sentence.

¶ 8 On August 8, 2011, the defendant filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2006)). In the petition, the defendant alleged that his guilty plea was not freely and voluntarily made. The defendant asserted that while in the Madison County jail, he was assaulted by a fellow inmate named "Clay" and was beaten and mistreated by the correctional officers. The defendant asserted that he entered a plea of guilty to escape "the constant and continued mental anguish [he] was subjected to, at the whims of correctional officers and at the Madison County [j]ail." In his petition, the defendant cited visits with medical personnel and corrections staff wherein he had been suffering from the effects of the abuse and had relayed instances of the abuse. Yet, the defendant failed to attach any affidavits to his petition.

¶ 9 On October 27, 2011, the circuit court summarily dismissed the defendant's petition as frivolous and patently without merit (725 ILCS 5/122-2.1(a)(2) (West 2006)), noting, *inter alia*, that the petition failed to attach affidavits, records, or other evidence supporting its allegations. On November 7, 2011, the defendant filed his timely notice of appeal.

¶ 10 DISCUSSION

¶ 11 On appeal, the defendant argues that the circuit court erred in dismissing his postconviction petition at the first stage of proceedings because his claim that his guilty plea was involuntary, due to the dangerous conditions he faced in the Madison County jail, had

a basis in law and fact, and thus, stated the gist of a constitutional claim. The State counters that the circuit court properly dismissed the defendant's postconviction petition because he failed to attach any affidavits, records, or other evidence to support his claims.

¶ 12 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 to 122-8 (West 2006)) sets forth a procedural mechanism through which a defendant can claim that "in the proceedings which resulted in his or her conviction there was 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 2006). The Act provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Bocclair*, 202 Ill. 2d 89, 99 (2002). At the first stage, the trial court independently assesses the defendant's petition, without further pleadings from the defendant or any motions or pleadings from the State, and if the court determines that the petition is "frivolous" or "patently without merit" the court can summarily dismiss it. 725 ILCS 5/122-2.1(a)(2) (West 2006). "A post-conviction petition is considered frivolous or patently without merit if the petition's allegations, taken as true, fail to present the gist of a meritorious constitutional claim." *People v. Collins*, 202 Ill. 2d 59, 66 (2002). If a petition is not dismissed at the first stage, it advances to the second stage, where the State can move to dismiss the petition. 725 ILCS 5/122-2.1(b), 122-4, 122-5 (West 2006). At the second stage, the trial court determines whether the defendant has made a substantial showing of a constitutional violation, and if a substantial showing is made, the petition proceeds to the third stage for an evidentiary hearing; if no substantial showing is made, the petition is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 245 (2001). "At both the second stage and the third stage, the defendant bears the burden of making a substantial showing that his conviction resulted from a violation of a constitutional right." *People v. Lane*, 398 Ill. App. 3d 287, 296 (2010).

¶ 13 The defendant commences proceedings under the Act by filing a petition in the circuit

court in which the conviction occurred. 725 ILCS 5/122-1(b) (West 2006); *Collins*, 202 Ill. 2d at 65. The defendant's petition must identify the conviction proceeding, the date of the contested final judgment, and the alleged constitutional violations. 725 ILCS 5/122-2 (West 2006); *Collins*, 202 Ill. 2d at 65. In addition, the defendant's petition must be both verified by affidavit and supported by "affidavits, records, or other evidence." 725 ILCS 5/122-1(b), 122-2 (West 2006); *Collins*, 202 Ill. 2d at 65. "[T]he affidavits and exhibits which accompany a petition must identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations." *People v. Delton*, 227 Ill. 2d 247, 254 (2008). If this documentation is not attached, the petition must explain why it is unavailable. 725 ILCS 5/122-2 (West 2006).

¶ 14 Although a *pro se* postconviction petitioner is not expected to set forth a complete and detailed factual recitation, his petition must set forth some facts which can be corroborated and are objective in nature or contain some explanation why such facts are absent. *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 55; 725 ILCS 5/122-2 (West 2006). "A postconviction petition that is not supported by affidavits or other supporting documents is generally dismissed without an evidentiary hearing unless the petitioner's allegations stand uncontradicted and are clearly supported by the record." *People v. Waldrop*, 353 Ill. App. 3d 244, 249 (2004). The failure to attach the necessary "affidavits, records, or other evidence" or to explain their absence is "fatal" to a postconviction petition and by itself justifies the petition's summary dismissal. *Collins*, 202 Ill. 2d at 66. "The dismissal of a postconviction petition without an evidentiary hearing is reviewed *de novo*." *People v. Hall*, 217 Ill. 2d 324, 334 (2005).

¶ 15 In this case, the circuit court properly dismissed the defendant's *pro se* postconviction petition at the first stage of proceedings. Contrary to the clear mandate of section 122-2 of the Act, the defendant's allegations were unsupported by "affidavits, records, or other

evidence" and offered no explanation for the absence of such documentation. See 725 ILCS 5/122-2 (West 2006). This failure alone justified the summary dismissal of the defendant's petition. See *Collins*, 202 Ill. 2d at 66.

¶ 16 We further note that the defendant's allegations are contradicted and not clearly supported by the record. *People v. Johnson*, 183 Ill. 2d 176, 191 (1998). "When a defendant claims that he only pleaded guilty due to prison conditions, it does not necessarily follow that his plea was involuntary." *People v. Urr*, 321 Ill. App. 3d 544, 547 (2001). The "[d]efendant must allege a specific instance of abuse, which caused him to plead guilty, and he must sufficiently establish a nexus between the alleged violence and his guilty plea." *Id.* ¶ 17

On July 23, 2007, DHS noted that the defendant had "reported that guards were spitting in his food and hitting him while he was in jail." However, at the plea proceeding, the defendant stated to the circuit court that he had not been forced or threatened to plead guilty and that he was entering the plea freely and voluntarily. See *People v. Strickland*, 154 Ill. 2d 489, 518-19 (1992); *People v. Stokes*, 21 Ill. App. 3d 754, 757 (1974) (defendant's failure to raise allegations with the trial court about abuses suffered in prison until after his plea of guilty weighs against a finding that his plea was involuntary); *cf. Urr*, 321 Ill. App. 3d at 545 (at plea proceeding, the defendant specifically told the court that jail abuse was the reason he was pleading guilty). Because the defendant's allegations do not stand uncontradicted and are not clearly supported by the record, the circuit court properly dismissed the defendant's postconviction petition in the first stage of proceedings.

¶ 18 CONCLUSION

¶ 19 Because the defendant's *pro se* postconviction petition included neither "affidavits, records, or other evidence" supporting his claims nor an explanation as to why such supporting evidence was lacking, and his allegations were contradicted and not clearly supported by the record, the circuit court properly dismissed his petition as frivolous and

patently without merit. We therefore affirm the order of the circuit court of Madison County summarily dismissing the defendant's postconviction petition.

¶ 20 Affirmed.