2022 IL App (4th) 210271-U

NO. 4-21-0271

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 29, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
STEPHEN C. COLEMAN,	)	No. 15CF1036
Defendant-Appellant.	)	
	)	Honorable
	)	John M. Madonia,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices DeArmond and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's postconviction claims have arguable merit, and the trial court erred by summarily dismissing his petition at the first stage of postconviction proceedings.

¶ 2 Defendant, Stephen C. Coleman, appeals the trial court's first-stage dismissal of his *pro se* postconviction petition. He argues his petition was not frivolous or patently without merit and that it stated the gist of constitutional claims of ineffective assistance of both trial and appellate counsel. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 In October 2015, the State charged defendant with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)) (count I), being an armed habitual criminal (*id.* § 24-1.7(a)) (count II), and aggravated unlawful use of a weapon (*id.* § 24-1.6(a)(1), (a)(3)(C)) (count III). It alleged defendant, who had not been issued a valid Firearm Owner's Identification

card, knowingly possessed and carried a firearm while wearing body armor and after having been previously convicted of certain specified felony offenses. The charges arose following the traffic stop of a vehicle owned and operated by Trish Rennier, and in which defendant was the sole passenger. At the time of the stop, the police searched the vehicle and found a handgun under the front passenger seat. They also conducted a "pat down" search of defendant and discovered that he was wearing a bulletproof vest under his clothing.

¶ 5 During the underlying proceedings, defendant was represented at different times by both privately retained and appointed counsel. He filed multiple motions to suppress evidence in his case, which raised various challenges to the traffic stop and the searches of both Rennier's vehicle and his person. The trial court conducted hearings on the motions, at which defendant presented Rennier's testimony, and the State presented testimony from the two police officers involved in the traffic stop, Matthew Dowis and Rikki Castles. Evidence presented at the hearings showed Dowis and Castles were on patrol together when they observed Rennier's vehicle make a turn and cross into an oncoming lane of travel. They initiated a traffic stop based on improper lane usage. The stop occurred late at night and in "a known drug area."

¶ 6 When the officers initially approached the vehicle, they obtained identifying information from Rennier and defendant. Dowis testified he did not notice any "alarming" behavior from either individual; however, he would not agree that there was "no officer safety issue" at the time of the "first approach" to the vehicle, stating the officers "didn't know who the individuals were in the vehicle." Based on "the time [of the stop] and the area," the officers "ran" the names and criminal histories of both occupants. They "ran" Rennier's information first and then defendant's information. The officers learned defendant "had a known drug history *** and also weapons offenses." Based on defendant's prior record, the officers decided to ask to search

the vehicle. Upon their return to the vehicle, the officers obtained Rennier's verbal consent for a search. Defendant was asked to exit the vehicle, and Dowis conducted a "pat down" of defendant's person, revealing a bulletproof vest under his clothing. The officers then searched Rennier's vehicle and located a loaded "9-millimeter Taurus handgun" underneath the passenger seat. After the handgun was discovered, the officers placed defendant in handcuffs.

¶ 7 Additionally, the evidence showed the officers did not issue Rennier a traffic citation during the stop. However, at some unspecified point, she was given a verbal warning.

¶ 8 The trial court denied each of defendant's motions to suppress. In November 2017, it conducted defendant's bench trial and found him guilty of each charged offense. In January 2018, the court sentenced defendant to 15 years in prison.

¶ 9 Defendant filed a direct appeal, arguing the trial court erred by denying his motions to suppress evidence. *People v. Coleman*, 2020 IL App (4th) 180098-U, ¶ 29. Specifically, on appeal he asserted he was unlawfully seized because the police improperly prolonged the traffic stop "beyond the mission of the stop (1) to 'run [his] name through the police computer' and (2) by asking Rennier for consent to search her car." *Id.* Defendant maintained his unlawful seizure required the suppression of both the handgun and the bulletproof vest. *Id.*

¶ 10 On review, this court affirmed the trial court's judgment. *Id.* ¶ 61. We found defendant forfeited his claim of error by failing to properly raise it with the trial court. *Id.* ¶ 32. In particular, we held that although defendant raised a bare allegation that the traffic stop was unlawfully prolonged in his original motion to suppress, he ultimately failed to develop that claim, argue it before the trial court, obtain findings pertaining to the claim from the court, or raise and argue the claim in his posttrial motion. *Id.* ¶¶ 32-33. Further, we rejected defendant's contention that the issue could be reviewed under the plain-error doctrine, finding defendant could not meet

his burden of showing a " 'clear or obvious error' " occurred when the court denied his motions to suppress. *Id.* ¶¶ 49, 59. In so holding, we found it improper and speculative to hold that any of the officers' actions unlawfully prolonged the stop when the record was not developed as to that ground. *Id.* ¶¶ 46, 58. We found it significant that the issue had not been the focus of the underlying proceedings and that the State did not have the opportunity to respond and present evidence specifically on the issue. *Id.*

¶ 11 In February 2021, defendant filed a *pro se* postconviction petition, which is the subject of the current appeal. He alleged his trial attorneys were ineffective for failing to litigate the suppression of evidence based upon the claim "of improper seizure and duration of the traffic stop." Defendant alleged the purpose of the traffic stop "was for improper lane usage," and he argued the officers' "actions were illegal upon every action after the completion of their information inquiry." He asserted that once the officers learned of his prior record, they decided not to issue any citation and "to request consent to search" Rennier's vehicle. Defendant further alleged as follows:

> "After running the information and finding that neither of the occupants [of the vehicle] had active warrants, the only thing left to do for these officers were [*sic*] to write up the citations. Here they chose not too [*sic*], but instead based solely on the prior criminal history of the passenger, these officers agreed to request to search the [vehicle]."

Defendant also maintained his appellate counsel was ineffective for failing to raise the issue of his trial attorneys' ineffectiveness. To support his claims, defendant attached to his petition his original motion to suppress evidence, portions of the transcript of Dowis's testimony from the initial suppression hearing, and portions of this court's order disposing of his direct appeal.

¶ 12 In April 2021, the trial court entered an order dismissing defendant's *pro se* postconviction petition. The court noted defendant had been represented by at least three different attorneys during the underlying proceedings, all of whom elected to focus on different grounds for the suppression of evidence other than the one alleged by defendant in his postconviction petition. Such circumstances led the court "to conclude that there was no record developed [regarding defendant's postconviction claim of an improperly prolonged traffic stop] because there was no factual support for such development." Therefore, the court concluded, it was not arguable that the performances of defendant's attorneys fell below objective standards of reasonableness. It held defendant's postconviction claims were frivolous and patently without merit.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues the trial court erred by dismissing his *pro se* postconviction petition as frivolous and patently without merit, and he asserts his petition stated the gist of constitutional claims of ineffective assistance of both his trial and appellate counsel. Specifically, defendant maintains his petition presented arguable claims that his (1) trial attorneys were ineffective for failing to request the suppression of evidence based on grounds that the police improperly prolonged the traffic stop of Rennier's vehicle beyond the mission of the stop and (2) appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness on that basis. Defendant argues his ineffective-assistance claims are supported by the record, which shows "that police took steps that could measurably extend the duration of the stop, and that his trial attorneys were aware of the claim but failed to pursue it."

¶ 16 A. The Postconviction Hearing Act

¶ 17 The Post-Conviction Hearing Act (Act) sets forth "a three-stage process for an

imprisoned person to raise a constitutional challenge to a conviction or sentence." *People v. Hatter*, 2021 IL 125981, ¶ 22, 183 N.E.3d 136 (citing 725 ILCS 5/122-1 *et seq.* (West 2016)). "At the first stage, the circuit court reviews the petition independently within 90 days after it is filed and docketed." *Id.* The court must consider "the petition's substantive virtue rather than its procedural compliance" and may "only summarily dismiss the petition if it is frivolous or is patently without merit." (Internal quotation marks omitted.) *Id.* ¶¶ 22-23. "The allegations of the petition, taken as true and liberally construed, must present the gist of a constitutional claim." *Id.* ¶ 24.

¶ 18 A postconviction petition is frivolous or patently without merit if it "has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Id.* at 16. "An example of an indisputably meritless legal theory is one which is completely contradicted by the record." *Id.* "Fanciful factual allegations include those which are fantastic or delusional." *Id.* at 17.

¶ 19 Ultimately, "[t]he first stage of postconviction proceedings presents a 'low threshold,' requiring only that the petitioner plead sufficient facts to assert an arguably constitutional claim." *People v. Johnson*, 2021 IL 125738, ¶ 25, 182 N.E.3d 728. "[T]o survive summary dismissal, a petitioner is only required to include a limited amount of detail and need not present formal legal arguments or citations to legal authority." *Hatter*, 2021 IL 125981, ¶ 24. "However[,] a 'limited amount of detail' does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional deprivation." *People v. Delton*, 227 Ill. 2d 247, 254, 882 N.E.2d 516, 520 (2008). "[W]hile a *pro se* petition is not expected to set forth a complete and detailed factual recitation, it must set forth some facts which can be corroborated and are objective in nature or contain some explanation as to why those facts are

absent." *Id.* at 254-55. A trial court's first-stage dismissal of a postconviction petition is subject to *de novo* review. *People v. Swamynathan*, 236 Ill. 2d 103, 113, 923 N.E.2d 276, 282 (2010).

¶ 20 B. Forfeiture or *Res Judicata*

¶ 21 Initially, we address the State's contention that the trial court properly dismissed defendant's *pro se* postconviction petition because his claims were barred by either forfeiture or *res judicata*.

¶ 22 We note a postconviction petition may be summarily dismissed based upon the doctrines of *res judicata* and forfeiture. *People v. Blair*, 215 Ill. 2d 427, 445, 831 N.E.2d 604, 616 (2005). In particular, "[t]he doctrine of *res judicata* bars consideration of issues that were previously raised and decided on direct appeal." *Id.* at 443. "For *res judicata* to apply, there must have been a final judgment on the merits of the case." *In re Leona W.*, 228 Ill. 2d 439, 455, 888 N.E.2d 72, 81 (2008). Additionally, forfeiture bars a defendant from raising claims in a postconviction proceeding "that could have been raised [on direct appeal], but were not." *Blair*, 215 Ill. 2d at 443-44.

¶ 23 Initially, we find the doctrine of forfeiture, rather than the doctrine of *res judicata* is applicable to the facts of this case. The record reflects defendant filed a direct appeal but raised no ineffective-assistance-of-counsel claim. Although he did argue the suppression of evidence was warranted due to his improper seizure and an unlawfully prolonged traffic stop—allegations which underlie the ineffective-assistance claims he now raises—that issue was, itself, found to be forfeited and not reviewable as plain error. Regarding our plain-error analysis, we found defendant could not establish a clear or obvious error because he had not pursued his claim below and the record was not properly developed for resolving the claim. *Coleman*, 2020 IL App (4th) 180098-U, ¶¶ 46, 58. Thus, in defendant's prior appeal, we did not reach the ultimate merits of any portion of

his ineffective-assistance claim, and as a result, *res judicata* did not bar him from raising that claim in his postconviction petition.

¶ 24 Next, to the extent that forfeiture applies because defendant could have raised his ineffective-assistance claim on direct appeal but failed to do so, we note defendant also alleged the ineffectiveness of his appellate counsel in his postconviction petition. The forfeiture doctrine may be relaxed under such circumstances. *People v. English*, 2013 IL 112890, ¶ 22, 987 N.E.2d 371 (stating the doctrine of forfeiture is relaxed "where the forfeiture stems from the ineffective assistance of appellate counsel"). Additionally, as we noted in our earlier decision, because defendant did not pursue suppression before the trial court based upon issues related to the duration of the traffic stop, the record was not fully developed as to that claim. Relaxing the forfeiture doctrine is also warranted on this basis. See *Id.* (stating a defendant's forfeiture of an issue is relaxed "where the facts relating to the issue do not appear on the face of the original appellate record"). Accordingly, we find that defendant's postconviction claims are not barred by forfeiture.

¶ 25 C. The Arguable Merit of Defendant's Postconviction Claims

¶ 26 The ineffective-assistance claims raised by defendant are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Hodges*, 234 Ill. 2d at 17. Under that standard, "a defendant must show both that counsel's performance 'fell below an objective standard of reasonableness' and that the deficient performance prejudiced the defense." *Id.* (quoting *Strickland*, 466 U.S. at 687-88). "At the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Id.*

¶ 27 Further, as stated, defendant's ineffective-assistance claims are based upon his trial

attorneys' failure to pursue the suppression of evidence in his case on grounds that he was unlawfully seized when the traffic stop of Rennier's vehicle was improperly prolonged beyond the mission of the stop. Whether to file a motion to suppress is generally a matter of trial strategy, and such decisions are entitled to great deference. *People v. Gayden*, 2020 IL 123505, ¶ 28, 161 N.E.3d 911. However, deficient performance has been found where trial counsel's failure to file a motion to suppress was the result "of a fundamental misjudgment" regarding the merit of the claim rather than a tactical decision (*People v. Peck*, 2017 IL App (4th) 160410, ¶ 38, 79 N.E.3d 232) or where trial counsel failed "to raise the strongest basis for quashing the arrest and suppressing the evidence" (*People v. Bloxton*, 2020 IL App (1st) 181216, ¶ 27, 178 N.E.3d 766). Further, to establish *Strickland* prejudice based on the failure to seek the suppression of evidence, "the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 15, 989 N.E.2d 192.

¶ 28 The fourth amendment protects against unreasonable seizures. *People v. Bass*, 2021 IL 125434, ¶ 15, 182 N.E.3d 714. "A traffic stop is a seizure of both the driver and the passengers," and it is "analogous to a so-called *Terry* stop." *Id.* (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). "Determining the reasonableness of a *Terry* stop involves a dual inquiry: 'whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.' " *Id.* (quoting *Terry*, 392 U.S. at 19-20).

¶ 29 "A lawfully initiated traffic stop may violate the fourth amendment if it is prolonged beyond the time reasonably required to complete its mission and attend to related safety concerns." *Id.* ¶ 16. "The 'mission' of a traffic stop is to address the traffic violation that warranted the stop,

and authority for the stop ends when tasks related to the stop's purpose are, or reasonably should have been, completed." *Id.* ¶ 17. "Ordinary inquiries related to traffic stops include checking the driver's license, doing a warrant check on the driver, or asking for registration and proof of insurance." *Id.* "[I]nquiries into matters unrelated to the justification of the traffic stop do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Id.* ¶ 18. "The critical question is *** whether the stop is prolonged beyond the point at which the original mission should have been completed." *Id.* ¶ 20.

¶ 30 Here, in his *pro se* postconviction petition, defendant alleged the mission of the underlying traffic stop was to address a traffic violation—improper lane usage. He asserted that after obtaining and "running the information" of the occupants of Rennier's vehicle, the police officers should have completed the stop. Defendant alleged, however, that instead of ending the stop, the officers measurably extended its duration by requesting consent to search the vehicle based solely on his criminal history.

¶ 31 We agree that the facts alleged by defendant state an arguably meritorious claim for the suppression of evidence in his case. Evidence at the suppression hearing supports defendant's factual assertions. When taken as true and liberally construed, defendant's uncontradicted allegations arguably establish both that the officers engaged in actions unrelated to the mission of the stop by requesting consent to search the vehicle, and that such action prolonged the stop beyond the point that it should have been completed. See *People v. Al Burei*, 404 Ill. App. 3d 558, 566, 937 N.E.2d 297, 304 (2010) (finding the defendant was unlawfully seized during a traffic stop when a police officer questioned the defendant and obtained consent to search beyond the time reasonably required to complete the stop's purpose).

¶ 32 The State asserts defendant cannot arguably show deficient performance by any of his trial attorneys because whether to file a motion to suppress is a matter of trial strategy. However, nothing in the record demonstrates a tactical basis for failing to litigate the suppression of evidence based upon a claim of an unlawfully prolonged stop. The record does show that the allegation was raised in connection with defendant's motions to suppress but, ultimately, not pursued before the trial court. Because defendant's claim of an unlawfully prolonged stop has arguable merit, we find it is also arguable that his trial counsel was ineffective for failing to pursue, develop, and argue the issue. It is also arguable that defendant suffered prejudice because a successful motion to suppress would have resulted in the suppression of evidence critical to the charged offenses, *i.e.*, the handgun and the bulletproof vest.

¶ 33 The State also argues defendant has presented insufficient factual support for his postconviction claims. It points to this court's decision on direct appeal, asserting we previously found the record was insufficient to support defendant's assertions of an unlawfully prolonged stop. The State also points out that, in his *pro se* petition, defendant presented no additional factual support for his claim based upon any matters outside the original appellate record. We note, however, that the standards for considering defendant's claims on direct appeal were much different that the standards now applicable to the present appeal.

¶ 34 On direct appeal, defendant presented the argument that the trial court erred by denying his motions to suppress evidence and that suppression was warranted based upon grounds of an unlawfully prolonged stop. *Coleman*, 2020 IL App (4th) 180098-U, ¶ 29. We found that issue had been forfeited because it was not properly raised with the trial court. *Id.* ¶ 32. Additionally, we held that given the record presented—which was undeveloped regarding defendant's claim of error and, significantly, the State's response to defendant's claim—defendant had failed to

establish the occurrence of a "clear or obvious error" under the plain-error doctrine. *Id.* ¶¶ 49, 59.

¶ 35 Conversely, the present appeal requires us to consider whether the trial court erred in finding defendant's postconviction claims were frivolous or patently without merit. As stated, "[t]he first stage of postconviction proceedings presents a 'low threshold,' requiring only that the petitioner plead sufficient facts to assert an arguably constitutional claim." *Johnson*, 2021 IL 125738, ¶ 25. "The court must accept as true and liberally construe all the allegations in the petition unless contradicted by the record." *Id.*

¶ 36 While the record below was insufficient to establish a clear or obvious error in the trial court's denial of defendant's motions to suppress, it was sufficient to support at least an arguable claim that the traffic stop was unlawfully prolonged beyond its mission and trial counsel was ineffective for failing to litigate that ground for suppression. As discussed, defendant alleged facts that, when taken as true and liberally construed, indicated the police officers took actions that were unrelated to the mission of the stop and that such actions prolonged the duration of the stop. Defendant's claim was not contradicted by the record, nor were his factual allegations fantastic or delusional. Accordingly, we find defendant raised postconviction claims that have arguable merit and the trial court erred by summarily dismissing his petition at the first stage of postconviction proceedings. In so finding, we express no opinion regarding the ultimate merit of defendant's claims.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we reverse the trial court's first-stage dismissal of defendant's *pro se* postconviction petition and remand for second-stage proceedings consistent with the Act.

¶ 39 Reversed and remanded.