

2012 IL App (2d) 101021-U  
No. 2-10-1021  
Order filed April 10, 2012

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07-CF-826
	)	
GERMAINE ELCOCK, a/k/a	)	
Yvette Williams,	)	Honorable
	)	Christopher R. Stride,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Justices Burke and Birkett concurred in the judgment.

**ORDER**

*Held:* The trial court did not err in its first-stage dismissal of defendant's postconviction petition.

¶ 1 Following a jury trial, defendant, Germaine Elcock, a/k/a Yvette Williams, was convicted of aggravated identity theft of over \$100,000 (720 ILCS 5/16G-20 (West 2006)), theft of over \$100,000 (720 ILCS 5/16-1(a)(1) (West 2006)), and wire fraud (720 ILCS 5/17-24(a) (West 2006)). The trial court found that the latter convictions merged into the aggravated identity theft conviction, and it sentenced defendant to 18 years' imprisonment.

¶2 On direct appeal, this court reversed defendant's convictions of aggravated identity theft over \$100,000 and theft of over \$100,000. *People v. Elcock*, 396 Ill. App. 3d 524, 536-37 (2009). We affirmed defendant's remaining convictions, including lesser-included convictions of aggravated identity theft of between \$10,000 and \$100,000. *Id.* at 537. We remanded the cause for resentencing, among other things. *Id.* at 540-41. On February 5, 2010, the trial court sentenced defendant to concurrent terms of 15 years' imprisonment.

¶3 On June 9, 2010, defendant filed a *pro se*, handwritten postconviction petition totaling about 60 pages. She argued that: her appellate defender was ineffective for failing to raise the issues that her public defender argued in his pre-trial and posttrial motions; she was denied her right to a speedy trial; her constitutional right to due process was violated when witnesses Adam Hyde and Denise Hall knowingly committed perjury while testifying at trial and during pretrial motions; Illinois lacked jurisdiction to put her on trial; there was an illegal search and seizure because the search warrant was invalid and seized items went beyond the warrant's scope; and her right against self-incrimination was violated because illegally-seized items were entered into evidence at trial.

¶4 On September 3, 2010, the trial court orally stated that the petition was frivolous and without merit because it failed to raise the gist of a constitutional claim. The trial court entered a written order the same day, which stated as follows. Defendant raised a number of issues in her petition. In addition to asserting her innocence "in and throughout her petition," she alleged that her appellate counsel was ineffective for failing to raise issues of: jurisdiction, the illegality of the search and seizure of evidence, and a violation of her right to a speedy trial. Defendant's claims of actual innocence failed because she did not provide any newly discovered evidence, or even attach an affidavit. She also did not demonstrate that the evidence that she was relying on in the petition was

not available at the time of trial or that it was of such conclusive character that it would probably change the result on a retrial. Regarding defendant's claim of ineffective assistance, appellate counsel's failure to reassert the specified issues on appeal was not a violation of *Strickland v. Washington*, 466 U.S. 668 (1984). The trial court concluded, "All of the Petitioner's claims are frivolous and patently without merit, and therefore, the petition is dismissed."

¶ 5 On appeal, defendant argues that the trial court failed to address her claim that her constitutional right to due process was violated when State witnesses Adam Hyde and Denise Hall knowingly committed perjury at pretrial motions and at trial. Defendant maintains that because the trial court failed to address her claim within the 90-day period for initial review as required by the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-2.1 (West 2010)), the court's order summarily dismissing her petition is void.

¶ 6 The Act creates a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Harris*, 224 Ill. 2d 115, 125 (2007). In the first stage, the trial court independently determines, without input from the State, whether the petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010); *People v. Boclair*, 202 Ill. 2d 89, 99 (2002). A petition is frivolous or patently without merit only if it has no arguable basis in law or fact. *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). This is true if the petition is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record, or a fanciful factual allegation. *Id.* at 16-17. At the first stage, the petition's allegations, liberally construed and taken as true, need to present only "the gist of a constitutional claim." *People v. Brown*, 236 Ill. 2d 175, 184 (2010). The petition needs to set forth just a limited amount of detail and does not need to set forth the claim in its entirety. *People v. Edwards*, 197 Ill. 2d 239, 244

(2001). The trial court is not allowed to engage in any fact finding or credibility determinations at this stage, and all well-pleaded facts not positively rebutted by the record are taken as true. *People v. Scott*, 2011 IL App (1st) 100122, ¶ 23. If the petition is frivolous or patently without merit, the trial court must dismiss it. 725 ILCS 5/122-2.1(a)(2) (West 2010). Otherwise, the proceedings move on to the second stage. *Harris*, 224 Ill. 2d at 115. We review *de novo* a trial court's first-stage dismissal of a postconviction petition. *People v. Shaw*, 386 Ill. App. 3d 704, 708 (2008).

¶ 7 Defendant cites section 122-2.1 of the Act (725 ILCS 5/122-2.1 (West 2010)). That section requires that the trial court review a petition within 90 days of its filing to determine whether it is frivolous and patently without merit. 725 ILCS 5/122-2.1 (West 2010). If the trial court finds that the petition is frivolous and patently without merit, section 122-2.1(a)(2) states that "it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision." 725 ILCS 5/122-2.1(a)(2) (West 2010). Defendant argues that the trial court's failure to address her claim regarding witness perjury within 90 days is tantamount to a partial summary dismissal of her petition, which is prohibited under *People v. Rivera*, 198 Ill. 2d 364 (2001). Defendant argues that we must therefore reverse the trial court's order and remand the cause for second-stage proceedings.

¶ 8 The State argues that under *Rivera*, it is well-settled that a partial summary dismissal of a postconviction petition is prohibited, and a petition can be dismissed only if all of its claims are frivolous and patently without merit. The State maintains that it is clear that the trial court's order here covered all of defendant's claims, and therefore its dismissal of defendant's petition should be affirmed. The State argues that although the trial court did not recite defendant's perjury claim in its order, it correctly assumed that the claim was defendant's way of indicating that she was actually

innocent, and it discussed her assertion of actual innocence. The State notes that the trial court pointed out that actual innocence means total vindication or exoneration, and the State argues that even if defendant's perjury claim were valid, it would clearly not have affected the case's outcome because the evidence was tangential to her actual innocence.

¶ 9 In *Rivera*, which both parties cite, the trial court explicitly dismissed some claims as frivolous and patently without merit and advanced other claims to the second stage of postconviction proceedings. *Rivera*, 198 Ill. 2d at 366. Our supreme court held that partial summary dismissals during the first stage of proceedings are not permitted under the Act. *Id.* at 374. The instant case is readily distinguishable from *Rivera*, as the trial court here explicitly dismissed "[a]ll of the Petitioner's claims" as frivolous and patently without merit. In *People v. Lee*, 344 Ill. App. 3d 851, 854-55 (2003), the defendant also argued that because the trial court gave no reason for dismissing one of his postconviction claims, its order must be construed as a partial dismissal under *Rivera*. The appellate court similarly distinguished *Rivera* on the basis that in the case before it, the trial court plainly intended to dismiss the entire petition. *Id.* at 855.

¶ 10 Defendant relies on section 122-2.1(a)(2), which provides that the trial court shall specify in a written order the factual findings and legal conclusions it made in reaching its decision. Defendant interprets this section as requiring the trial court to explicitly address each individual claim in a postconviction petition. In *People v. Porter*, 122 Ill. 2d 64, 82 (1988), the defendant argued that the written order requirements of section 122-2.1(a)(2) were mandatory. Our supreme court stated that the statute had such requirements to "facilitate appellate review of the court's dismissal." *Id.* at 82-83. Our supreme court held that an interpretation of that section as mandating the entry of a written order and its contents would violate the doctrine of separation of powers. *Id.* at 83. Therefore, a trial

court's failure to specify factual findings and legal conclusions in its written order does not require reversal of the dismissal order. *Id.*; see also *People v. Leason*, 352 Ill. App. 3d 450, 452 (2004) (although it is advisable for a trial court to state its reasons for dismissing a postconviction petition, it is not mandatory); *People v. Ross*, 339 Ill. App. 3d 580, 584 (2003) (if the trial court does not specify its findings in a written order, the defendant suffers no prejudice because the dismissal will be reviewed on appeal). In fact, a trial court is not even required to enter a written order and may orally dismiss a postconviction petition. *People v. King*, 2012 IL App (2d) 100801, ¶7.

¶ 11 Defendant cites *People v. Mack*, 336 Ill. App. 3d 39, 44 (2002). There, the trial court summarily dismissed the defendant's successive postconviction petition without explanation. *Id.* at 42. The appellate court reversed and remanded, stating that the trial court had not listed its reasons for dismissing the petition, contrary to section 122-2.1(a)(2), so it was unclear on what basis it did so. *Id.* at 44. The appellate court noted that under *Boclair*, which was published after the trial court's decision, a trial court could not summarily dismiss a petition based on untimeliness or a failure to establish a lack of culpable negligence. *Mack*, 336 Ill. App. 3d at 43-44. Therefore, the appellate court reversed and remanded the cause. *Id.* at 45.

¶ 12 Defendant's reliance on *Mack* is not persuasive as *Mack* does not acknowledge the existence of *Porter* and its holding that section 122-2.1(a)(2)'s requirement of a written order listing the reasons for dismissal is not mandatory. Therefore, we decline to follow *Mack*. Moreover, *Mack* is distinguishable because there, the trial court provided no basis for its dismissal, leading the appellate court to speculate that it may have dismissed the petition on improper grounds. Here, in contrast, the trial court entered a written order stating its reasons for summarily dismissing defendant's postconviction petition.

¶ 13 Given that a trial court is not required to specify any factual findings or legal conclusions in an order dismissing a postconviction petition (*Porter*, 122 Ill. 2d at 82-83), it follows that its failure to explicitly address a specific claim does not require reversal. As stated, a defendant does not suffer prejudice from the lack of specific trial court findings because the trial court's decision is subject to *de novo* review on appeal. See *Ross*, 339 Ill. App. 3d 584. Thus, even though the trial court here did not explicitly address defendant's claim regarding witness perjury, she was free to argue on appeal that the claim was not frivolous and patently without merit.<sup>1</sup> Accordingly, the trial court's choice to not specifically discuss that claim or to construe it as an allegation of actual innocence does not render its dismissal the equivalent of a partial summary dismissal, and it does not warrant reversal.

¶ 14 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 15 Affirmed.

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<sup>1</sup>Defendant does not in fact advance this argument on appeal, so we do not address it. See Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) (points not argued in the appellant's brief are forfeited).