

2012 IL App (2d) 110334-U
No. 2-11-0334
Order filed March 6, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07-CF-1417
)	
JONATHAN HERRERA,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Zenoff concurred in the judgment.

ORDER

Held: The trial court did not err in summarily dismissing defendant's *pro se* petition for post-conviction relief. Dismissal was justified based on defendant's failure to support allegations in his petition with affidavits, records, or other evidence or a statement why such documentation was not attached. Moreover, since issues raised in postconviction petition could have been raised on direct appeal but were not, they were forfeited. Finally, the trial court could properly find that the allegations in defendant's petition were frivolous or patently without merit on the basis that defendant failed to establish that his attorney's advice to take a plea and waive a jury trial resulted in ineffective assistance of counsel or that the trial court erred in ruling that defendant should be tried and incarcerated as an adult.

¶ 1 Defendant, Jonathan Herrera, appeals the first-stage summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122 *et seq.* (West 2010)). We affirm.

¶ 2 I. BACKGROUND

¶ 3 On June 14, 2007, defendant was indicted on one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006), now codified as amended at 720 ILCS 5/12-3.05(e)(1) (West 2010)) in relation to the May 25, 2007, shooting of Trabyrus Charles. Defendant, who was born on October 2, 1991, was 15 years and 7 months at the time the offense alleged in the indictment occurred. The public defender was appointed to represent defendant. Defendant originally pleaded not guilty to the charge alleged in the indictment. However, on October 5, 2007, defendant withdrew his plea of not guilty and signed a jury waiver. He then entered a guilty plea to aggravated battery with a firearm with an agreed sentence of nine years' imprisonment and three years of mandatory supervised release (MSR). In addition, as a condition of his sentence, defendant was required to testify "truthfully and consistently" with statements given to the police if called as a witness at the trial of a co-defendant.

¶ 4 At the October 5, 2007, guilty plea hearing, the trial court advised defendant of, and defendant indicated he understood, the charge to which he was pleading and the possible penalties. The court then asked defendant if he had heard the state's attorney review the terms of the plea agreement. Defendant responded in the affirmative. In response to further questioning by the trial court, defendant also indicated that he understood the terms of the plea and that he wished to enter a plea of guilty to aggravated battery with a firearm as charged in the indictment. The court asked defendant whether he understood that he had the right to persist in his plea of not guilty and to

proceed to trial, and defendant responded affirmatively. The court then inquired whether defendant was aware of his right to a jury trial or a bench trial:

“THE COURT: You were entitled to have a trial in front of a jury where we would have selected 12 jurors to hear the evidence. They would have decided whether you’re guilty or not guilty. Or you could waive that right, ask for a judge to hear your case, and a judge would decide whether you’re guilty or not guilty. Do you understand that?”

DEFENDANT HERRERA: Yes, I do.

THE COURT: Do you understand that by pleading guilty today you’re giving up your right to such a trial?

DEFENDANT HERRERA: Yes, I have.”

The court then explained the other rights defendant was giving up by pleading guilty, and it asked defendant whether he understood them. Defendant stated that he did.

¶ 5 Defendant then affirmed for the court that he was pleading guilty freely and voluntarily, that no one forced or coerced him to plead guilty, and that no other promises were made in exchange for his plea. In response to questions from the court, defendant also indicated that he is not taking any kind of medication or drug that would interfere with his ability to understand the guilty plea proceedings, that he is a citizen of the United States, that he is 16 years old, and that he last attended high school as a sophomore. The court asked defendant if he understood everything that had taken place in court and if he understood everything that his attorney talked to him about regarding this case. Defendant responded in the affirmative to both inquiries. When asked if he was satisfied with his attorney’s representation in this case, defendant stated that he was.

¶ 6 The assistant state’s attorney then provided the following factual basis for the plea. Charles

would testify that on May 25, 2007, he was on foot in Addison, Du Page County, Illinois, when a car drove by him. Charles would further testify that someone inside the car shot a gun at him, causing injury. Detective Goss would testify that he and other members of the Addison police department investigated the shooting. As part of the investigation, the police interviewed defendant. During the course of the interview, defendant indicated that on May 25, 2007, at about 8 p.m., a car picked him up and he sat in the rear seat behind the passenger. Defendant stated that others were in the vehicle, including Phillip Valerio. Defendant indicated that Valerio had a problem with some Latin Counts in Addison the previous night and that Valerio wanted to look for them. Defendant told Goss that he observed a .25 caliber handgun in the console area of the vehicle between the front seats. Defendant believed that the weapon belonged to Valerio. As they drove around, Valerio spotted a heavysset black male walking. Valerio then told defendant several times to “pop him, pop him.” Defendant reached over, grabbed the .25 caliber gun from the console area, and cocked it. He then pointed the gun at the male subject, shouted, “King love, Count killer,” and fired the gun in the direction of the victim. The individuals in the car then fled and disposed of the firearm.

¶ 7 Defense counsel confirmed the factual basis. The trial court then asked defendant if he understood that as part of the plea agreement, he was required to provide truthful testimony against Valerio. Defendant responded in the affirmative. The court also asked defendant if he understood that the failure to testify against Valerio according to the terms of the plea agreement would allow the State to vacate the agreement and have him resentenced on his plea of guilty. Defendant also responded in the affirmative to this inquiry. Thereafter, the trial court found the factual basis sufficient, and it accepted the plea and the agreed disposition.

¶ 8 Noting that defendant was 16 years of age at the time of the plea, the trial court inquired

where defendant would be incarcerated. The assistant state's attorney told the court that defendant would be kept in the custody of the juvenile division until he turns 18, at which point he would be transferred to the adult division. Defense counsel indicated that he had spoken with someone from the Illinois Department of Corrections and was informed of the possibility of defendant remaining in the juvenile division until he turned 21, "depending on how things are going." Defense counsel added that there was "some discretion as to that," but that "at some point, certainly by the time [defendant is] 21, he'll be transferred to the adult [division]."

¶ 9 The trial court explained to defendant that he would be required to serve 85% of his sentence. Defendant stated that he understood. The court then reiterated that it was accepting the plea agreement and that defendant would be sentenced to nine years' imprisonment "at the 85 percent rate" with credit for time in custody followed by three years of MSR. The court also noted that defendant would be required to undergo a DNA assessment and to provide truthful testimony if called to testify at Valerio's trial. Thereafter, the trial court informed defendant of his appeal rights. The court noted that prior to filing an appeal, defendant would have to file a written motion within 30 days asking to withdraw his guilty plea and vacate the judgment. The court told defendant if it granted such a motion, the case would be "reset down for trial." The court told defendant that if it denied the motion, he would then have 30 days to file a notice of appeal. Defendant did not move to withdraw his plea and did not appeal from his conviction.

¶ 10 On September 26, 2008, the trial court entered an order for defendant to be transported from the Illinois Youth Center in Joliet to the Du Page County courthouse for a hearing pursuant to section 3-10-7 of the Unified Code of Corrections (730 ILCS 5/3-10-7 (West 2008)) regarding the "placement of the defendant within the Illinois Department of Corrections." That hearing was held

on October 23, 2008. A transcript of the October 23, 2008, proceeding has not been included in the record on appeal. However, an order entered that day provides that defendant “shall remain under the auspices of the Department of Juvenile Justice.”

¶ 11 On February 1, 2011, defendant filed a *pro se* petition for relief under the Act.¹ On February 8, 2011, the trial court ordered a copy of the transcript of the October 5, 2007, proceedings. On March 8, 2011, the trial court dismissed defendant’s postconviction petition at the initial stage. The court noted that although defendant alleged numerous constitutional violations, only a few were actually explained in the body of the petition. The court interpreted the petition as raising the following four issues: (1) whether defense counsel was ineffective for “advising petitioner to not ‘take a trial’ and to ‘take a bench trial’ ”; (2) whether the State proved defendant guilty beyond a reasonable doubt; (3) whether “the decision to prosecute [defendant] as an adult was improper as there was not a proper transfer from the juvenile court”; and (4) whether defendant’s “right to a jury trial was not explained to him by the court.” In ruling on defendant’s petition, the court initially noted that defendant’s petition lacked supporting affidavits to corroborate the alleged facts and provided no explanation for the failure to attach the same. See 725 ILCS 5/122-2 (West 2010). In addition, the court found that the issues raised in the petition could have been raised in a direct appeal, but were not. Finally, the court considered the allegations raised in the petition, but found that dismissal was appropriate because the petition “fails to state a basis in law or fact and is patently without merit.” Defendant thereafter retained counsel and, on March 31, 2011, filed a notice of

¹ Defendant filed a “petition for judgment relief” pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) the same day. The trial court denied defendant’s request for relief under section 2-1401, and defendant does not challenge that ruling in this appeal.

appeal from the summary dismissal of his postconviction petition.

¶ 12

II. ANALYSIS

¶ 13 The Act provides a collateral remedy by which defendants may challenge their convictions or sentences on the ground that they have suffered substantial violations of their federal or state constitutional rights. *People v. Taylor*, 405 Ill. App. 3d 421, 421-22 (2010). In noncapital cases, the Act sets out a three-step process for adjudicating petitions for postconviction relief. 725 ILCS 5/122-1 through 122-6 (West 2010); *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). In this case, defendant’s petition was dismissed at the first stage, and we confine our analysis to this aspect of the postconviction process.

¶ 14 At the first stage of the postconviction process, the trial court determines, without input from the State or any further pleadings from the defendant, whether the allegations in the petition sufficiently demonstrate a constitutional violation that would require relief. *People v. Barcik*, 365 Ill. App. 3d 183, 190 (2006); *People v. Prier*, 245 Ill. App. 3d 1037, 1039 (1993). To survive summary dismissal, a *pro se* petitioner need only present the “gist” of a constitutional claim. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). “The ‘gist’ standard is ‘a low threshold.’ ” *People v. Edwards*, 197 Ill. 2d 239, 244 (2001), quoting *Gaultney*, 174 Ill. 2d at 418. Our supreme court has stated that to set forth the gist of a constitutional claim, the *pro se* petitioner need present only a limited amount of detail and is not required to set forth the claim in its entirety. *Edwards*, 197 Ill. 2d at 244.

¶ 15 While the petition need not include legal arguments or citations to legal authority (725 ILCS 5/122-2 (West 2010); *Gaultney*, 174 Ill. 2d at 418), it must have attached to it affidavits, records, or other evidence supporting the allegations. 725 ILCS 5/122-2 (West 2010); *People v. Smith*, 352 Ill.

App. 3d 1095, 1105 (2004). The reason for this requirement is to establish that a petition's allegations are capable of objective or independent corroboration. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). Unless the petition is uncontradicted and supported by the record, the failure of a petitioner to substantiate the petition with affidavits, records, or other evidence, or to explain the absence thereof, is grounds for dismissal. *Smith*, 352 Ill. App. 3d at 1105. Furthermore, because the purpose of a postconviction proceeding is to allow inquiry into constitutional issues involved in the original conviction and sentence that have not been and could not have been adjudicated previously on direct appeal (*People v. Fields*, 331 Ill. App. 3d 323, 328 (2002)), issues that could have been presented on direct appeal, but were not, are forfeited (*People v. Ligon*, 239 Ill. 2d 94, 103 (2010)).²

¶ 16 If a petition is not dismissed as a result of any of the deficiencies discussed above, the trial court considers whether a petitioner has presented the “gist” of a constitutional claim under the frivolous-or-patently-without-merit test. 725 ILCS 5/122-2.1(a)(2) (West 2010); *Hodges*, 234 Ill. 2d at 11. A petition is frivolous or patently without merit only if it has no arguable basis in law or fact. *Hodges*, 234 Ill.2d at 11-12. A petition lacks an arguable basis in law or fact if it is “based on

² The State suggests that defendant's petition was untimely because it was not filed within three years from the date of his conviction and defendant failed to offer an explanation for the delay. See 725 ILCS 5/122-1(c) (West 2010) (“If a defendant does not file a direct appeal, the postconviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.”). However, our supreme court has held that a postconviction petition may not be dismissed as untimely during first-stage review. See *People v. Bocclair*, 202 Ill. 2d 89, 100-02 (2002). Therefore, we make no determination regarding the timeliness of defendant's petition.

an indisputably meritless legal theory,” such as one that is “completely contradicted by the record,” or it is based on “a fanciful factual allegation,” including allegations “which are fantastic or delusional.” *Hodges*, 234 Ill.2d at 16-17. In considering the allegations of the petition, the trial court may examine the court file of the proceedings, any transcripts of the proceeding, and any action by the appellate court. 725 ILCS 5/122-2.1(c) (West 2010); *Brown*, 236 Ill. 2d at 184. If the court determines that the petition is either frivolous or patently without merit, the court must dismiss the petition in a written order. 725 ILCS 5/122-2.1(a)(2) (West 2010). We review the first-stage dismissal of a postconviction petition *de novo*. *People v. Carballido*, 2011 IL App (2d) 090340, ¶ 37.

¶ 17 On appeal, defendant argues that the trial court erred in dismissing his petition at the first stage of the postconviction process. According to defendant, his petition is not frivolous or patently without merit as it stated the “gist” of a constitutional claim on two grounds. First, he alleges that the petition stated that defense counsel was ineffective “for advising him to take a plea and waive a jury trial.” Second, he alleges that the petition stated that defendant should not have been “tried and incarcerated as an adult.”

¶ 18 Initially, we note that defendant does not challenge the trial court’s finding that he failed to comply with the “affidavit, records, or other evidence” requirement set forth in section 122-2 of the Act.³ Further, defendant does not challenge the trial court’s finding that he forfeited the two issues

³ Defendant did attach to his postconviction petition an affidavit in which he verifies that, to the best of his recollection, all of the facts presented in the petition are true and correct. However, the “affidavit, record, or other evidence” requirement is not satisfied by a defendant’s verification of the petition itself. *Fields*, 331 Ill. App. 3d at 331.

he raises on appeal by failing to raise them in a direct appeal. As noted above, these findings by the trial court offer two independent grounds for summary dismissal. See *People v. Delton*, 227 Ill. 2d 247, 254-58 (2008) (affirming first-stage summary dismissal of postconviction petition for failure to comply with affidavit requirement); *People v. Blair*, 215 Ill. 2d 427, 445 (2005) (authorizing summary dismissal at first stage of postconviction process on basis of *res judicata* or forfeiture). Notwithstanding forfeiture or defendant's failure to comply with section 122-2, we find that the trial court properly dismissed defendant's petition as frivolous or patently without merit. We address each of defendant's two allegations in turn.

¶ 19 Citing *People v. Correa*, 108 Ill. 2d 541 (1985), defendant first claims that a guilty plea made in reliance upon counsel's erroneous advice may constitute ineffective assistance of counsel if the plea is deemed involuntary as a result. Although not clearly articulated in his petition or his brief on appeal, defendant appears to allege that his guilty plea was not voluntary "as it was made in reliance upon counsel's erroneous advice, as to [defendant's] inability to avail himself of a jury trial." In support of this claim, defendant notes that under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2006)), a minor is entitled to a jury trial only in limited circumstances. See, *e.g.*, 705 ILCS 405/5-810(3) (West 2006) (providing for a trial by jury in extended jurisdiction juvenile prosecutions); 705 ILCS 405/5-815(d) (West 2006) (providing for a trial by jury for habitual juvenile offenders); 705 ILCS 405/5-820(d) (West 2006) (providing for a trial by jury for violent juvenile offenders). Defendant suggests that his trial attorney was confused as to whether defendant, a minor when the offense of which he was convicted was committed, was eligible for a jury trial and that this confusion resulted in a "failure to be advised correctly of the possibility of a jury trial."

¶ 20 The sixth amendment to the United States Constitution guarantees a criminal defendant the effective assistance of counsel. U.S. Const., amend VI; see *People v. Hattery*, 109 Ill. 2d 449, 460 (1985). There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *People v. Nunez*, 325 Ill. App. 3d 35, 42 (2001). To succeed on a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687-94 (1984). The defendant must establish both (1) that his counsel's performance fell below an objective standard of reasonableness (the deficient performance prong) and (2) that, but for this substandard performance, there is a reasonable probability that the outcome of the proceeding would have been different (the prejudice prong). *People v. Albanese*, 104 Ill. 2d 504, 525 (1984), citing *Strickland*, 466 U.S. at 687-94. "Because [a] defendant must satisfy both prongs of the test, the failure to satisfy either element precludes a finding of ineffective assistance of counsel under *Strickland*." *People v. Shaw*, 186 Ill. 2d 301, 332 (1998). We find that defendant has failed to establish that defense counsel was ineffective with respect to any advice regarding his right to a jury trial.

¶ 21 Even assuming that defense counsel was confused regarding whether defendant was eligible for a jury trial, that defense counsel's confusion resulted in the failure to properly advise defendant of the possibility of a jury trial, and that this lack of advice fell below an objective standard of reasonableness, defendant has failed to show any prejudice as a result. To be valid, a jury waiver must be knowingly and understandably made. *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001). Here, the record establishes that defendant was aware of and waived his right to a trial by jury. As noted above, the trial court asked defendant whether he understood that he had the right to persist in a plea of not guilty. Defendant responded in the affirmative. The court also inquired whether defendant

was aware of his right to a jury trial or a bench trial. The court explained the jury process, noting that defendant was entitled to have a trial in front of a jury of 12 of his peers who would hear the evidence and determine whether defendant was guilty or not guilty. The trial court also told defendant that he could waive his right to a trial by jury and proceed with a bench trial in which a judge would hear the case and decide the issue of defendant's guilt. After defendant indicated that he understood his options, the trial court again inquired whether defendant understood that by pleading guilty he was giving up his right to "such a trial." Again, defendant responded affirmatively. Furthermore, in response to inquiries from the trial court, defendant indicated that he was pleading guilty freely and voluntarily, that no one forced or coerced him to plead guilty, that no other promises were made in exchange for his plea, and that he was not taking any medication or drug that would interfere with his ability to understand the guilty plea proceedings. Defendant also told the court that he understood everything that had taken place in court, that he understood everything that his attorney talked to him about regarding this case, and that he was satisfied with his attorney's representation in this case. In addition, defendant signed a "Waiver of Trial by Jury," averring that he "has been fully advised of [his] right to Trial by Jury" and that he "waives same." The waiver was witnessed by defense counsel.

¶ 22 Thus, regardless of any confusion, the record clearly demonstrates that at the time defendant entered his guilty plea, he was fully aware of his right to elect a jury trial but waived it and voluntarily exercised his right to enter a guilty plea. Indeed, throughout the acceptance of the guilty plea, the trial court was very careful to ensure that defendant understood his rights and what he was agreeing to. Thus, the jury issue and any allegation of ineffective assistance of counsel are contradicted by the record and clearly lack any merit or basis in law or fact. Accordingly, the trial

court properly rejected this allegation of defendant's postconviction petition.

¶ 23 Before proceeding to defendant's second issue, we note that his reliance on *Correa* is misplaced. At issue in *Correa* was whether defense counsel's advice that the defendant's guilty pleas would likely not result in his deportation fell below the constitutionally required range of competence. *Correa*, 108 Ill. 2d at 547-48. In *Correa*, the defendant asked his attorney what effect a guilty plea would have on his status as an immigrant married to an American citizen. Defense counsel told the defendant that if his wife is an American citizen, his guilty plea would not affect his status. Prior to accepting the defendant's plea, the trial court admonished the defendant as to the consequences of his guilty pleas, but did not address the effect of the pleas upon the defendant's status as an immigrant. After serving his sentence, the defendant was taken into custody by the United States Immigration and Naturalization Service. Thereafter, he filed a postconviction petition challenging his guilty pleas. The supreme court held that where the defendant expressly asked defense counsel about the effect of his guilty pleas on his status as an immigrant and where, in response, defense counsel made "unequivocal, erroneous, misleading representations *** the accuracy of which counsel could have ascertained before the pleas were entered," the defendant's guilty pleas were not knowingly and intelligently made and therefore were not voluntary. *Correa*, 108 Ill. 2d at 500-03. In this case, although defendant claims that defense counsel was confused about whether he was eligible for a jury trial, defendant does not allege that defense counsel actively misrepresented anything in response to a specific inquiry from defendant. In addition, the trial court thoroughly admonished defendant regarding his right to a trial by jury. For these reasons, we find defendant's reliance on *Correa* misplaced.

¶ 24 Our ability to address defendant's second allegation is hampered somewhat by defendant's

failure to clearly articulate his argument. However, he appears to be contesting his trial in adult court and his subsequent transfer to an adult incarceration facility.

¶ 25 The trial court rejected defendant's claim that his case was improperly transferred from juvenile to adult court and found that the juvenile transfer provision did not apply. We see no basis for disturbing this finding. Defendant was charged with aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)) in relation to the May 25, 2007, shooting of Charles. Defendant pleaded guilty to that charge, and the factual basis provided that defendant personally discharged the weapon. The Juvenile Court Act provides for the automatic transfer of a juvenile age 15 or older to criminal court to be prosecuted as an adult when he or she is charged with certain offenses. *People v. Jackson*, 2012 IL App (1st) 100398, ¶ 6. Section 5-130(1)(a) of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2006)) provides that a minor who is at least 15 years old and charged with aggravated battery with a firearm when he or she personally discharges the weapon does not fall within the definition of a "delinquent minor" and shall be prosecuted under the criminal laws of Illinois. Here, defendant was born on October 2, 1991. Thus, he was 15 years and 7 months old when the offense occurred, and he was 16 years old at sentencing. Accordingly, he was subject to the automatic transfer provision, and there is no basis in law or fact for a claim that he was not properly tried as an adult.

¶ 26 Defendant also appears to object to no longer being in a juvenile facility. However, defendant has not provided any case law asserting that his transfer to an adult facility was a substantial violation of a constitutional right and therefore appropriate for a postconviction determination. See 725 ILCS 5/122-1(a)(1) (West 2006)). In the common law record, there is an order for defendant's transport on October 23, 2008, from the Illinois Youth Center in Joliet for a

hearing. Yet, no transcript of the October 23, 2008, proceeding, where the placement was apparently discussed, is included in the record on appeal. Defendant's petition itself has a paucity of facts regarding his alleged misunderstanding or any alleged misstatements by defense counsel. Defendant's appellate brief does not articulate the matter any better. Thus, defendant has not supported his argument that the trial court acted improperly or that the court, defense counsel, or defendant himself were confused regarding the appropriate procedure.

¶ 27 Defendant also attempts to cloak the issue of his transfer to an adult facility in an ineffective assistance of counsel argument. However, the record does not support such a claim. At the guilty plea proceeding on October 5, 2007, after the agreed disposition was accepted by the trial court, the parties discussed where the 16-year-old defendant would be housed during his sentence. The assistant state's attorney stated that defendant would be housed in the juvenile division until 18 and then transferred to an adult facility. Defense counsel stated that he had spoken to the Illinois Department of Corrections and that there was the possibility that defendant could remain in the juvenile facility until he was 21, "depending on how things are going." Thus, according to the available record, it appears that defendant's location after his 18th birthday was a discretionary matter rather than a right and that his counsel had rendered an objectively reasonable level of assistance by investigating the discretionary options.

¶ 28 **III. CONCLUSION**

¶ 29 For the reasons set forth above, we affirm the judgment of the Circuit Court of Du Page County which summarily dismissed defendant's *pro se* petition for post-conviction relief at the first stage of the postconviction process.

¶ 30 Affirmed.