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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 Winnebago County.
Plaintiff-Appellee,)	
)	
v.)	No. 00-CF-1381
)	
JASON N. STRAWBRIDGE,)	Honorable
)	John R. Truitt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant adequately raised in his *pro se* postconviction petition his claim concerning trial counsel's failure to challenge the admission of certain evidence; but defendant's petition asserting ineffective assistance of counsel was frivolous and patently without merit in that defendant failed to set forth an arguable claim of prejudice.

¶ 2 Defendant, Jason N. Strawbridge, was convicted of four counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a) (West 2000)) and one count of aggravated stalking (720 ILCS 5/12-7.4(a)(3) (West 2000)) following a jury trial in the circuit court of Winnebago County. He was sentenced to 12-years' imprisonment on each of the predatory criminal sexual assault counts

(subject to the truth-in-sentencing statute (730 ILCS 5/3-6-3 (West 2008)) and 2-years' imprisonment on the stalking count. On appeal, this court found that one count of predatory criminal sexual assault had to be vacated on one-act, one-crime principles (see *People v. King*, 66 Ill. 2d 551, 566 (1977)) and that one of the 12-year sentences for predatory criminal sexual assault was excessive (see 730 ILCS 5/5-5-4 (West 2008)). We otherwise affirmed. Defendant then filed a postconviction petition (see 725 ILCS 5/122-1 *et seq.* (West 2010)) alleging, *inter alia*, that he received ineffective assistance of counsel in that trial counsel failed to move to suppress photographs of his genitalia taken by the police without obtaining a warrant (Before this court, defendant renews his argument that the police needed a warrant to take these photographs, and the State does not respond. Accordingly, we will not address this issue and instead base our disposition of this appeal upon the arguments' of the parties). Defendant also asserted that appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness on direct appeal. The trial court dismissed the petition, finding it to be frivolous and patently without merit. See *People v. Brown*, 236 Ill. 2d 175, 184-85 (2010). We agree with the trial court and affirm.

¶ 3 This case comes to us following the summary dismissal of a postconviction petition; hence, our review is *de novo*. *People v. Burns*, 405 Ill. App. 3d 40, 42 (2010). To survive, a petition need only set forth the gist of a constitutional claim. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). The gist standard is a low one. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A trial court may dismiss a postconviction petition if it is frivolous and patently without merit. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). A petition is frivolous and patently without merit only if it has no arguable basis in fact or law. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). Factual allegations are to be taken as true if they are not affirmatively rebutted by the record. *People v. Gerow*, 388 Ill. App. 3d 524, 526 (2009). A defendant need only provide a limited amount of detail in the petition, and the petition

need not contain formal legal argument or citation to legal authority. *Hodges*, 234 Ill. 2d at 9.

Moreover, the petition must be given a liberal construction. *Edwards*, 197 Ill. 2d at 244.

¶ 4 As a preliminary matter, the State contends that any issue regarding trial counsel's failure to move to suppress the photograph of defendant's genitals is waived because defendant did not raise it in his postconviction petition (The State has moved to file a surreply brief addressing this issue. That motion is denied). See *People v. Jones*, 213 Ill. 2d 498, 508-09 (2004). We disagree with the State. In his petition, defendant alleged that counsel was ineffective for "fail[ing] to cross examine Officer Ron Phillips about the pictures he took of [defendant] when he had already refused consent of his home and had no warrant to take pictures of [defendant]." Keeping in mind that a defendant need not set forth formal legal argument in order to survive a first-stage dismissal (*Hodges*, 234 Ill. 2d at 9), we find this allegation sufficient to allow appellate counsel to address the issue before this court. Essentially, defendant identified the underlying problem (that the officer took pictures of his genitals without a warrant) and asserted that counsel should have taken steps to remedy it (engaged in cross-examination). We do not find it fatal that defendant did not recognize that the appropriate legal mechanism to address the situation would have been a motion to suppress rather than cross-examination of the officer who took the photographs. Requiring a defendant to identify the appropriate legal remedy would violate the supreme court's admonition that a defendant need not set forth formal legal argument (*Hodges*, 234 Ill. 2d at 9). Accordingly, we find the State's argument unpersuasive, and we will address the substance of defendant's argument. Parenthetically, we note that the State also argues that dismissal was proper based on defendant's failure to notarize his supporting affidavit. As we decide this appeal on alternate grounds, we need not address this argument.

¶ 5 Turning to the merits, to set forth the gist of a claim of ineffective assistance of counsel, a

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defendant must show that his or her counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceedings would have been different. *People v. Watson*, 2012 IL App (2d) 091328, ¶ 23. A "reasonable probability" is one sufficient to undermine confidence in the outcome of the proceedings. *Id.* If a defendant fails to satisfy either prong of this test, his or her claim fails. *People v. Johnson*, 372 Ill. App. 3d 772, 777 (2007).

¶ 6 Defendant has not satisfied the prejudice prong, notwithstanding the low standard by which postconviction petitions are judged in the first stage of proceedings. As we recognized in our disposition of defendant's direct appeal, the proof of defendant's guilt was overwhelming. There, we determined the admission of certain pornographic images did not constitute plain error, noting the following:

"Quite simply, the victim testified to numerous incidents of sexual contact with defendant that started when she was nine years old and continued until a few months before her thirteenth birthday. She added that these occurred three or four times per week. The victim described various sex acts, including intercourse and oral sex. While the allegation that defendant possessed some deviant pornographic images certainly reflected negatively on defendant, it does not seem to us to be particularly prejudicial in light of the substantial testimony that defendant abused a child for a period of nearly four years." *People v. Strawbridge*, 404 Ill. App. 3d 460, 469 (2010).

We further note the victim's testimony was corroborated by the discovery of defendant's DNA in semen stains in the victim's room. Thus, the photographs of defendant's genitalia would have, at best, provided incremental corroboration of the victim's testimony. In short, it does not appear arguable to us that a reasonable probability exists that, but for the admission of the photographs at

issue, the trial would have ended differently. Hence, defendant has not set forth the gist of a claim of ineffective assistance of counsel. *Hodges*, 234 Ill. 2d at 10.

¶ 7 In light of the foregoing, the order of the circuit court of Winnebago County dismissing defendant's postconviction petition is affirmed.¹

¶ 8 Affirmed.

¹We advise counsel for both sides to provide more specific citations to the record. Long string citations to the record where it is not clear to which asserted fact the various references relate are not particularly helpful (*i.e.*, "1588, 1963, 1771-1775, 1794, 1941"). Even less helpful are citations to large blocks of the records (defense counsel provides a citation that covers 51 pages ("1767-1817"); the State similarly cites a 38 page block of the record ("1722-1759")). Citing in this manner is barely superior to not citing the record at all and causes a needless waste of judicial resources.