

**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).

2012 IL App (3d) 110248-U

Order filed August 30, 2012

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellee,	)	Henry County, Illinois,
	)	
v.	)	Appeal No. 3-11-0248
	)	Circuit No. 07-CF-349
	)	
PAUL McLENNAN,	)	Honorable
	)	Ted J. Hamer,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE HOLDRIDGE delivered the judgment of the court.  
Presiding Justice Schmidt and Justice O'Brien concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* The trial court properly dismissed the defendant's postconviction petition, alleging ineffective assistance of trial counsel and denial of counsel, as frivolous and patently without merit.

¶ 2 Following a bench trial, the defendant, Paul McLennan, was convicted of cannabis trafficking (720 ILCS 550/5.1 (West 2006)) and was sentenced to 14 years' imprisonment. The defendant appeals the denial of his postconviction petition, arguing that he presented the gist of a constitutional claim for ineffective assistance of trial counsel and denial of counsel. We affirm.

## FACTS

¶ 3

¶ 4 On August 17, 2007, the motor home the defendant was driving was stopped for a traffic violation. The vehicle was searched, and cannabis was discovered. The defendant was subsequently charged with cannabis trafficking (720 ILCS 550/5.1 (West 2006)), unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(g) (West 2006)), and unlawful possession of cannabis (720 ILCS 550/4(g) (West 2006)). The charges alleged that the defendant possessed more than 5,000 grams of a substance containing cannabis with the intent to deliver.

¶ 5 Prior to trial, the defendant filed a motion to suppress evidence that was seized as a result of the search. At the hearing on October 11, 2007, the defendant was represented by public defender Eugene Stockton. Following the presentation of evidence by the parties, the trial court continued the hearing to review a DVD recording of the traffic stop.

¶ 6 On October 23, 2007, the hearing resumed, and Stockton began closing arguments on the motion to suppress. Stockton argued that the officer unlawfully prolonged the traffic stop by questioning the defendant regarding a search of the motor home. During Stockton's closing argument, a disagreement ensued between the defendant and Stockton. Without concluding his arguments, Stockton sought leave to withdraw from the case because the defendant requested a new attorney. The trial court granted the request, appointed public defender Edward Woller to represent the defendant, and continued the case to allow Woller to review the file.

¶ 7 On November 15, 2007, the trial court continued the case so that the defendant could hire a private attorney. On December 13, 2007, the defendant informed the court that he had hired John Steckel as his attorney; however, when the court called Steckel, he stated that he did not represent the defendant.

¶ 8 On January 2, 2008, Steckel still had not entered an appearance on behalf of the defendant. The defendant informed the court that he would rather go without counsel than have Woller represent him. The court allowed Woller to withdraw, and at that time, told the defendant that he was representing himself until another attorney filed an appearance for him. The trial court informed the defendant that he had a right to standby counsel, and set the remaining portion of the suppression hearing for January 4, 2008.

¶ 9 On January 4, 2008, Steckel did not appear. The defendant's request for a continuance to allow Steckel to appear was denied, because Steckel again informed the court over the telephone that he did not represent the defendant. The court proceeded to finish the closing arguments on the motion to suppress, and the defendant proceeded *pro se*. After hearing arguments from the defendant and the State, the trial court denied the defendant's motion, and thereafter appointed standby counsel for the defendant.

¶ 10 On January 7, 2008, Steckel filed an appearance as the defendant's attorney. Steckel also filed a motion to reopen or reconsider the motion to suppress. When the case came before the court, Steckel orally moved to substitute the trial judge, which was granted.

¶ 11 The newly appointed trial judge denied Steckel's motion to reopen the evidence, but told the parties that he would review the prior judge's ruling based upon the evidence that had been presented and would allow arguments by counsel. Steckel argued that the traffic stop was unlawfully prolonged, which made the defendant's consent to search the motor home involuntary. After reviewing the evidence presented at the suppression hearing, the DVD recording of the traffic stop, and counsel's arguments, the trial court upheld the denial of the defendant's motion to suppress.

¶ 12 On April 3, 2008, the trial court held a hearing on the defendant's motion to suppress the confession he gave to the police following his arrest. The defendant testified that the interrogating officer threatened him into giving a confession. The officer, however, denied threatening the defendant during the interrogation. The court subsequently denied defendant's motion, finding his statement voluntary and not coerced.

¶ 13 Prior to trial, the court granted Steckel's motion to withdraw from the case due to the defendant's complaints about his ineffectiveness. The defendant eventually retained attorney Scott Clemens. On October 6, 2008, Clemens filed a motion to reconsider the denial of the motion to suppress, claiming that the officer's testimony at the hearing was contradicted by the DVD recording of the traffic stop. Specifically, Clemens pointed out that after the officer gave the defendant a warning ticket for speeding, they both walked to the back of the squad car. The officer, however, testified that the defendant started walking towards the motor home when the officer called out to him to ask more questions. Clemens argued that the traffic stop was unlawfully prolonged, making the defendant's subsequent consent involuntary. The trial court denied the motion, and the cause proceeded to a bench trial. Following the trial, the defendant was convicted of cannabis trafficking and was sentenced to 14 years' imprisonment. The defendant filed a motion for a new trial, which the trial court denied.

¶ 14 On direct appeal, the defendant argued that the trial court erred in denying his motion to suppress evidence. The defendant contended that because the traffic stop was impermissibly prolonged, the defendant was illegally seized, which made his subsequent consent to search the vehicle invalid. This court affirmed the defendant's conviction and sentence. *People v. McLennan*, No. 3-08-0988 (2010) (unpublished order under Supreme Court Rule 23).

¶ 15 On February 18, 2011, the defendant filed a *pro se* postconviction petition, alleging that Stockton was ineffective when he failed to file a proper motion to suppress evidence. The defendant alleged that Steckel was ineffective in filing the motion to reconsider, because Clemens found new evidence on the DVD recording that the traffic stop was tainted, and that there was no verbal consent to search. The defendant also alleged that Clemens was ineffective at trial when he failed to address the voluntariness of the defendant's confession, and that his confession was not recorded. Lastly, the defendant alleged that he was denied counsel during arguments on his motion to suppress, because the trial court denied his continuance to allow private counsel to appear.

¶ 16 The trial court dismissed the defendant's petition as frivolous and patently without merit. The defendant appeals.

¶ 17 ANALYSIS

¶ 18 On appeal, the defendant argues his postconviction petition should not have been dismissed because his claims that his counsel was ineffective and that he was denied the right to counsel stated the gist of a constitutional claim.

¶ 19 The Post-Conviction Hearing Act provides for a three-stage review process in noncapital cases. 725 ILCS 5/122-1 *et seq.* (West 2010); *People v. Hodges*, 234 Ill. 2d 1 (2009). At the first stage, the trial court must independently determine whether the petition is "frivolous or is patently without merit," and based on that finding, either summarily dismiss the petition or docket it for further review. 725 ILCS 5/122-2.1(2) (West 2010). The petition's allegations, liberally construed and taken as true, need only present the gist of a constitutional claim. *People v. Harris*, 224 Ill. 2d 115 (2007). To state the gist of a constitutional claim, the defendant must

plead some facts from which a valid claim can be discerned. *People v. Edwards*, 197 Ill. 2d 239 (2001). We review the first-stage dismissal of a postconviction petition *de novo*. *People v. Morris*, 236 Ill. 2d 345 (2010).

¶ 20 I. Ineffective Assistance of Counsel

¶ 21 A postconviction petition alleging ineffective assistance of counsel may not be summarily dismissed at the first stage if it is at least arguable that: (1) counsel's performance was so deficient that it fell below an objective standard of reasonableness; and (2) the deficient performance prejudiced defendant's case. *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Petrenko*, 237 Ill. 2d 490 (2010). Defendant must overcome a strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence. *People v. Manning*, 241 Ill. 2d 319 (2011).

¶ 22 Initially, we note that the defendant failed to raise on direct appeal the argument that Stockton, Steckel, and Clemens were ineffective. Issues that could have been raised on direct appeal but were not are forfeited. *Petrenko*, 237 Ill. 2d 490. Despite forfeiture, the defendant's arguments also lack merit. In his petition, the defendant claimed Stockton was ineffective for failing to file a proper motion to suppress; however, the defendant failed to allege any facts stating how Stockton was deficient. Although a *pro se* petitioner is not required to allege facts supporting all elements of a constitutional claim, here the defendant merely made a conclusion that counsel was ineffective, and we find no basis in the record to support such a conclusion. See *Edwards*, 197 Ill. 2d 239.

¶ 23 The defendant's argument that Steckel was ineffective is also without merit. Although the defendant claims Clemens found new evidence on the DVD recording that Steckel allegedly

overlooked, Clemens merely pointed out the details in the DVD that contradicted the officer's testimony at the hearing. The defendant did not explain how these discrepancies established ineffective assistance, and it is not clear to this court how the differences affected his case. The defendant's allegations seem to stem from his disagreement with the evidence Steckel sought to emphasize and present at the hearing, which was merely trial strategy and not ineffective assistance. See *Manning*, 241 Ill. 2d 319; *People v. Williams*, 127 Ill. App. 3d 231 (1984).

¶ 24 The defendant also argued that Clemens was ineffective at trial when he failed to address the defendant's alleged forced confession. However, the court held a hearing on the defendant's motion to suppress his confession based on the officer's alleged threat, and the trial court denied the motion. The defendant also testified at trial that the officer's threat forced him to give the confession. *People v. Torres*, 228 Ill. 2d 382 (2008) (allowing dismissal of petition when the allegations are contradicted by the record). As such, the alleged threat was addressed below. Thus, even assuming counsel's performance was deficient, the defendant cannot prove that the result of his trial would have been different. See *Strickland*, 466 U.S. 668.

¶ 25 Accordingly, we conclude that the defendant failed to present the gist of a constitutional claim that he was denied effective assistance of trial counsel.

¶ 26 II. Denial of the Right to Counsel

¶ 27 The defendant further alleged that he was denied counsel during arguments on his motion to suppress, because the trial court denied his continuance to allow private counsel to appear.

¶ 28 The sixth amendment of the United States Constitution entitles a defendant to counsel. U.S. Const., amends. VI, XIV; see also *People v. Hughes*, 315 Ill. App. 3d 86 (2000). A defendant has a constitutional right to counsel at every stage of a criminal proceeding where

substantial rights of a criminal accused may be affected. *Hughes*, 315 Ill. App. 3d 86. A defendant may waive this right and proceed without counsel only if he "voluntarily and intelligently elects to do so." *People v. Baker*, 92 Ill. 2d 85, 90 (1982); see also Ill. S. Ct. R. 401 (eff. July 1, 1984). Illinois Supreme Court Rule 401 (eff. July 1, 1984), states the admonishments that should normally be given when a defendant waives his right to counsel. Even if the defendant does not elect to waive his right to counsel, the defendant may not use the right to counsel as a weapon to undermine the court's responsibility to administer justice. *Hughes*, 315 Ill. App. 3d 86.

¶ 29 On appeal, the defendant notes that he was not properly admonished in accordance with Rule 401(a) when he proceeded *pro se* during the remainder of the arguments on his motion to suppress. The defendant provides no discussion of a Rule 401(a) issue and no citation to relevant authority, as required by Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Regardless of the defendant's failure to satisfy the requirements of Rule 341(h)(7), we do not find that the defendant was denied the right to counsel.

¶ 30 Following the presentation of evidence and during closing arguments on the motion, the defendant requested that Stockton withdraw, because he disagreed with his strategy. The court allowed several continuances to accommodate the defendant's request to hire private counsel. After private counsel failed to appear and twice informed the court directly that he did not represent the defendant, the defendant asked for a continuance and refused to allow the public defender to represent him. Under these circumstances, the failure to give Rule 401(a) admonishments was not error where the defendant effectively refused to proceed *pro se*, refused to work with two of his appointed attorneys, and further refused to allow appointed counsel to

represent him when private counsel failed to appear on more than one occasion. See *People v. Bingham*, 364 Ill. App. 3d 642 (2006) (stating that in ruling on a motion to continue to substitute counsel, the court must balance the defendant's right to choose his own counsel against the efficient and effective administration of justice); cf. *People v. Myles*, 86 Ill. 2d 260 (1981) (holding that Rule 401(a) admonishments were not required where the defendant declined to proceed *pro se*, but also refused to cooperate with appointed counsel).

¶ 31 Furthermore, the defendant was represented by counsel during the presentation of evidence and part of the closing arguments on his motion to suppress. Additionally, during the hearing on the motion to reconsider, the trial court reviewed the evidence presented at the motion hearing, watched the DVD recording of the traffic stop, and allowed arguments from counsel. Therefore, even if the defendant was without counsel during part of the closing arguments on the motion to suppress—due, we note, to his refusal to allow the public defender to represent him and his failure to retain private counsel—he was allowed the opportunity to have counsel argue on his behalf at the motion to reconsider.

¶ 32 Consequently, we find that the defendant's postconviction allegations, liberally construed, did not make a claim for ineffective assistance of trial counsel or denial of the right to counsel; therefore, the defendant's petition was properly dismissed. See *Harris*, 224 Ill. 2d 115.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 35 Affirmed.