

NOTICE
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2012 IL App (4th) 110040-U

Filed 6/4/12

NO. 4-11-0040

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
PATRICK P. JACKSON,)	No. 05CF486
Defendant-Appellant.)	
)	Honorable
)	Gary W. Jacobs,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices McCullough and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in summarily dismissing defendant's amended postconviction petition because defendant failed to sufficiently allege that his appellate counsel's failure to raise the identified issues on direct appeal jeopardized his constitutional rights or resulted in prejudice against him, in light of the overwhelming evidence of guilt presented at defendant's jury trial.

¶ 2 Defendant, Patrick P. Jackson, appeals from the circuit court's summary dismissal of his amended postconviction petition. He claims the petition sufficiently alleged constitutional violations so as to survive first-stage dismissal. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2007, a jury found defendant guilty of armed violence, aggravated battery, and home invasion (720 ILCS 5/33A-2, 12-4, 12-11 (West 2004)) based on evidence that in September 2005, he entered the apartment of two females and attacked them while they slept. The

trial court sentenced defendant to consecutive prison terms of 10 years for armed violence, 7 years for home invasion, and 3 years for aggravated battery. Defendant filed a direct appeal, challenging his armed-violence conviction and restitution order. In June 2008, this court affirmed defendant's convictions and sentences. *People v. Jackson*, No. 4-07-0362 (Jun. 24, 2008) (unpublished order under Supreme Court Rule 23).

¶ 5 In March 2009, defendant filed a *pro se* postconviction petition, which the circuit court summarily denied, finding the claims were either forfeited or barred by *res judicata*. Defendant filed a motion to reconsider and attached a proposed amended petition. The court denied defendant's motion to reconsider and dismissed the amended petition for failing to request leave to file a subsequent petition. Defendant appealed, and this court reversed and remanded the cause for further proceedings, finding the circuit court erred in failing to consider defendant's motion to reconsider as a motion for leave to file an amended postconviction petition. *People v. Jackson*, No. 4-09-0420 (Aug. 23, 2010) (unpublished order under Supreme Court Rule 23).

¶ 6 On remand, on October 14, 2010, defendant filed a second amended postconviction petition. Defendant confirmed, upon the trial court's request, that he sought to rely on this latest amended petition, rather than the one filed in April 2009, though defendant alleged the same acts of ineffective assistance of appellate counsel in both. In his amended petitions, defendant claimed his appellate counsel had rendered ineffective assistance by failing to raise the following issues on direct appeal: (1) the trial court's denial of defendant's motion to suppress the photographic line-up and in-court identification; (2) the court's denial of defendant's motion to change venue; (3) the court's denial of defendant's motion for a *Franks* hearing; (4) the court's decision to allow the testimony of the State's witnesses, who described the size of knives found in defendant's apartment; (5) the court's

denial of defendant's motions *in limine* related to evidence that he attempted to enter the bedroom window of another woman in the neighborhood by cutting her window screen prior to entering the victims' apartment, and defendant's statement that "he would kill not to go back to Iraq;" and (6) the cumulative effect of these errors deprived defendant of adequate appellate representation.

¶ 7 In December 2010, the circuit court summarily dismissed defendant's amended petition as frivolous and patently without merit, finding defendant was not prejudiced by appellate counsel's failure to raise the cited issues on appeal. Specifically, the court found (1) the claims were inherently non-meritorious and had been argued and been so determined by the trial court in posttrial proceedings, (2) appellate counsel did not err in failing to raise nonmeritorious issues on appeal, and (3) the evidence of defendant's guilt was overwhelming. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant claims the circuit court erred in summarily dismissing his amended postconviction petition in relation to the claim of ineffective assistance of appellate counsel concerning the trial court's denial of defendant's motion *in limine*. Defendant contends the claims raised in his motion *in limine* (that the evidence (1) relating to the cut window screen in the other residence and (2) defendant's statement that "he would kill not to go back to Iraq" should not have been admitted) and had appellate counsel challenged the admission of that evidence on direct appeal, it is likely defendant's appeal would have been successful. Here, defendant claims these issues were sufficiently alleged in his amended postconviction petition to have, at least, survived first-stage dismissal. We disagree.

¶ 10 A petition is dismissed at the first stage of postconviction proceedings if the circuit court determines that, after a summary review, the *pro se* defendant had alleged "enough facts to

make out a claim that is arguably constitutional for purposes of invoking the [Post Conviction] Act." *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); 725 ILCS 5/122-2 (West 2006). We review the circuit court's dismissal *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 11 In order to present the gist of a meritorious claim of ineffective assistance of appellate counsel sufficient to survive a first-stage dismissal, the defendant must show that (1) counsel's performance fell below an objective standard of reasonableness, and that (2) counsel's deficient performance resulted in prejudice to defendant. *Strickland v. Washington*, 466 U.S. 668, 688-92 (1984). "Counsel's error was prejudicial if there is a reasonable probability the result of the appeal would have been different but for the error." *People v. Robinson*, 217 Ill. 2d 43, 61 (2005). Appellate counsel is not required to raise every conceivable issue on appeal, and it is not considered incompetence if he refrains from raising issues which he believes are without merit. *People v. Johnson*, 206 Ill. 2d 348, 378 (2002).

¶ 12 Our review of the record indicates defendant cannot satisfy this burden. The evidence presented at defendant's trial was so overwhelming as to defendant's guilt that any error attributable to appellate counsel's failure to raise the identified issues on direct appeal could not result in prejudice to defendant. Assuming (1) appellate counsel had challenged the trial court's decisions to allow the window-screen evidence and defendant's statement, and (2) this court found error, such error would have been deemed harmless and nonprejudicial in light of the totality of the State's evidence presented against defendant.

¶ 13 The evidence presented at defendant's trial demonstrated that one of the women in the apartment identified the suspect as wearing a gray "ARMY" t-shirt. She identified defendant in a photographic lineup. Police collected a gray "ARMY" t-shirt from defendant's apartment, which

had stains on it. A forensic scientist determined that the stains were blood and the blood matched one of the victim's genetic profile. Given the strength of this evidence, the admission of the evidence involving the fact that another window screen had been cut in the neighborhood prior to the crime at issue, and the admission of defendant's statement about not wanting to return to Iraq could have no conceivable effect on the jury's verdict. Cf. People v. Lindgren, 79 Ill. 2d 129, 141-43 (1980) (error of admitting other-crimes evidence was not harmless because evidence against defendant was not overwhelming).

¶ 14 Therefore, the fact that appellate counsel failed to raise the claims on direct appeal resulted in, at most, harmless error. "[S]ome constitutional errors, in the setting of a particular case, are so 'unimportant and insignificant' that they may, consistent with the federal constitution, be deemed harmless beyond a reasonable doubt." *People v. Wrice*, 2012 IL 111860, ¶ 59, quoting *Chapman v. California*, 386 U.S. 18, 22 (1967). Based on these circumstances, we find the circuit court did not err in summarily dismissing defendant's amended postconviction petition.

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 17 Affirmed.