

NOTICE

Decision filed 06/26/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100499-U  
NO. 5-10-0499  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Lawrence County.
	)	
v.	)	No. 06-CF-11
	)	
CONNIE M. VANTLIN,	)	Honorable
	)	Robert M. Hopkins,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Justices Chapman and Wexsten concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where the defendant's *pro se* postconviction petition stated the gist of a constitutional claim that her trial counsel provided ineffective assistance, the circuit court's dismissal of the postconviction petition is reversed and the cause is remanded to the circuit court for further proceedings under the Post-Conviction Hearing Act.
- ¶ 2 The defendant, Connie Vantlin, appeals the order entered by the circuit court of Lawrence County dismissing her *pro se* petition for postconviction relief during the first stage of the postconviction proceedings. For the following reasons, we reverse and remand.
- ¶ 3 Following a jury trial, Vantlin was convicted of first-degree murder. She was sentenced to 50 years' imprisonment. Her conviction and sentence were affirmed on direct appeal. *People v. Vantlin*, No. 5-07-0421 (Mar. 30, 2009) (unpublished order pursuant to Illinois Supreme Court Rule 23 (eff. May 30, 2008)). On June 17, 2010, Vantlin filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2010)), claiming, *inter alia*, that she was denied effective

assistance of counsel when her counsel failed to (1) request a change of venue pursuant to her request, (2) caution her regarding the dangers of testifying, (3) inform her that she would be allowed to make a statement in allocution at her sentencing hearing, (4) review evidence with her before trial, (5) elicit testimony from her that the victim abused and threatened her and her son, (6) offer computer evidence at trial, and (7) investigate the State's witnesses prior to trial. She also raised numerous due-process-violation, cruel-and-unusual-punishment, "prosecutorial-vindictiveness," sufficiency-of-the-evidence, admissibility-of-the-evidence, and violation-of-right-to-confrontation claims.

¶ 4 On August 10, 2010, the trial court dismissed the petition as frivolous and patently without merit because Vantlin failed to set forth the gist of a constitutional claim. Specifically, the court stated as follows with regard to her *pro se* petition:

"[T]he Defendant's Post-Conviction Petition does not allege or state specific facts which would state the gist of a constitutional claim. She alleges violations of constitutional rights only in general terms, stating the abstract right and claiming it was violated but failing to specify the context of the violation in her case. She fails to state who did what or who failed to do what when."

Accordingly, the trial court dismissed her *pro se* petition. Vantlin appeals.

¶ 5 On appeal, Vantlin argues that her *pro se* postconviction petition should not have been summarily dismissed by the trial court at the first stage of the postconviction proceedings. Specifically, she alleges the following: (1) that her *pro se* postconviction petition successfully raised several issues of a constitutional magnitude, including numerous ineffective-assistance-of-counsel claims, and (2) that her *pro se* petition stated the gist of a constitutional claim that her right to confrontation was violated by the admission of the autopsy report authored by Dr. John Heidingsfelder. The State counters that (1) Vantlin's *pro se* postconviction petition failed to include any specific factual allegations supporting her

constitutional-violation claims, (2) Vantlin forfeited her claims set forth in the *pro se* petition because she failed to raise them on direct appeal and to attach affidavits or supporting documents as required by section 122-2 of the Act (725 ILCS 5/122-2 (West 2010)), (3) Vantlin forfeited her claim that her constitutional right to confrontation was violated by her failure to raise it on direct appeal, and (4) if not forfeited, the trial court correctly dismissed her *pro se* petition because autopsy reports are admitted under the business-records exception to the hearsay rule and therefore do not implicate the confrontation clause. Because we agree with Vantlin that her *pro se* petition successfully raised several issues of a constitutional magnitude, we need not address whether her argument concerning Dr. Heidingsfelder's autopsy report stated the gist of a constitutional claim.

¶ 6 The Act provides a mechanism for a criminal defendant to assert that his or her conviction or sentence was based on a substantial violation of his or her constitutional rights. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008). "A postconviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings." *Id.* Accordingly, issues raised and adjudicated on direct appeal are barred from consideration by the doctrine of *res judicata* and issues that could have been raised but were not are considered forfeited. *Id.* However, *res judicata* and forfeiture will be relaxed under the following circumstances: where fundamental fairness requires, where forfeiture results from the ineffective assistance of counsel, or where the facts relating to the issue do not appear on the face of the appellate record. *People v. Myers*, 386 Ill. App. 3d 860, 864 (2008). "The waiver rule does not apply if the factual basis for a claim of ineffectiveness is not contained within the original trial court record and, therefore, could not have been considered on direct appeal." *People v. Kellerman*, 342 Ill. App. 3d 1019, 1025 (2003).

¶ 7 Here, Vantlin argues in her *pro se* postconviction petition that she received ineffective assistance of trial counsel because her counsel failed to request a change of venue pursuant

to her request, caution her regarding the dangers of testifying, inform her that she would be allowed to make a statement in allocution at her sentencing hearing, review evidence with her before trial, elicit testimony from her that the victim abused and threatened her and her son, offer computer evidence at trial, and investigate the State's witnesses prior to trial. Further, she also raised numerous arguments concerning due-process-violation, cruel-and-unusual-punishment, "prosecutorial-vindictiveness," sufficiency-of-the-evidence, admissibility-of-the-evidence, and violation-of-right-to-confrontation claims. The only argument Vantlin raised on direct appeal was that her sentence was excessive in light of her lack of a significant criminal history, her mental-health issues, and her cooperation with the police. However, we note that the circumstances surrounding the majority of her ineffective-assistance-of-counsel claims involved private conversations between herself and her trial counsel and that details of these private conversations are not contained in the appellate record. Therefore, the ineffective-assistance-of-counsel claims involving private conversations between Vantlin and her trial counsel could not have been raised on direct appeal. "[I]f some claims are subject to a dismissal at the first stage [of the postconviction proceedings] while others are not, the entire postconviction petition must be docketed for second-stage proceedings." *People v. Johnson*, 377 Ill. App. 3d 854, 858 (2007). Accordingly, we cannot affirm the trial court's ruling on the basis of *res judicata* or waiver.

¶ 8 The State argues that Vantlin's *pro se* petition was properly dismissed because she failed to attach documentation to support her claims as required by section 122-2 of the Act. Vantlin counters that the majority of her ineffective-assistance-of-counsel claims involved private conversations with her and her attorney, and she should not be expected to obtain an affidavit from her trial counsel stating that counsel was ineffective.

¶ 9 Pursuant to section 122-2 of the Act (725 ILCS 5/122-2 (West 2010)), the postconviction petition must be accompanied by affidavits, records, or other evidence

supporting the petitioner's allegations, or state why such documentation is not attached. "The failure to comply with section 122-2 is fatal and by itself justifies the petition's summary dismissal." *People v. Harris*, 224 Ill. 2d 115, 126 (2007). However, in *Kellerman*, 342 Ill. App. 3d at 1026, the Third District concluded that the defendant should not be expected to obtain an affidavit from his trial counsel to support his allegations that his trial counsel was ineffective for making oral misrepresentations that induced the defendant to plead guilty.

¶ 10 Here, Vantlin's *pro se* postconviction petition was accompanied by a notarized verification attesting to the truthfulness of the allegations contained in her petition, but was not accompanied by supporting affidavits, records, or other evidence. She did not explain why she failed to supply the supporting documentation. However, because the majority of her ineffective-assistance-of-counsel claims involved private conversations between herself and her trial counsel, she could not be expected to obtain an affidavit from trial counsel acknowledging that he was ineffective. Accordingly, we cannot affirm the trial court's ruling on the basis that Vantlin's *pro se* petition lacked the supporting documentation required under section 122-2 of the Act.

¶ 11 The State next argues that the trial court correctly dismissed Vantlin's *pro se* petition because she alleged violations of constitutional rights in general terms without specifying the factual allegations that support her claims.

¶ 12 The Act sets forth a three-stage process for non-death-penalty cases. *People v. Morris*, 236 Ill. 2d 345, 354 (2010). During the first stage of the postconviction proceedings, the trial court must review the postconviction petition within 90 days of its filing to determine whether the petition is frivolous or patently without merit. *Id.*; 725 ILCS 5/122-2.1(a)(2) (West 2010). "In order to survive a dismissal at this stage, a *pro se* postconviction petition \*\*\* need only assert the gist of a constitutional claim." *Johnson*, 377 Ill. App. 3d at 858. In making this decision, the trial court accepts all well-pleaded facts as true. *People*

*v. Kitchen*, 189 Ill. 2d 424, 433 (1999). The threshold for survival is low, and the petitioner need only present a limited amount of detail in the petition. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The petitioner is not required to make legal arguments or cite legal authority. *People v. Ligon*, 239 Ill. 2d 94, 104 (2010). The postconviction petition should only be dismissed at the first stage when a "quick look at the record" shows that the allegations are "absolutely untrue" or without merit." (Emphasis in original.) *Johnson*, 377 Ill. App. 3d at 860 (quoting *People v. Rivera*, 198 Ill. 2d 364, 373 (2001) (quoting 83d Ill. Gen. Assem., House Proceedings, June 21, 1983, at 89 (Statements of Representative Johnson))). "[T]he function of the pleadings in a proceeding under the Act 'is to determine whether the petitioner is entitled to a hearing.'" *People v. Coleman*, 183 Ill. 2d 366, 382 (1998) (quoting *People v. Airmers*, 34 Ill. 2d 222, 226 (1966)). However, "[n]onfactual and nonspecific assertions which merely amount to conclusions are not sufficient" to survive dismissal. *Kitchen*, 189 Ill. 2d at 433.

¶ 13 Here, the first several pages of Vantlin's *pro se* petition set forth a list of several cases and the cases' holdings without any application to her own circumstances. However, as previously explained, she eventually set forth a number of specific claims in her *pro se* petition. For example, she alleged ineffective assistance of trial counsel for counsel's failure to request a change of venue as she requested, caution her regarding the dangers of testifying, inform her that she would be allowed to make a statement in allocution at her sentencing hearing, and elicit testimony from her that the victim abused and threatened her and her son. Therefore, a review of the *pro se* petition clearly contradicts the trial court's finding that the petition failed to allege specific facts to state the gist of a constitutional claim. Also, as explained above, several of Vantlin's ineffective-assistance-of-counsel claims would require us to go beyond a "quick look" at the record because those claims were based on private conversations between her and her trial counsel, the contents of which are not contained in

the record. We thus conclude that Vantlin's *pro se* postconviction petition could not properly be dismissed as frivolous or patently without merit.

¶ 14 For the foregoing reasons, we reverse the decision of the circuit court of Lawrence County dismissing Vantlin's *pro se* postconviction petition. We remand for further proceedings.

¶ 15 Reversed; cause remanded.