

No. 1-12-1161

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 01 CR 30587
)	
WILLIE WELLS,)	Honorable
)	Jorge Luis Alonso,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice REYES concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Summary dismissal of defendant's *pro se* post-conviction petition affirmed where defendant failed to present an arguable claim of ineffective assistance of trial counsel.
- ¶ 2 Defendant Willie Wells appeals from an order of the circuit court of Cook County dismissing his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). On appeal, defendant contends that he raised the gist of a

constitutional claim of ineffective assistance of trial counsel to warrant further proceedings.

¶ 3 Following a 2007 jury trial, defendant was convicted of three counts of attempted first degree murder of a peace officer, three counts of attempted first degree murder of three other persons, and two counts of aggravated battery with a firearm for firing at rival gang members and at Chicago police officers on the evening of November 14, 2001. The trial court sentenced defendant to an aggregate term of 47 years' imprisonment on these convictions, and on direct appeal, this court vacated defendant's conviction and sentence on one of the aggravated battery with a firearm counts, affirmed the convictions of the remaining offenses, and vacated and modified certain sentences and remanded for resentencing. *People v. Wells*, No. 1-07-3120 (2010) (unpublished order under Supreme Court Rule 23). On remand, defendant was again sentenced to an aggregate term of 47 years' imprisonment.

¶ 4 On December 5, 2011, defendant filed a *pro se* post-conviction petition alleging, in relevant part, that his trial counsel was ineffective for failing to locate and interview defense witness Sweetness Bogan, who, he claimed, would have testified that he (defendant) came to her home about 7:30 on the night in question, stayed for a while and made several phone calls there. She and defendant then headed to the corner convenience store at Huron Street and Homan Avenue in Chicago, and afterwards, defendant was shot between Spaulding and Christina Avenues on Huron Street.

¶ 5 Defendant further alleged that Lavelle Atkins would have testified that at 6 p.m. on the night in question defendant met with him and Fred Reed on Sawyer Avenue and Ohio Street, and went with them to purchase liquor. They drove around the neighborhood for a while, then

stopped in front of the school on Sawyer Avenue and listened to music. There, they were approached by several females, including Bogan's sister, and Atkins and Reed left defendant with the females in front of the school. Defendant maintained that the testimony from Bogan and Atkins would have changed the outcome of the trial.

¶ 6 Defendant also alleged that trial counsel was ineffective for failing to obtain medical records showing that he had a prior injury which rendered him incapable of running or committing any of the alleged acts testified to by the State's witnesses. Defendant further alleged that he did not have supporting evidence for his claims because he was indigent and incarcerated, but attached his own affidavit and that of his mother, Carlan Duncan. Defendant averred that trial counsel disregarded his request to locate and interview defense witnesses to properly prepare for trial, and that he had not contacted any of these witnesses because he is incarcerated and has no contact with "the outside." Defendant further averred that trial counsel placed the duty of contacting witnesses on his mother, and refused to send out an investigator. He also averred that counsel failed to obtain medical records for his previous injury, which made it impossible for him to bear weight on his right leg without assistance.

¶ 7 In her affidavit, Duncan averred that defendant was initially represented by an attorney who was removed for "ineffective practices," and that his new trial counsel told her that he only had enough time to prepare for trial, and could not submit any motions or conduct a new investigation. She also averred that counsel asked her if she could provide addresses for the listed witnesses because he could not have an investigator go out to locate or interview any of them.

¶ 8 The circuit court dismissed defendant's petition, finding, in relevant part, that defendant's bald claims of ineffective assistance of counsel were conclusory in nature and insufficient for post-conviction review. The court noted that defendant's claims were unsupported, that he had merely provided the court with a list of reasons as to why he believed his trial counsel was incompetent, and thus dismissed his petition as frivolous and patently without merit.

¶ 9 On appeal, defendant contends that he presented the gist of a constitutional claim of ineffective assistance of trial counsel for failing to conduct a proper pretrial investigation of his case by locating and interviewing exculpatory witnesses, and leaving the investigation to his mother. He further maintains that counsel was ineffective for failing to investigate and interview the State's witnesses, and obtain medical records showing that a prior leg injury prevented him from moving in the way described by the State's witnesses at trial. Defendant raises no issue regarding the other allegations in his petition, and has thus waived them for review. *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006).

¶ 10 At the first stage of post-conviction proceedings, a *pro se* defendant need only present the gist of a meritorious constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The gist standard is a low threshold, requiring that defendant only plead sufficient facts to assert an arguably constitutional claim. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). However, section 122-2 of the Act requires that defendant attach to his petition affidavits, records, or other evidence supporting his allegations or state why the same are not attached. *People v. Delton*, 227 Ill. 2d 247, 253 (2008). If a petition has no arguable basis in law or in fact, it is frivolous and patently without merit, and the trial court must summarily dismiss it. *People v. Hodges*, 234

Ill. 2d 1, 16 (2009). Our review of a first-stage summary dismissal is *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998).

¶ 11 To prevail on a claim of ineffective assistance of counsel, defendant must show that counsel's performance was objectively unreasonable and that he was prejudiced as a result thereof. *Hodges*, 234 Ill. 2d at 17, citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

At the first stage of post-conviction proceedings, a petition alleging ineffective assistance of counsel may not be summarily dismissed if it is arguable that counsel's performance fell below an objective standard of reasonableness, and it is arguable that he was prejudiced thereby.

People v. Tate, 2012 IL 112214, ¶19.

¶ 12 As an initial matter, the State points out that defendant must satisfy basic pleading requirements to avoid summarily dismissal, including the necessity of providing supporting documentation for his claims or an explanation for their absence. 725 ILCS 5/122-2 (West 2010). The purpose of section 122-2 is to establish that the verified allegations are capable of objective or independent corroboration. *Delton*, 227 Ill. 2d at 254; *People v. Collins*, 202 Ill. 2d 54, 65 (2007).

¶ 13 Here, defendant maintained that his counsel was ineffective for failing to obtain medical records supporting his claim that he had a prior injury preventing him from carrying out the actions testified to by the State's witnesses, or an affidavit of the allegedly exonerating witness, Bogan. He failed, however, to provide any supporting documentation regarding a prior injury, or an affidavit from Bogan attesting that he was with her shortly before and during the shooting, and averring that she was available to testify on defendant's behalf.

¶ 14 Defendant contends that he was unable to obtain supporting documentation because he was incarcerated and indigent. However, his status as a prisoner does not excuse his failure to provide supporting documentation as the Act, which requires the supporting documentation, is only available to persons imprisoned in the penitentiary. 725 ILCS 5/122-1(a) (West 2012). Furthermore, and contrary to defendant's contention, he clearly had outside contact where he obtained an affidavit from his mother, and his indigent status did not prevent him from obtaining his own medical records or asking his mother to assist him with obtaining same. Without support or a cogent explanation for the absence of supporting documentation, defendant's bare, conclusory allegations of ineffective assistance of counsel were bereft of the objective or independent corroboration required to avoid summary dismissal. *People v. Hall*, 217 Ill. 2d 324, 333 (2005); *Collins*, 202 Ill. 2d at 67; *People v. Teran*, 376 Ill. App. 3d 1, 3-4 (2007). Defendant's own affidavit does not serve that purpose (*People v. Teran*, 376 Ill. App. 3d 1, 3-4 (2007)), and his petition was thus subject to summary dismissal (*Delton*, 227 Ill. 2d at 255).

¶ 15 In addition, we observe that defendant's contention that his counsel did not attempt to contact Bogan is refuted by the record which shows that counsel informed the court that he attempted to contact Bogan, but was unable to do so. Where the record rebuts the allegations in the petition, summary dismissal is proper. *People v. Rogers*, 197 Ill. 2d 216, 222 (2001).

¶ 16 We further observe that the State's evidence included the testimony of officers who observed defendant fire the gun, and defendant's written statement in which he admitted that he did so. In light of this evidence of his guilt, defendant has failed to make an arguable showing of

ineffective assistance of counsel under either prong of the test. *People v. Johnson*, 183 Ill. 2d 176, 192 (1998); *People v. Buchanan*, 403 Ill. App. 3d 600, 608-09 (2010).

¶ 17 Moreover, counsel cannot be arguably ineffective for failing to present Bogan's testimony as it would have been in conflict with defendant's defense at trial and potentially harmful to him. *People v. Flores*, 128 Ill. 2d 66, 106-07 (1989); *People v. Gillepsie*, 407 Ill. App. 3d 113, 133 (2010). At trial, defendant called Andrea Tilson, who testified that at 7:55 on the night in question, defendant arrived at her home at 654 North Spaulding Avenue to use her telephone. She further testified that defendant then left her home, and shortly thereafter, at 8:20 p.m. she heard gunshots. Thus, Bogan's proposed testimony that defendant was at her home at 7:30 p.m., then left with her to go to a convenience store, and was shot between Spaulding and Christina Avenues on Huron Street while with her, would have contradicted his defense at trial that he was at the home of Tilson shortly before the shooting. Accordingly, where the allegations in defendant's post-conviction petition are contradicted by the record, defendant has failed to present an arguable claim of ineffective assistance of trial counsel to warrant further proceedings under the Act. *People v. Deloney*, 341 Ill. App. 3d 621, 626 (2003).

¶ 18 Defendant, nonetheless, maintains that his counsel was ineffective for failing to conduct a proper pretrial investigation of his case by locating and interviewing exculpatory witnesses and investigating and interviewing State witnesses, and left the investigation to his mother. Defendant has not alleged how he was arguably prejudiced by his mother assisting his counsel with the investigation, and by counsel failing to interview and investigate unnamed State witnesses. To warrant a hearing under the Act, the allegations in the petition must be specific

and supported by fact, which includes naming the witnesses defendant claims counsel was ineffective for failing to interview and investigate. *People v. Smith*, 341 Ill. App. 3d 530, 545 (2003), citing *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). Here, defendant's broad conclusory allegations fail to give rise to a gist of a constitutional claim of ineffective assistance of counsel and are not allowed under the Act. *People v. Miller*, 393 Ill. App. 3d 629, 640 (2009).

¶ 19 In light of the foregoing, we affirm the order of the circuit court of Cook County summarily dismissing defendant's post-conviction petition.

¶ 20 Affirmed.