

No. 1-12-2410

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 27392
	)	
RONALD LEACH,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

**O R D E R**

¶ 1 *Held:* The circuit court's summary dismissal of defendant's *pro se* postconviction petition is affirmed where allegations in the petition were unsupported by the affidavit of the proposed witness as required by section 122-2 of the Post-Conviction Hearing Act (725 ILCS 5/122-2 (West 2012)).

¶ 2 Defendant Ronald Leach appeals from the summary dismissal of 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 the circuit court erred in dismissing his petition because he was denied the effective assistance of trial counsel when counsel failed to investigate and interview

eyewitness Leola Williams, who would have corroborated defendant's assertion that he was not guilty of aggravated discharge of a firearm because he did not fire in the direction of Anthony White. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of the fatal shooting of the victim Nicole White. A gun was also fired at the victim's brother, Anthony White, during this incident. Following a jury trial, defendant was convicted of second degree murder and aggravated discharge of a firearm. He was sentenced to 12 years in prison for murder and to a consecutive term of 6 years for aggravated discharge of a firearm.

¶ 4 The evidence at defendant's trial established that defendant shot the victim after an argument over drug sales turned physical. At one point, defendant pulled a handgun from his jacket, pointed it at the victim, and fired twice. The victim was struck in the chest and later died. Anthony White testified that as defendant was backing away from the victim, defendant pointed the gun at him and fired once. Witnesses Corey Clay and Latrice Johnson also testified that defendant shot at Anthony White. Defense witness Connie King, who acknowledged that she was a long-term heroin addict and had used heroin on the day of the shooting, testified that defendant fired in the air, she heard gunshots from another direction, and White was on the other side of the street.

¶ 5 At the close of the defense's case, the trial court listed the witnesses named in the defense's answer and amended answer to discovery which included: Clarence Mack, Barbara Wood Broxton, Quianta Taylor, Mike Miller, Larry Williams, Passion Broxton, Nicole Gordon, Misty Wood, Kenyatta Taylor and "Ms. Taylor from 646 North Spaulding." The court then inquired whether defendant spoke to his attorneys regarding whether he wanted these witnesses to testify on his behalf. Initially, defendant indicated that he wanted those witnesses to testify if

they were "still here," however, after a 10-minute break during which defendant spoke with his attorneys, defendant indicated that he agreed with his attorneys' decision not to present the testimony of any additional witnesses. Ultimately, the jury convicted defendant of second degree murder and aggravated discharge of a firearm. He was sentenced to 12 years in prison for the murder conviction and to a consecutive term of 6 years for the aggravated discharge of a firearm conviction. Defendant's convictions were affirmed on direct appeal. See *People v. Leach*, 2011 IL App (1st) 090339.

¶ 6 In 2012, defendant filed the instant *pro se* postconviction petition alleging, *inter alia*, that he was denied the effective assistance of counsel when, although defendant told trial counsel about eyewitness Leola Williams, counsel failed to investigate Williams and present her testimony at trial. The petition alleged that Williams would have testified that defendant did not shoot in the direction of Anthony White or any other person because Anthony White was behind defendant when defendant shot at the victim. The petition also stated that defendant had unsuccessfully tried "on numerous occasions" to have contact made with Williams, was aware of Williams's address, and felt that Williams would "come forward" if approached by an investigator or attorney. In defendant's affidavit attached in support of the petition, defendant averred that he had diligently and unsuccessfully sought Williams's affidavit, but had not obtained it by the deadline to file the postconviction petition. The circuit court summarily dismissed the petition as frivolous and patently without merit.

¶ 7 The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. 725 ILCS 5/122-1 (West 2012). At the first stage of a postconviction proceeding, the circuit court independently reviews the petition, taking the allegations as true, and determines if it is

frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). A petition should be summarily dismissed as frivolous or patently without merit only when it has no arguable basis in either fact or law. *Hodges*, 234 Ill. 2d at 11-12. Our supreme court has held that a petition lacks an arguable basis in fact or law when it is based on "an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. Fanciful factual allegations are those which are "fantastic or delusional" and an example of an indisputably meritless legal theory is one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16-17. This court reviews the summary dismissal of a postconviction petition *de novo*. *People v. Tate*, 2012 IL 112214, ¶ 10.

¶ 8 To succeed on an ineffective assistance of counsel claim, a defendant must demonstrate that counsel's representation was both objectively unreasonable and that it prejudiced him. *Hodges*, 234 Ill. 2d at 17, citing *Strickland v. Washington*, 466 U.S. 668 (1984). A postconviction petition alleging ineffective assistance of counsel may not be dismissed at the first stage of the proceedings "if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17.

¶ 9 Initially, the State contends that defendant's failure to either attach an affidavit from Williams or to sufficiently explain the affidavit's absence is fatal to defendant's petition. Defendant responds that he explained the absence of Williams's affidavit, that is, he tried on numerous occasions to have contact made with Williams, but was unsuccessful.

¶ 10 Section 122-2 of the Act requires a defendant to support the allegations in his *pro se* postconviction petition by either attaching factual documentation to the petition or explaining the absence of such evidence. 725 ILCS 5/122-2 (West 2012); *People v. Delton*, 227 Ill. 2d 247, 253

(2008). The purpose of this requirement is to establish that the allegations raised in the petition are capable of independent or objective corroboration. *Delton*, 227 Ill. 2d at 254. It is well settled that an allegation that trial counsel provided ineffective assistance due to a failure to investigate and present testimony from witnesses must be supported by affidavits from those proposed witnesses. *People v. Jones*, 399 Ill. App. 3d 341, 371 (2010). Without an affidavit from the proposed witness, "a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary." *People v. Enis*, 194 Ill. 2d 361, 380 (2000); see also *Delton*, 227 Ill. 2d at 255 (the failure to support a postconviction petition as required by section 122-2 of the Act is fatal to the petition and justifies summary dismissal).

¶ 11 In the case at bar, defendant did not attach the affidavit of Williams to his *pro se* postconviction petition; rather, he explained that he had tried on numerous occasions to have contact made with Williams and felt that she would come forward if contacted by an attorney or investigator. Defendant's own affidavit attesting to what another would testify to, however, is insufficient to satisfy section 122-2 of the Act (725 ILCS 5/122-2 (West 2012)), because he needed objective or independent corroboration of his allegation when his allegation of ineffective assistance of trial counsel was based on what Williams would have testified to at trial. *People v. Hall*, 217 Ill. 2d 324, 333 (2005); see also *People v. Barcik*, 365 Ill. App. 3d 183, 190-91 (2006) (where the defendant attacks his counsel's performance based upon a failure to call or contact a witness, he must attach to his postconviction petition an affidavit showing the potential witness's testimony and explaining its significance). In other words, defendant's own affidavit is not an independent or objective corroboration of this allegation (*People v. Harris*, 224 Ill. 2d 115, 142 (2007)), and his failure to provide the affidavit or documentation required by section 122-2 of the

Act is fatal to his postconviction petition and justifies its summary dismissal. *Delton*, 227 Ill. 2d at 255.

¶ 12 *People v. Harris*, 224 Ill. 2d 115 (2007) is instructive. In that case, the defendant alleged, *inter alia*, that he was denied the effective assistance of trial counsel when counsel failed to interview and present the testimony of eight witnesses who would have supported the defendant's case. Attached to the petition in support were the defendant's affidavit and unsigned "affidavits" from each witness. In his affidavit, the defendant stated what he believed the witnesses would say and explained that he had mailed the affidavits to the witnesses, but that no one had returned a signed copy. In summarily dismissing the petition, the circuit court concluded, in pertinent part, that the defendant had not complied with section 122-2 of the Act requiring that a petition have attached in support affidavits, records, or other evidence supporting its allegations. *Harris*, 224 Ill. 2d at 119-20.

¶ 13 Our supreme court affirmed the summary dismissal of the petition because it did not state the gist of a meritorious claim. The court explained that the "claim that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness." (Internal quotation marks omitted.) *Harris*, 224 Ill. 2d at 142, quoting *Enis*, 194 Ill. 2d at 380. The court further explained that in the absence of such an affidavit, the reviewing court cannot determine whether the potential witness could have provided testimony or information favorable to the defendant and, therefore, further review of the defendant's claim is unnecessary. *Harris*, 224 Ill. 2d at 142. In so holding, the court determined that a defendant's affidavit regarding what he believed a witness would say was insufficient to satisfy this requirement. *Harris*, 224 Ill. 2d at 142.

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¶ 14 Here, as in *Harris*, defendant has not supported his petition with the affidavit of the potential witness; rather, the petition stated what defendant believed that Williams would say. Because this court cannot determine whether Williams would have provided testimony favorable to defendant without an affidavit from Williams, further review of defendant's postconviction claim is unnecessary. *Harris*, 224 Ill. 2d at 142.

¶ 15 For these reasons, we affirm the judgment of the circuit court of Cook County summarily dismissing defendant's *pro se* postconviction petition.

¶ 16 Affirmed.