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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1745
)	
BRIDGET A. IVANOV,)	Honorable
)	Marmarie J. Kostelny,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed the defendant's postconviction petition at the first stage as frivolous and patently without merit.

¶ 2 In February 2013, the defendant, Bridget Ivanov, filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)). The trial court found the petition frivolous and patently without merit and summarily dismissed it. On appeal, the defendant contends that her petition stated the gist of a constitutional claim based on trial counsel's actual conflict of interest in representing both the defendant and her co-defendant at trial. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Following a jury trial in 2010, the defendant was convicted of armed violence (720 ILCS 5/33A-2(a) (West 2010)), and sentenced to 14 years' imprisonment. The defendant and her co-defendant were tried together and represented by the same counsel. The incident which resulted in the conviction involved the defendant stabbing the victim with a pocket knife. The defense theory of the case was that the defendants were not guilty of armed violence because they acted in self-defense. The defendant argued at trial that she stabbed the victim as he attacked her behind a liquor store and then she stabbed the victim again when the victim attacked her boyfriend, the co-defendant, as he was coming to help her. On direct appeal, this court affirmed the trial court's judgment. *People v. Ivanov*, 2012 IL App (2d) 101321-U, ¶ 44.

¶ 5 In February 2013, the defendant filed a *pro se* petition for relief under the Act (725 ILCS 5/122-1 *et seq.* (West 2010)). Among other claims in the petition, the defendant asserted that she was deprived of her sixth amendment right to counsel because she was represented at trial by the same attorney as her co-defendant and there were conflicting interests. She also argued that her appellate counsel was ineffective for failing to raise this issue on direct appeal. On May 10, 2013, the trial court dismissed the petition in a written order, finding that the defendant had failed to state the gist of a constitutional claim and that her petition was frivolous and patently without merit. On June 20, 2013, the defendant filed a late notice of appeal. On June 26, 2013, this court granted her late notice of appeal.

¶ 6

II. ANALYSIS

¶ 7 On appeal, the defendant argues that the trial court erred in summarily dismissing her postconviction petition. The defendant limits her argument to only one of the constitutional claims she raised in her petition: The defendant contends that appellate counsel was ineffective

in failing to argue on direct appeal that trial counsel acted under a conflict of interest in his representation of the defendant and her co-defendant.

¶ 8 The Act provides a three-step process for a defendant to challenge a conviction or sentence based on an alleged violation of federal or state constitutional rights. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). At the first stage of postconviction review, the circuit court independently reviews the petition to determine whether it is “frivolous or is patently without merit” and dismisses the petition if it finds that is the case. 725 ILCS 5/122-2.1(a)(2) (West 2010). A defendant need only present a limited amount of detail at the first stage and need not set forth a claim in its entirety, include legal argument, or cite legal authority. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). A court must take as true all well-pleaded facts unless positively rebutted by the record. *Id.* at 189. The petition need only present the “gist” of a constitutional claim. *Id.* at 184. A petition may be dismissed under this standard only if it has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). A petition has no arguable basis in law or fact if it is based on an indisputably meritless legal theory or a fanciful factual allegation. *Id.* at 16. An indisputably meritless legal theory is one which is completely contradicted by the record and fanciful factual allegations include those which are fantastic or delusional. *Id.* at 16-17.

¶ 9 To state the “gist” of a constitutional claim the defendant must meet a “low threshold.” *Brown*, 236 Ill. 2d at 184. However, the “low threshold” at the first stage “does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional violation.” *Hodges*, 234 Ill. 2d at 10. “Thus, while a *pro se* petition is not expected to set forth a complete and detailed factual recitation, it must set forth some facts which can be corroborated and are objective in nature or contain some explanation as to why those facts

are absent.’ ” *Id.*, (quoting *Delton*, 227 Ill. 2d at 254-55). “[N]onfactual and nonspecific assertions which merely amount to conclusions are insufficient to require a hearing under the * * * Act.” *People v. Burt*, 205 Ill. 2d 28, 35-36 (2001) (citing *People v. Coleman*, 183 Ill. 2d 366, 381 (1998)).

¶ 10 If a petition survives to the second stage, counsel will be appointed to an indigent defendant, and the State will be allowed to file responsive pleadings. 725 ILCS 5/122-4 (West 2010); *Hodges*, 234 Ill. 2d at 10-11. If the defendant makes a “substantial showing” of a constitutional violation, the petition will proceed to the third stage, at which the trial court will conduct an evidentiary hearing. 725 ILCS 5/122-6 (West 2010); *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). The summary dismissal of a postconviction petition at the first stage is reviewed *de novo*. *Brown*, 236 Ill. 2d at 184.

¶ 11 In the present case, with respect to the claim at issue, the defendant’s postconviction petition included only the following conclusory allegation: “The Petitioner was in fact denied her Sixth Amendment safeguard to counsel of undivided loyalty where, she and her [co-defendant], were represented during pretrial and trial by the same lawyer *** which, did in fact create a ‘conflict of interest’ that served to compromise the Petitioner’s Sixth Amendment right to the effective assistance of counsel with undivided loyalty.” Even construing it liberally, the defendant’s petition contained no factual allegations to support this conclusion. Although the defendant was not required to set forth her postconviction claim in its entirety, she was required to present “some facts” that were “capable of objective or independent corroboration.” *Hodges*, 234 Ill. 2d at 10. We note that multiple representation of co-defendants is not a *per se* violation of the Sixth Amendment. *United States v. Burney*, 756 F.2d 787, 790 (10th Cir. 1985). The defendant included no factual allegations as to how her interest diverged from that of her co-

defendant or instances where the interest of her co-defendant was placed before her own. She did not explain how her testimony or her theory of defense would have changed if she had been represented by independent counsel. Because the defendant failed to properly state a claim based on trial counsel's alleged conflict of interest, the petition also failed to state a claim for ineffective assistance of appellate counsel. See *McGhee*, 2012 IL App (1st) 093404, ¶ 12 (a defendant can only show he was prejudiced by appellate counsel's failure to raise an issue on appeal if the underlying issue has merit). Accordingly, it was proper to dismiss the defendant's postconviction petition at the first stage. *People v. Burt*, 205 Ill. 2d 28, 35-36 (2001) (“[N]onfactual and nonspecific assertions which merely amount to conclusions are insufficient to require a hearing under the * * * Act.”).

¶ 12 The defendant did provide additional detail about her claim in her appellate brief. However, “[a] reviewing court will not consider arguments not presented to the trial court.” *Hytel Corp. Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010). Nonetheless, even if we considered the contentions raised for the first time in the defendant's appellate brief, our determination would not change because the record completely refutes any allegation that trial counsel acted under a conflict of interest in representing the defendant. See *Hodges*, 234 Ill. 2d at 16-17 (it is proper to dismiss a postconviction petition at the first stage if it is based on a legal theory that is completely rebutted by the record). In her brief, the defendant argues that trial counsel suggested—during opening statements, direct examination, and closing argument—that the defendant was solely responsible for the victim's injuries and that her co-defendant had no liability.

¶ 13 According to the defendant, “[t]rial counsel foreshadowed the emerging conflict between his clients during opening statements by claiming that [the] co-defendant only came to her aid

‘after pretty much the whole event was over,’ at which time [the defendant] ‘had blood on her hands, which also makes sense.’ ” However, when read in context, these quotes do not present any conflict. Trial counsel was trying to convey that the victim’s wounds were from the defendant flailing about with the knife while she was being attacked by the victim. Trial counsel further explained that the co-defendant showed up after the attack was mostly complete, to emphasize to the jury that the victim’s wounds were from the defendant protecting herself, and not the result of a combined attack of the defendant and co-defendant on the victim. Trial counsel stated that it made sense for the defendant to have blood on her hands because she was “flailing about trying to repel an attack,” as opposed to making calculated stab wounds on a helpless victim.

¶ 14 The defendant also argues that during direct examination, trial counsel repeatedly emphasized her shouting and yelling, and the fact that only she used the knife. She argues that “[t]here was no reason for trial counsel to reemphasize [her] stabbing motions other than to shift blame for the victim’s injuries to her and away from the co-defendant.” Again, review of the record rebuts any assertion that trial counsel was attempting to “shift the blame.” The questions about the defendant yelling were to emphasize that she was being attacked by the alleged victim and trying to summon help. Further, the questions about using the knife were to emphasize that she originally used the knife when she was attacked by the victim and that the knife was still in her hand when she went to help the co-defendant as he was being attacked by the victim.

¶ 15 Finally, the defendant argues that, during closing argument, trial counsel portrayed her as the “crazed aggressor” and the co-defendant as a mere onlooker. This contention is also rebutted by the record. During closing argument, trial counsel emphasized that the victim’s testimony was incredible because, at the time of the incident, his blood alcohol content was three times the

legal limit. Trial counsel also explained why other eyewitness testimony did not make sense. Trial counsel emphasized that the defendant only stabbed the victim in an attempt to protect herself and the co-defendant from attack by a drunk and belligerent victim. Trial counsel never argued that the co-defendant was a mere onlooker and not accountable for the defendant's actions. The sole theory of defense was that the defendant and co-defendant acted in self-defense and there was no conduct for which to be accountable.

¶ 16 In support of her contention that defense counsel labored under a conflict of interest, the defendant cites *In re V.W.*, 112 Ill. App. 3d 587 (1983), and *United States v. Martin*, 965 F. 2d 839 (10th Cir. 1992). In the former case, V.W. and two other juveniles were represented by the same public defender at a delinquency hearing. *V.W.*, 112 Ill. App. 3d at 589. V.W. testified that all three were present during the incident in question and that he acted in self-defense. The co-respondents gave alibi defenses. *Id.* at 590. After V.W. was adjudicated delinquent, the reviewing court held that the circumstances presented defense counsel with a conflict of interest and reversed the adjudication of delinquency. *Id.* at 591-92. The court noted that counsel was faced with a situation in which it appeared that at least one of his three clients was lying, although he could not thoroughly examine his own clients to bring out the truth. *Id.* at 590.

¶ 17 In *Martin*, the district court vacated the defendant's conviction and granted him a new trial due to an actual conflict of interest that emerged between his co-defendant clients at trial. *Martin*, 965 F. 2d at 840-41. The reviewing court affirmed. *Id.* at 841. The co-defendants were charged with conspiring to possess marijuana with intent to distribute. *Id.* at 840. In a *habeas corpus* motion, the defendant claimed that he would have testified that, even if a conspiracy existed, he took action to withdraw from it. However, his trial counsel prevented him from so testifying because it would have undermined the co-defendant's theory that no conspiracy

existed. *Id.* at 842. The *Martin* court held that the defendant “presented the classic conflict situation in which, in order to reduce the degree of his own culpability, he would have to testify in contravention of his co-defendants’ theory of defense.” *Id.*

¶ 18 Unlike *V.W.* and *Martin*, the defendant fails to allege any specific instances of conflict between her and her co-defendant that were adverse to her interests. She fails to allege how she would have testified differently or changed her theory of defense had she been represented by independent counsel. The defendant argues that the accountability theory undermined her self-defense argument and that trial counsel alleged a common defense but an inconsistent alternative. A review of the record positively rebuts these assertions. Throughout the course of the trial, trial counsel emphasized just one theory—that the defendant acted in defense of herself and her co-defendant. Trial counsel never argued that the co-defendant was not accountable. Defense counsel argued only that there was nothing for which to be accountable. There is absolutely no evidence that trial counsel labored under a conflict of interest with respect to the representation of the defendant. Based on the foregoing, we conclude that it was proper for the trial court to deny defendant’s postconviction petition at the first stage.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 21 Affirmed.