2016 IL App (2d) 140307-U
No. 2-14-0307
Order filed June 27, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-2815
	)	
RYAN A. SCHILLER,	)	Honorable
	)	Rosemary Collins,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Cause remanded for second-stage proceedings where trial court failed to include postconviction claim advanced in a separate contemporaneous document in the summary dismissal of the postconviction petition.

¶ 2 Following a bench trial, the defendant, Ryan Schiller, was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2008)) for killing his girlfriend, Amanda Reed. The defendant was sentenced to 28 years' imprisonment. On December 23, 2013, the clerk of the circuit court of Winnebago received two *pro se* documents from Schiller: a postconviction petition, and a "motion to modify conviction." On March 14, 2014, the circuit court summarily dismissed the postconviction petition. The defendant appeals this order. On appeal, he argues

(1) that the circuit court should not have summarily dismissed his postconviction petition because, when read together with the motion to modify the conviction, it stated an arguable claim, and (2) that the circuit court judge should have recused herself because she knew the victim's mother in a professional capacity. We vacate the March 14, 2014, order and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 Because the facts of this case have been set forth in considerable detail elsewhere (see, *e.g.*, *People v. Schiller*, 2012 IL App (2d) 110677-U, ¶¶ 4-24 (unpub. order dated Dec. 19, 2012), we include here only those facts necessary to an understanding of this appeal.

¶ 5 The defendant was charged with causing the victim's death by asphyxia by placing his knee on the victim's back while she was face-down on a bed. It is undisputed that he did so. The defendant's postconviction arguments center on how he came to do so. According to the statement he gave to police, in the early morning hours of September 4, 2009, the defendant and the victim (who was very drunk) were fighting, and he held her down on her bed in order to keep her from striking him, not intending to kill her. When she stopped struggling and he released her, she fell onto her back. He attempted mouth-to-mouth resuscitation and CPR. When he could not resuscitate her, he arranged her on the bed and pulled the sheet up. He did not think she was alive when he left.

¶ 6 The forensic pathologist who performed the autopsy, Dr. Larry Blum, testified that, based upon the bruising on the victim and other indicators, the victim suffocated because she could not breathe when a heavy weight was placed on her chest, and her mouth and nose were partially or wholly blocked. The toxicology reports showed that the victim's blood alcohol level at the time of death was .276. Dr. Blum also commented that it was a somewhat unusual method by which

to intentionally cause death; in his 31 years of practice, he had not seen a similar intentional killing.

¶ 7 Various other witnesses testified regarding times when they had seen the defendant and the victim together, and the nature of their relationship. The victim's mother, Diane Reed, testified that when the two attended a concert with her a week before the victim's death, the victim appeared upset and was crying at one point. On the bus ride home, the two were squished together, sleeping.

¶ 8 A co-worker, Paula Schwarz, testified that when the two came into a bar a couple of days before the victim's death, they were not getting along. At one point, the defendant covered the victim's mouth with his hand to keep her quiet and the victim pushed his hand away from her mouth; the defendant then said, "I'll kill you." (Schwarz did not mention this when she gave a statement to the police six days later.) After the two left the bar, Schwarz saw the defendant push the victim on the back of the neck to get her into their car.

¶ 9 Elizabeth Kolosa, the victim's roommate, testified that the victim had said she did not want to see the defendant and was going out with other friends on the evening of September 3, 2009. The victim and the defendant had a "rocky" relationship and fought (though "not to a great extent"), but seemed to care for each other.

¶ 10 Melissa Sadler, who identified herself as one of the victim's best friends, said that she had been at the victim's apartment for most of the night on September 3, 2009. The defendant let himself in shortly before 4 a.m. and went into the victim's bedroom. Sadler saw him trying to wake the victim up and heard the victim make a moaning noise. Later, when she returned to retrieve her cell phone, she saw the defendant still sitting on the side of the victim's bed, trying

to wake her. Sadler thought the victim was still alive at that point. The defendant was not acting in a violent manner.

¶ 11 The victim was discovered dead in her bed more than 24 hours later, on the morning of September 5, 2009. Her eyes were open and deep purple. Her face was bruised and there was dried blood near her nose. Her right wrist was bruised and swollen. She was lying on her back and the sheet was pulled up to her waist or chest. Her head was on a pillow, and the TV in the room was on. A bloody t-shirt with the victim's blood on it was found in the trash outside her apartment. A vaginal swab taken from the victim contained human DNA matching the defendant's DNA.

¶ 12 The defendant did not testify at trial and the defense called no witnesses. Instead, the defense argued that the evidence showed that the relationship between the defendant and the victim was good, if uneven: the defendant had a key to the victim's apartment; they had sex; and Kolosa testified that the victim would probably call the defendant after a night of drinking. Defense counsel noted that the defendant told police that the victim had started fighting with him—hitting, kicking, and biting him—and argued that he was defending himself. Thus, he argued, the trial court should find the defendant not guilty. The defense also argued that the State had not proven the mental state necessary for first degree murder and at most had shown recklessness. Accordingly, if the trial court found him guilty of anything, it should be involuntary manslaughter.

¶ 13 The trial court found the defendant guilty of first degree murder, finding that he knew that his acts created a strong probability of death or great bodily harm: "[e]ven young children are aware that placing an object such as a pillow over the face of someone can cause them to suffocate," and there was a mark on the back of the victim's neck indicating that she had been

held down. The trial court rejected the defendant's assertion of self-defense. There was no evidence as to how the fight started except for the defendant's statement, which lacked credibility. The trial court stated that it was "obvious" that the defendant was lying in his statement to the police and that his "credibility varie[d] between slim and none." Further, to the extent that there were any injuries to the defendant, the trial court found that they were caused when the victim was reacting to being held down and was "fighting for her life." The trial court also noted the victim's height and weight and commented that, based on the court's observation of the defendant, he was "clearly taller and heavier than she was." Finally, the trial court *sua sponte* found that the victim's injuries and death were not the result of "the factors outlined in 720 ILCS 9-2(a)(1) and (2)" (factors that would support a finding of second degree murder rather than first degree), as "neither of those facts [was] present in this case." The trial court then found the defendant guilty of first degree murder.

¶ 14 The defendant moved for a new trial, arguing once again that the most he could be convicted of was involuntary manslaughter. Following a hearing, the trial court denied the motion and sentenced the defendant to 28 years' imprisonment.

¶ 15 On December 23, 2013, the clerk of the circuit court of Winnebago County received and file-stamped three documents. One was a handwritten motion titled, "Motion to Modify the Charge of 1st Degree Murder to a Charge of 2nd Degree Murder." The motion argued that Dr. Blum's testimony established that the defendant "could not have known that, nor intended for [*sic*], his alleged actions in the physical confrontation or altercation in this case would cause the described great bodily harm herein" (*i.e.*, asphyxiation). In explaining why a conviction of second degree murder was more appropriate than his conviction of first degree murder, he argued that at the time of the victim's death he was acting under a sudden and intense passion

resulting from serious provocation in that her death occurred during a fight with her, and that he had "an emotional attachment" to her. The defendant concluded:

> "Should this honorable court decline to grant this motion to modify the charge of 1st degree murder or even render a disposition on this motion as it is a free-standing motion, this court may reconstrue this filing as a post-conviction petition pursuant to 725 ILCS 5/122-1 *et seq*. (West 2012) ***.
>
> Wherefore, this defendant *** prays that this honorable court grant this motion to modify the charge of first degree murder in this case to a charge of second [degree] murder or alternatively reconstrue this free standing motion as a post-conviction petition pursuant to 725 ILCS 5/122-1 *et seq*. (West 2012) and allow him to file his petition accompanied with his affidavit [which] is already prepared for filing formally."

The motion was signed and was dated October 25, 2013. No affidavit was attached to it.

¶ 16 The next document received on December 23 was typewritten and was titled, "Petition for Post-Conviction Relief." The defendant raised three arguments therein. First, he asserted that a police officer had given false testimony before the grand jury, denying him due process. Second, he argued that he received ineffective assistance of trial counsel in that his attorney did not investigate and present the theory that the defendant's mental state at most was reckless (not knowing), and thus he could be convicted only of involuntary manslaughter. Finally, he argued that his appellate counsel was also ineffective for failing to raise the above arguments and "raise a viable constitutional claim." The defendant made no mention, in this document, of his contention that his trial counsel should have presented a defense of provocation requiring that any conviction be reduced to second degree murder. The postconviction petition was signed and dated November 22, 2013.

¶ 17 The last document received on December 23 was a handwritten letter addressed "Dear Judge," dated December 16, 2013. In the letter, the defendant stated, among other things, that he "asked [his] lawyer to put up the 2nd degree grounds" and present an argument that the defendant "was provoked into sudden intense passion by [the] person killed." In the letter, the defendant did not mention any of the arguments presented in the postconviction petition, nor did he ask that the letter be construed as a postconviction petition or refer to 725 ILCS 5/122-1 (West 2014).

¶ 18 Because the judge who presided over the trial had retired, the defendant's postconviction proceedings were assigned to another judge, Judge Rosemary Collins. On March 14, 2014, the trial court dismissed the defendant's postconviction petition as frivolous and patently without merit under the first stage of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)). Before giving her oral ruling, Judge Collins noted that, although she had no familiarity with either the defendant or the victim in the case, she had had professional contact with the victim's mother, Diane Reed, in the course of Judge Collins' activities in the field of domestic violence. Judge Collins stated that she believed that the acquaintance would not affect her judgment in any way and that she felt "comfortable proceeding on this case even in light of that," but she wanted to disclose the acquaintance. The court then discussed each of the three claims raised by the defendant in his typewritten postconviction petition and found that all of those claims were contradicted by the record or did not state a constitutional claim. Neither of the parties was present at this oral ruling. Rather, the court simply put its reasoning on the record, and its written order referred to this record. The court entered a first-stage summary dismissal of the postconviction petition. The court did not refer in any way, in either its oral ruling or its written order, to the simultaneously-filed motion to modify or the issue raised

therein, *i.e.*, second degree murder as an alternative to the conviction of first degree murder. The defendant filed this appeal.

¶ 19 II. ANALYSIS

¶ 20 We begin by reviewing the applicable law. The Act establishes a three-stage process for adjudicating a postconviction petition. *People v. Jones*, 213 Ill. 2d 498, 503 (2004). At the first stage, the trial court reviews the petition within 90 days of its filing to determine whether it is either frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). If the trial court determines that the petition is frivolous or patently without merit, it must dismiss the petition. *Id*. That is what the trial court here did.

¶ 21 Because most postconviction petitions are initially drafted by defendants with little legal knowledge, the threshold for survival at this first stage is low. *People v. Torres*, 228 Ill. 2d 382, 394 (2008). "But nonfactual and nonspecific assertions that merely amount to conclusions are not sufficient to require a hearing under the Act." *Id*. Although only a limited amount of detail need be presented in a *pro se* petition, the petition must clearly set forth how the petitioner's constitutional rights were violated. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); see also 725 ILCS 5/122-2 (West 2012).

¶ 22 A *pro se* postconviction petition is frivolous or patently without merit when it has "no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 16. "A petition has no basis in law when it is based on an 'indisputably meritless legal theory,' meaning that the legal theory is 'completely contradicted by the record.' " *People v. Carballido*, 2011 IL App (2d) 090340, ¶ 37 (quoting *Hodges*, 234 Ill. 2d at 16). "A petition has no basis in fact when it is based on 'fanciful factual allegation[s],' meaning that the factual allegations are 'fantastic or delusional.' " *Id*. (quoting *Hodges*, 234 Ill. 2d at 17). When considering whether to summarily dismiss a

postconviction petition at the first stage, a court must take as true "all well-pleaded facts not positively rebutted by the original trial record." *Id*. ¶ 40 (citing *People v. Coleman*, 183 Ill. 2d 366, 385 (1998)). A petition not dismissed as frivolous or patently without merit advances to the second stage. *Id*. ¶ 37. A trial court's first-stage dismissal is reviewed *de novo*. *Id*.

¶ 23 On appeal, the defendant argues that: (1) if the summary dismissal of the postconviction petition encompassed an implicit dismissal of the second degree murder argument, the trial court erred in entering that dismissal; (2) if the summary dismissal did not include an implicit dismissal of the second degree murder, it was only a partial summary dismissal, which is not legally permitted; and (3) Judge Collins should have recused herself from hearing the postconviction proceedings because of her acquaintance with the victim's mother. The first two arguments are premised on an implicit assertion that the trial court should have considered the motion to modify as an addendum or a part of the postconviction petition. We first consider whether this assertion is correct. To do so, we must construe the relevant provision of the Act.

¶ 24 In construing a statute, our task is to "ascertain and give effect to the legislature's intent." *Lieb v. Judges' Retirement System*, 314 Ill. App. 3d 87, 92 (2000). We begin by examining the statute's language, which is the most reliable indicator of the legislature's objectives in enacting a particular law. *Yang v. City of Chicago*, 195 Ill. 2d 96, 103 (2001). The statutory language must be afforded its plain and ordinary meaning, and where the language is clear and unambiguous we must apply the statute without resort to further aids of statutory construction. *In re Michael D.*, 2015 IL 119178, ¶ 9. We will not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent. *Id*.

¶ 25 Under section 122-1(d) of the Act (725 ILCS 5/122-1(d) (West 2014)), "[a] person seeking relief by filing a petition under this Section must specify in the petition or its heading that it is filed under this Section." If the filing "fails to specify in the petition or its heading that it is filed under this Section," the trial court "need not evaluate the petition to determine whether it could otherwise have stated some grounds for relief" under the Act. *Id*.

¶ 26 Here, the trial court received, on the same date, not one but two documents that referred to the Act: a typewritten document labeled a postconviction petition, and the handwritten "motion to modify the charge." The latter expressly identified itself as a free-standing motion rather than a postconviction petition, but also requested that the court "alternatively reconstrue this free standing motion as a post-conviction petition pursuant to 725 ILCS 5/122-1." The two documents contained separate arguments and did not refer to one another. Nevertheless, under the plain language of section 122-1(d), the determining factor is whether a document received by the trial court states, either in the title or the body of the document, that it seeks relief under section 122-1 of the Act. As the "motion to modify" included a request that it be evaluated under that section, it qualified as a postconviction petition under section 122-1(d).

¶ 27 Further, given that the trial court received on the same date two documents seeking relief under the Act, it should have considered those documents together, in essence as a single petition. While the defendant may have erred in dividing his postconviction claims between two separate documents without explicitly requesting that they be considered together, such inartful pleading is not unusual. As noted above, most petitions at the first stage are drafted by defendants with little legal knowledge. Indeed, that is why the standard for determining whether a document should be considered a postconviction petition is so straightforward, requiring only a

superficial examination of it to determine whether it states that it seeks relief under section 122-1 of the Act.

¶ 28 The State argues that, even if the defendant's motion to modify also raised a postconviction claim, that claim was considered by the trial court and was summarily dismissed along with the claims raised in the typewritten postconviction petition. The State argues that a trial court need not specifically refer to all of the arguments that it is ruling upon. The State did not provide any legal authority for this assertion. However, even assuming that this principle is correct, here the State's argument is refuted by the record. Nothing in either the trial court's lengthy oral ruling or its written order indicates that it considered the claim raised in the motion to modify (relating to whether counsel should have advanced a theory of second degree murder) when reaching its decision. Given that the trial court carefully addressed all of the arguments raised in the typewritten postconviction petition, the reasonable inference is that, if the court believed that a claim involving a theory of second-degree murder was before it, it would have explicitly addressed that claim as well. On this record, we cannot presume that the trial court considered the postconviction claim raised by the defendant in the "motion to modify."

¶ 29 That being so, we must remand this case so that all of the postconviction claims advanced by the defendant may proceed to the second stage. If a postconviction petition survives the first stage, the defendant is appointed counsel, who must consult with the defendant, examine the record, and amend the petition as necessary to ensure that the defendant's contentions are adequately presented. *People v. Gerow*, 388 Ill. App. 3d 524, 526 (2009). If the State wishes, within 30 days after the order allowing the petition to proceed was docketed, the State may move to dismiss the petition. *Id*. As the State concedes, if even a single claim in a multiple-claim postconviction petition is not dismissed at the first stage, then all of the claims "must be

docketed for second-stage proceedings regardless of the merits of the remaining claims in the petition." *People v. Romero*, 2015 IL App (1st) 140205, ¶ 27. Accordingly, we must reverse the trial court's summary dismissal of the defendant's postconviction petition and remand for second-stage proceedings. As we are remanding, we do not address the defendant's other arguments.

¶ 30 Before closing, we note that we do not fault the trial court for failing to realize that the defendant here had submitted postconviction claims in two documents, given that a clearly-marked postconviction petition was in the file. Nevertheless, the statutory language is clear and unambiguous, and we may not ignore its requirements. Of course, a trial court confronted with similarly confusing documents in the future may directly question the defendant to ascertain which of the claims presented the defendant wishes to pursue. See, *e.g.*, *People v. Bland*, 2011 IL App (4th) 100624, ¶¶ 8-9, 24 (where defendant filed a motion to vacate the judgment that referred to both section 122-1 of the Act and section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)), trial court questioned the defendant to determine which statute he wished to proceed under, and the defendant asked to proceed under the Act).

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, the March 14, 2014, order of the circuit court of Winnebago County entering a first-stage dismissal of the defendant's postconviction petition is vacated and the cause is remanded for further proceedings consistent with this disposition.

¶ 33 Order vacated and cause remanded.