

No. 1-15-1027

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Respondent-Appellee,)	Cook County.
)	
v.)	09 CR 17784
)	
JOSHUA HOSKINS,)	Honorable
)	Steven J. Goebel,
Petitioner-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Lampkin and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *HELD:* Trial court did not err in summarily dismissing defendant's *pro se* postconviction petition claiming ineffective assistance of appellate counsel.

¶ 2 Defendant Joshua Hoskins appeals the trial court's summary dismissal of his *pro se* postconviction petition as frivolous and patently without merit. Defendant contends the trial

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court erred in this regard on the ground that he raised the gist of a constitutional claim that his appellate counsel was ineffective for failing to raise an insufficiency of the evidence argument on direct appeal. Defendant focuses his argument on the credibility of the State's rebuttal witness, Corrections Officer Daniel Steffan. Defendant maintains the evidence was insufficient to support his convictions for unlawful possession of contraband in a penal institution, in light of the officer's incredible and inconsistent rebuttal testimony. We disagree and for the reasons that follow, we affirm.

¶ 3

BACKGROUND FACTS

¶ 4 Sergeant Duane Collins testified at trial that on August 30, 2009, at approximately 7 a.m., he was working at the Cook County jail when a call came out over the radio alerting corrections officers that a fight was in progress between some inmates on the fourth floor. Sergeant Collins, followed by a group of his fellow corrections officers, entered the fourth floor day room where the altercation was occurring. The sergeant observed defendant with metal objects or shanks (jail-made knives) in his hands. Defendant was swinging the shanks in a circular motion to fend off a group of inmates who were trying to surround him.

¶ 5 Sergeant Collins and other corrections officers yelled at the inmates to "hit the floor." All of the inmates, except defendant, complied with the directive. Sergeant Collins approached defendant and ordered him to turn over the shanks. Defendant hesitated and tried to hand the shanks to an inmate in a nearby jail cell. After the inmate refused to take the shanks, Sergeant Collins again ordered defendant to turn over the weapons, which he did. The sergeant identified People's exhibits 1 and 2 as photos of the shanks he took from defendant.

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¶ 6 Searches of other inmates and jail cells on the tier where the incident occurred revealed no additional weapons. Defendant was escorted from the day room and placed in a holding area while officers completed paperwork concerning the incident.

¶ 7 Sergeant Collins' testimony regarding the incident was corroborated by a video recording taken of the events as they unfolded in the day room. The sergeant narrated the video recording for the court.

¶ 8 Sergeant Collins testified on cross-examination that he did not know where the shanks came from or how they came into the defendant's possession. The sergeant surmised that another inmate could have given the shanks to defendant. According to the sergeant, no inmates came forward to say how the incident started.

¶ 9 Corrections Officer Ramon Fondren gave testimony similar to that given by Sergeant Collins. He testified that when he arrived at the day room he observed the defendant waving around two shanks, attempting to keep other inmates away from him. According to Officer Fondren, the other inmates were "within a few feet [of the defendant] trying to surround him, trying to get behind him and in front of him." Officer Fondren later observed the defendant unsuccessfully attempt to put the shanks into a nearby cell, before handing them over to Sergeant Collins.

¶ 10 After the trial court denied defendant's motion for a directed finding at the close of the State's case-in-chief, he presented the testimony of Jerame Moore. Moore and defendant were fellow inmates at the jail at the time of the incident. Moore testified that on the day of the incident he was in the front of the day room watching television when he heard a "smacking

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sound" from the back of the room. He turned around and saw defendant on top of a Hispanic inmate. The Hispanic inmate had two knives in his waistband and the defendant was struggling to get possession of the weapons.

¶ 11 Moore claimed that defendant eventually gained possession of the knives and then went to the back of the tier and tried to hand them to an inmate in a nearby cell, but the inmate refused to take the knives. Moore testified that by this time, corrections officers arrived in the day room, and that he and the other inmates moved to walls. Moore testified that defendant gave the knives to the corrections officers.

¶ 12 Moore testified on cross-examination that he did not see any inmates threaten defendant and did not see defendant swinging the knives at any inmates. He did not know how the altercation started.

¶ 13 The State called Corrections Officer Daniel Steffan as a witness to rebut Moore's testimony. Officer Steffan testified that on the day of the incident, he and Officer Fondren were in the officers' housing center on the tier, when he saw defendant run from the back of the day room to one of the tables in front of the room and strike a Hispanic inmate with a closed fist. After striking the inmate, defendant ran to the back of the day room and pulled a knife from a bag containing his personal belongings and then ran to the stairwell door where he retrieved a second knife. Defendant then stood in the back of the day room with a knife in each hand shouting "Come on, you mother f**kers, let's go." At this time, there were several inmates in front of the defendant.

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¶ 14 Officer Steffan sent out a radio call alerting corrections officers there was a fight in progress between some inmates on the tier. Officer Steffan waited for backup officers to arrive and then they all entered the tier and directed the inmates to lie on the floor. All of the inmates complied with the directive, except for defendant. Officer Steffan testified that after defendant turned over the knives to Sergeant Collins, he and the sergeant escorted defendant out of the day room.

¶ 15 Officer Steffan testified on cross-examination that he never came into physical possession of the shanks and he never told investigating detective J. Dugandzic that defendant handed over the shanks to him, rather than to Sergeant Collins. Officer Steffan further testified that in his written report to the investigating detective, he never wrote that the shanks were handed over to him. After defense counsel finished cross-examining Officer Steffan and the State rested in rebuttal, the parties stipulated that the investigating detective noted in his supplemental report that "Officer Steffan stated inmate Hoskins handed over the shanks to Correctional Officer Steffan which were then inventoried." The defense then rested.

¶ 16 The trial court found defendant guilty of two counts of unlawful possession of contraband in a penal institution. After denying defendant's motion for a new trial, and hearing arguments in aggravation and mitigation, and defendant's statement in allocution, the trial court sentenced him to two concurrent 10-year terms of imprisonment. The concurrent sentences were to be served consecutive to a previously imposed 19-year sentence for attempt murder.

¶ 17 On direct appeal, defendant argued that the sentences imposed upon him for his convictions for unlawful possession of contraband in a penal institution were excessive in light

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of "substantial" mitigating evidence. We disagreed and affirmed in a summary order. *People v. Hoskins*, No. 1-12-2009 (unpublished under Supreme Court Rule 23). The Illinois Supreme Court denied defendant's subsequent request for leave to appeal. *People v. Hoskins*, No. 117368 (Ill. May 28, 2014).

¶ 18 On November 20, 2014, defendant filed a *pro se* petition for postconviction relief from his convictions for unlawful possession of contraband in a penal institution. The trial court summarily dismissed the petition, finding that all of the issues raised therein were frivolous and patently without merit. This appeal followed.

¶ 19 ANALYSIS

¶ 20 Defendant contends the trial court erred in summarily dismissing his *pro se* postconviction petition at the first stage of the postconviction proceeding, arguing that he raised the gist of a constitutional claim of ineffective assistance of appellate counsel. Defendant maintains appellate counsel was ineffective for failing to argue that the evidence was insufficient to support his convictions for unlawful possession of contraband in a penal institution beyond a reasonable doubt. Specifically, he faults appellate counsel for failing to challenge Officer Steffan's rebuttal testimony on the alleged grounds that the testimony was inconsistent, incredible, and contradicted by the testimony of other State witnesses as well as video footage of the incident.

¶ 21 The Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2000)), provides a statutory remedy by which an imprisoned criminal defendant can collaterally attack his conviction or sentence based on a substantial denial of his federal or state constitutional

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rights. *People v. Tenner*, 175 Ill. 2d 372, 377 (1997). "The purpose of a post-conviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal." *People v. Harris*, 206 Ill. 2d 1, 12 (2002).

¶ 22 A post-conviction proceeding not involving the death penalty is divided into three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). We review this case at the first stage of the postconviction process. At the first stage, the trial court independently reviews the petition, taking the allegations as true, and determines whether it is frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). At this stage, the trial court may summarily dismiss the petition if it finds that the allegations in the petition are frivolous and patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2000).

¶ 23 A petition is considered frivolous and patently without merit if the allegations in the petition, when taken as true and liberally construed, fail to present the "gist" of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The "gist" standard is low, since in many cases a defendant initially files his postconviction petition *pro se* without the aid of counsel. See *Gaultney*, 174 Ill. 2d at 418.

¶ 24 In order to set forth the "gist" of a constitutional claim, the postconviction petition need only present a limited amount of detail and need not include legal arguments or citations to legal authority. *Gaultney*, 174 Ill. 2d at 418. However, the "gist" of a meritorious claim is more than a bare allegation of a deprivation of a constitutional right. *People v. Lemons*, 242 Ill. App. 3d 941, 946 (1993). Rather, a defendant must plead sufficient facts from which the trial court could find

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a valid claim of deprivation of a constitutional right. *Lemons*, 242 Ill. App. 3d at 946. A trial court's summary dismissal of a defendant's postconviction petition is reviewed *de novo*. *People v. Barrow*, 195 Ill. 2d 506, 519 (2001).

¶ 25 In the instant case, defendant contends his *pro se* petition stated the gist of a meritorious claim of ineffective assistance of appellate counsel. Claims of ineffective assistance of appellate counsel are evaluated under the same two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) for assessing claims of ineffective assistance of trial counsel. *Harris*, 206 Ill. 2d at 34.

¶ 26 In order to demonstrate ineffective assistance of appellate counsel, a defendant must allege facts demonstrating both that counsel's failure to raise an issue on direct appeal was objectively unreasonable and that counsel's decision prejudiced the defendant. *People v. Flores*, 153 Ill. 2d 264, 283 (1992). "Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong." *People v. Easley*, 192 Ill. 2d 307, 329 (2000). Therefore, unless the underlying issue has merit, defendant suffers no prejudice from appellate counsel's failure to raise an issue on appeal. *People v. Peebles*, 205 Ill. 2d 480, 514 (2002). Applying these principles to the instant case, we find defendant failed to establish he was prejudiced by appellate counsel's decision not to raise an insufficiency of the evidence argument premised on the ground that Officer Steffan's rebuttal testimony was incredible.

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¶ 27 A criminal conviction will not be set aside on grounds of insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). When reviewing the sufficiency of the evidence in a criminal case, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Cooper*, 194 Ill.2d 419, 430-31 (2000). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, it is for the trier of fact to determine the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Enis*, 163 Ill. 2d 367, 393 (1994).

¶ 28 In this case, defendant was convicted of two counts of unlawful possession of contraband (shanks) in a penal institution in violation of section 31A-1.1(b) of the Criminal Code of 1961 (Code) (720 ILCS 5/31A-1.1(b) (West 2008)). To convict defendant of this offense, the State was required to prove that he knowingly possessed contraband in a penal institution, regardless of the intent with which he possessed the contraband. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 21. Based on our review of the record, we find the evidence was more than sufficient to support defendant's convictions for unlawful possession of contraband in a penal institution in violation of section 31A-1.1(b) of the Code. Defendant however does not challenge the sufficiency of the evidence as to any specific element of the offense; rather, he asserts that Officer Steffan's rebuttal testimony was so incredible as to be unworthy of belief.

¶ 29 The State presented the testimony of Officer Steffan to rebut Jerame Moore's testimony inferring that defendant was acting in self-defense when he allegedly gained possession of the shanks from the Hispanic inmate during a physical struggle. Defendant now contends that the officer's rebuttal testimony was so obviously incredible that appellate counsel should have raised an insufficiency of the evidence argument on direct appeal, and that counsel's failure to do so amounted to ineffective assistance. Defendant raises a number of arguments in support of this contention, none of which merit reversal of his convictions.

¶ 30 Defendant first argues that Officer Steffan's testimony concerning him striking the Hispanic inmate was so incredible as to be unworthy of belief because it made no sense that he would strike an inmate and then run to the rear of the day room to retrieve shanks where he risked being intercepted or tripped up by that inmate or other inmates before he could reach the weapons. We disagree. We do not find the facts as described by Officer Steffan so improbable or contrary to human experience or human behavior as to discredit his testimony. See, *e.g.*, *People v. Foules*, 258 Ill. App. 3d 645, 654 (1993) (finding nothing inherently improbable about officers' testimony).

¶ 31 Defendant next argues that Officer Steffan's contention that he and Officer Fondren were together in the officers' housing center just before the incident occurred, was contradicted by the testimony of Officer Fondren who testified that he arrived on the scene after Officer Steffan sent out the alert. Our examination of the record reveals no such inconsistencies or contradictions between the testimonies give by the two corrections officers.

¶ 32 Defendant next contends that Officer Steffan's testimony regarding the confiscated shanks was so incredible as to be unworthy of belief because he gave inconsistent testimony regarding whether he inventoried the shanks or ever physically possessed the weapons. We disagree because these arguments are not supported by the record.

¶ 33 Officer Steffan was asked on cross-examination, "[w]hen did you come into possession of those shanks to inventory them?" He replied that he was never in possession of the shanks. He testified that Sergeant Collins was in possession of the weapons "the whole time." Officer Steffan added that he was given photocopies of the shanks and then ordered to fill out a report.

¶ 34 When defense counsel asked Officer Steffan if he recalled telling investigating detective J. Dugandzic that the defendant handed the shanks over to him, Steffan denied ever saying such a thing to the detective. Defense counsel attempted to impeach Officer Steffan's testimony with an alleged prior inconsistent statement he purportedly made in a supplemental investigative report drafted by detective J. Dugandzic. The parties stipulated that the detective noted in his supplemental report that "Officer Steffan stated inmate Hoskins handed over the shanks to Correctional Officer Steffan which were then inventoried per CCDOC policy."

¶ 35 Despite defendant's attempts to impeach Officer Steffan's testimony, the trial court, as the trier of fact, heard the evidence and found Steffan's testimony to be credible. It is the function of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve conflicts in the evidence and to draw reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). Here, the trial court was in a superior position to assess the credibility of Officer Steffan's testimony and observe his demeanor while

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he testified, and we find no reason to disturb its findings. See, *e.g.*, *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004).

¶ 36 Finally, contrary to defendant's argument, video footage of the incident does not contradict Officer Steffan's testimony that he along with Sergeant Collins approached defendant in the back of the day room. State's exhibits Nos. 4, 00:02, 00:06, 00:08, 00:13, and 00:16, snapshots of the video footage of the incident, clearly show a white-shirted Sergeant Collins along with several other dark-shirted correction officers, walk to the back of the day room and approach defendant. Hence, the video and State's exhibits corroborate Officer Steffan's testimony that he also approached the defendant.

¶ 37 In his interpretation of the snapshots of the video footage, defendant appears to suggest that the photos served to impeach Officer Steffan's testimony since they do not depict him following directly behind Sergeant Collins as the sergeant approached the defendant. We decline to adopt such an interpretation.

¶ 38 In sum, we conclude defendant has failed to establish ineffective assistance of appellate counsel under either prong of *Strickland*. Defendant has failed to show that appellate counsel's decision not to raise an insufficiency of the evidence argument was objectively unreasonable and he has also failed to show that, had counsel raised the issue on direct appeal, there was a reasonable probability the outcome at trial would have been different. Accordingly, the trial court did not err in summarily dismissing defendant's *pro se* postconviction petition claiming ineffective assistance of appellate counsel.

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¶ 39 For the foregoing reasons, we affirm the trial court's summary dismissal of defendant's *pro se* postconviction petition as frivolous and patently without merit.

¶ 40 Affirmed.