2017 IL App (1st) 151342-U

THIRD DIVISION
February 15, 2017

No. 1-15-1342

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. 09 C2 20073
	)	
PRABHJOT UPPAL,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the circuit court's second-stage dismissal of defendant's amended postconviction petition where: (1) she failed to make a substantial showing that her trial counsel was ineffective; (2) the court did not improperly ignore and strike a *pro se* motion filed by her; and (3) her claims that postconviction counsel provided unreasonable assistance were speculative, conclusory and unsupported by the record.

¶ 2 Defendant Prabhjot Uppal appeals from an order of the circuit court, granting the State's motion to dismiss her amended petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2014)). She contends that: (1) the circuit court erred in dismissing her postconviction petition where she made a substantial showing that her trial counsel was ineffective for failing to present certain evidence to the trial court and coercing her into pleading guilty; (2) the court erred in ignoring and striking a *pro se* motion filed by her; (3) postconviction counsel provided unreasonable assistance; (4) the State committed prosecutorial misconduct during the trial court proceedings; and (5) trial counsel had a conflict of interest. We affirm.

¶ 3 In January 2007, under case number 07 CR 2129, the State charged defendant with three counts of harassment by telephone (720 ILCS 135/1-1 (West 2004)) and one count of harassment through electronic communications (720 ILCS 135/1-2(a)(4) (West 2004)), all based on contacting George Bovis with the intent to abuse, threaten and harass him between October 2005 and August 2006. After being charged, the trial court released defendant on bond with the condition that she could not contact Bovis.

¶ 4 In February 2009, the State charged defendant in case number 09 C2 20073 with one count of harassment of a witness (720 ILCS 5/32-4a(a)(2) (West 2008)) and one count of harassment by telephone (720 ILCS 135/1-1 (West 2008)), all based on an incident on January 20, 2009, where she allegedly contacted and harassed Bovis.

¶ 5 On November 3, 2009, defendant appeared in court and her trial counsel informed the court that she wanted a guilty plea conference pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012). The court explained to defendant what a Rule 402 conference entailed, which she

stated she understood, and asked her if she wanted one. She responded "[p]lease." The parties recessed for the conference off the record. Upon the case being recalled, trial counsel informed the court that defendant could not be located, and as a result, he was unable to discuss the results of the conference with her. An assistant State's Attorney noted for the record that trial counsel had "tried all phone numbers" for defendant. Based on defendant's absence, the court issued a bond forfeiture warrant.

¶ 6 Later that same day, defendant re-appeared in court along with an associate of trial counsel, who moved to vacate the bond forfeiture warrant. After noting that the case was scheduled for trial that day, the trial court denied the motion, finding that defendant's actions, including those that caused case number 09 C2 20073 to be filed against her and absenting herself during the Rule 402 conference, were "dilatory" in nature and vacating the warrant was "not in the interest of justice." The court ordered defendant to be held in custody without bail. After setting an interim status date, defense counsel requested, and the court ordered, a behavioral clinical examination of defendant. At the conclusion of her court appearance, defendant stated that "they told me there was no trial today."

¶ 7 Approximately one month later, Dr. Monica Argumedo filed a report concluding that, based on her examination of defendant, defendant was legally sane at the time she committed the alleged offense and was fit to stand trial. Defendant's case was set for trial on January 19, 2010.

¶ 8 That day, defense counsel informed the court that defendant wanted to plead guilty to one count of harassment of a witness in case number 09 C2 20073. The court admonished her as follows:

"THE COURT: Do you understand you have a right to plead not guilty and you may have a trial in this matter if you so choose?

THE DEFENDANT: Yes.

THE COURT: There is [*sic*] two types of trial. There is a trial by me without a jury, which is known as a bench trial, and a jury trial. Do you understand the differences between a bench trial and a jury trial and how each one would proceed?

THE DEFENDANT: Yes.

THE COURT: I have in my hand a document titled jury waiver and waiver of presentence investigation. Did you sign this document twice?

THE DEFENDANT: Yes.

THE COURT: Do you understand the first time you signed this document you are telling the Court in writing that you wish to give up your right to a jury trial, do you understand that?

THE DEFENDANT: Yes.

THE COURT: When you plead guilty, there will not be a trial of any kind. There will not be a bench trial or a jury trial. That means you are giving up certain rights which include the right to remain silent, the right to see and hear the witnesses that would testify against you, the right to cross-examine witnesses, and the right to call witnesses on your own behalf. Do you understand you give away those rights when you plead guilty?

THE DEFENDANT: Yes.

THE COURT: Has anyone forced you, threatened you, or promised you anything which is causing you to plead guilty?

THE DEFENDANT: No.

* * *

THE COURT: Has anyone forced you, threatened you, or promised you anything which is causing you to plead guilty today?

THE DEFENDANT: No.

THE COURT: Is this your decision and your decision alone?

THE DEFENDANT: Yes."

¶ 9 The State subsequently presented a factual basis for defendant's guilty plea. George Bovis was a surgeon associated with Lutheran General Hospital and supervised medical students, including, at one point, defendant. During defendant's surgical rotation, she made "bizarre comments" toward Bovis, gave him a "DVD" of love songs and made inappropriate phone calls to him. Although he wrote defendant a "less than stellar" recommendation, she was hired by Lutheran General Hospital as a resident. When Bovis found out, he went to the "authorities" at the hospital and told them he did not want to have any contact with her. At a meeting with hospital personnel, defendant was informed "not to contact Dr. Bovis for any reason." After the meeting, Bovis received several pages and a phone message from defendant. He reported the communications to the hospital "authorities," who then terminated defendant's employment.

¶ 10 Afterward, defendant made harassing phone calls to Bovis, which led to her arrest and being charged in case number 07 CR 2129. Defendant was released on bond, and as part of the conditions of her release, she was prohibited from contacting Bovis, the State's chief witness in the case. On January 20, 2009, at approximately 8:19 p.m., Bovis received a page while he was

home. When he called the number that had paged him, he recognized defendant's voice on the other end. Bovis' "position" was that she intended to "harass" him.

¶ 11 The trial court accepted defendant's guilty plea, finding she made it "freely and voluntarily." The State nol-prossed the remaining counts against defendant. The court subsequently sentenced her to two years' probation and required her to receive a mental health evaluation and comply with any recommendations from the evaluation. Trial counsel also noted for the record that, as a "collateral consequence[]" of defendant's guilty plea, he had informed her that she could permanently lose her license to practice medicine. She responded "[i]n this country, yes, I understand that." The court confirmed with defendant that she understood this possible consequence to which she responded "I understand that." Defendant did not move to withdraw her guilty plea or file a direct appeal.

¶ 12 On October 15, 2010, the State filed a petition for a violation of probation against defendant for felony intimidation. On September 14, 2011, the State filed a petition for a violation of probation against defendant for violating a court order, which had required her not to have contact with her trial counsel.

¶ 13 On January 18, 2013, defendant filed a postconviction petition, through private counsel, alleging that, because of the ineffective assistance of her trial counsel, her guilty plea was not voluntarily made. The circuit court advanced the petition to second-stage proceedings under the Act.

¶ 14 On October 9, 2013, while defendant's petition was pending, she filed a "Motion to Admit Newly Discovered Evidence of Actual Innocence and to Authorize Subpoena Power and to Grant Leave to File Amended Petition for Post-Conviction Relief." She amended that motion

and filed it on October 18, 2013. In part, defendant requested the ability to subpoena her phone records as well as those of Bovis. According to a memorandum of orders from October 18, 2013, the circuit court allowed defendant to subpoena her own phone records, but, because the State objected to defendant's request concerning Bovis' phone records, it gave the State an opportunity to file a written response. The record is unclear regarding defendant's request to obtain Bovis' phone records, but it appears that the court denied it.

¶ 15 On June 30, 2014, defendant, though a different private counsel, filed an amended postconviction petition, arguing that she unintelligently and unknowingly pled guilty based upon the ineffectiveness of her trial counsel. The petition asserted that counsel's representation was deficient where he: (1) failed to review the discovery tendered by the State; (2) failed to review the discovery with her after her repeated requests; (3) failed to conduct any investigation of the case; and (4) failed to prepare for her scheduled jury trial. The petition argued that, had counsel performed these tasks and reviewed the evidence, particularly defendant's phone records which had been obtained by him during discovery, counsel would have discovered that the allegations against her could not have occurred as Bovis claimed and thus, counsel would not have advised her to plead guilty. The petition claimed that, because counsel failed to review the evidence, he did not competently advise defendant regarding her guilty plea. The petition further asserted that defendant had been prejudiced because she was "actually innocent of the charges" where Bovis' allegations were disproven based on the phone records, but also the routine practice of Lutheran General Hospital with respect to on-call procedures.

¶ 16 Various exhibits were attached to the petition, including a charge of discrimination filed by defendant with the Equal Employment Opportunity Commission against Lutheran General

Hospital, affidavits from defendant and her mother, phone records from defendant's phone on January 20, 2009, records purporting to identify the sources of the phone numbers defendant called and received on January 20, 2009, and police reports about the case.

¶ 17 In defendant's affidavit, she averred that, on January 20, 2009, she never paged Bovis, never received a telephone call from him and never had any contact with him at all that day. She further stated that her mother had paid trial counsel $70,000 for his representation, but neither he nor his associate ever met with defendant to discuss the evidence against her or a possible defense. As a result, she did not know the specific allegations against her. Counsel told her that she would not be successful at trial and would receive "the maximum sentence" of seven years' imprisonment, but if she pled guilty, she would receive only probation. On November 3, 2009, she agreed to allow counsel to have a Rule 402 conference with the trial court and the State. While the conference was occurring, she became worried that she could lose her ability to practice medicine and called counsel, telling him that she would "never plead guilty to a felony."

¶ 18 Afterward, the battery to her phone died, so she went to her vehicle to charge it while she waited for counsel to complete the conference. She averred that, while she was in her vehicle, the case had been recalled, but counsel never called her, and because she was not in court, a warrant was issued for her. When she returned to court later that day, counsel's associate was there. After defendant was ordered to jail, counsel never met with her despite her repeated requests. Over the course of the next few months, defendant was assaulted and raped in jail. She continued refusing to plead guilty despite counsel telling her that she would be released from jail upon doing so. On January 19, 2010, the day her trial was scheduled to begin, counsel still had not discussed any aspect of the case with her. When she met with counsel that day, he told her again that, if she

went to trial, she would be sentenced to seven years' imprisonment. Consequently, defendant "reluctantly" pled guilty "out of desperation, frustration and terror that [she] could never get out of jail because [her] lawyer and judge were both against [her]."

¶ 19 In the affidavit of defendant's mother, Yashvinder Uppal, she averred to similar facts as defendant. She stated that, up to three times per day while defendant was in jail, she called trial counsel and requested that he discuss the case with defendant. Uppal additionally visited counsel's offices at least 20 times to request the same. Each time, counsel told her that he would visit defendant the following day, but neither he nor his associate ever did. Uppal averred that defendant told her that counsel would "never take her case to trial" and she pled guilty "only out of desperation and frustration" from being in jail.

¶ 20 On October 15, 2014, the State filed a motion to dismiss defendant's amended petition. The State argued that the petition failed to make a substantial showing that trial counsel was ineffective where there was no evidence that counsel represented her in a deficient manner and instead, the petition relied on speculative allegations. Further, the State argued that the petition and attached documents failed to show that she did not commit the acts that led to her conviction. Lastly, the State asserted that the trial court proceedings from the day defendant pled guilty showed it was her decision to plead guilty.

¶ 21 Approximately six months later, defendant filed a *pro se* motion, seeking subpoena power and leave to file a second amended postconviction petition.

¶ 22 The following week, the circuit court granted the State's motion to dismiss, finding the claims raised in defendant's amended petition could be dismissed solely based on her guilty plea, which precluded her from raising "independent claims relating to the deprivation of

constitutional rights that occurred prior to the entry of the guilty plea." The circuit court further noted that defendant had been properly admonished concerning her guilty plea and she told the trial court that it was her decision alone to plead guilty. The circuit court also found that defendant had not suffered prejudice as a result of trial counsel's allegedly deficient performance.

¶ 23 After granting the State's motion, the circuit court also addressed defendant's *pro se* motion. Postconviction counsel informed the court that he was unaware defendant had filed the motion. Defendant disagreed, however, and told the court that they had discussed the motion and counsel told her to file it. Counsel did not agree with this assertion and also informed the court that, based on a conversation he had with defendant that morning, he thought his representation of her was "being terminated." The court instructed both of them to discuss the matters in private. After discussing the matters off the record, counsel informed the court that defendant did "not want [him] to withdraw," and he "agreed to strike" the *pro se* motion. The court responded "[*p*]*ro se* filing stricken." This appeal followed.

¶ 24 Initially, we must note that defendant has raised multiple claims on appeal for the first time, including that the State committed prosecutorial misconduct during the trial court proceedings and her trial counsel had a conflict of interest because he allegedly represented Bovis at the same time he represented her. Further, defendant asserts that counsel wanted to protect Bovis "from potential criminal charges and preserv[e] [his] ability to practice medicine at the expense of [her]." These claims, however, have been forfeited because they were not first raised in her original or amended petition. *People v. Barrow*, 195 Ill. 2d 506, 538 (2001); see also 725 ILCS 5/122-3 (West 2014) (stating a defendant forfeits "[a]ny claim of substantial

denial of constitutional rights not raised in the original or an amended petition"). We therefore do not address these claims.

¶ 25 Defendant first contends that the circuit court erred in granting the State's motion to dismiss her amended postconviction petition where she made a substantial showing that her trial counsel provided ineffective assistance. Specifically, she argues that counsel failed to present phone records to the trial court, which would have contradicted the allegations made by Bovis, and counsel coerced her into pleading guilty.

¶ 26 There are three stages of the Act. *People v. Domagala*, 2013 IL 113688, ¶ 32. Relevant here is the second stage. Once a defendant's petition has advanced to the second stage and the State has moved to dismiss the petition, the circuit court must determine whether the petition and any supporting documentation demonstrate a substantial showing of a constitutional violation. *Id.* ¶ 33. "[T]he allegations in the petition must be supported by the record in the case or by its accompanying affidavits." *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). Allegations that are nonfactual and merely conclusory are insufficient to warrant an evidentiary hearing. *Id.* All well-pled facts not positively rebutted by the record must be accepted as true. *Domagala*, 2013 IL 113688, ¶ 35. At the second stage, the court does not undertake any credibility or fact-finding determinations. *Coleman*, 183 Ill. 2d at 385. Rather, the court only determines whether the petition is legally sufficient. *Domagala*, 2013 IL 113688, ¶ 35. The defendant bears the burden of demonstrating a substantial showing. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). We review a second-stage dismissal *de novo. Id.*

¶ 27 "It is well established that a voluntary guilty plea waives all non-jurisdictional errors or irregularities, including constitutional ones." *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). In *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), the United States Supreme Court explained:

> "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."

A defendant's only recourse upon pleading guilty is challenging the voluntariness of the guilty plea and whether it was based on competent advice from counsel. *Id.* at 266-67. "If the defendant's pleas were made in reasonable reliance upon the advice or representation of his attorney, which advice or representation demonstrated incompetence, then it can be said that the defendant's pleas were not voluntary." *People v. Correa*, 108 Ill. 2d 541, 549 (1985).

¶ 28 Turning to the present case, defendant's first claim of ineffective assistance of trial counsel appears to be that counsel performed deficiently by failing to investigate the facts and circumstances surrounding her case more thoroughly, in particular phone records showing "the incoming phone numbers to [her] phone on January 20, 2009." The record, however, is clear that, despite these complaints against counsel, defendant pled guilty on her own free will. Defendant has not demonstrated that a connection exists between counsel's alleged failure to investigate and the voluntariness of her guilty plea. See *Tollett*, 411 U.S. at 266-67; *Townsell*, 209 Ill. 2d 545. She therefore has not made a cognizable claim of ineffective assistance of counsel given her voluntary guilty plea. See *People v. Smith*, 383 Ill. App. 3d 1078, 1086 (2008)

(appellate court would "not consider [a postconviction defendant's] attorney's alleged deficient performance" for "failing to investigate and present a defense of compulsion" where the alleged errors "relate[d] to claims she voluntarily relinquished when she pled guilty.").

¶ 29 Defendant's second claim of ineffective assistance of counsel appears to attack the voluntariness of her guilty plea by arguing that counsel coerced her into pleading guilty thereby rendering her plea involuntary. However, we find the claim rebutted by the record. On January 19, 2010, trial counsel informed the trial court that defendant wanted to plead guilty to one count of harassment of a witness. Defendant did not express any confusion or disagreement with counsel's assertion. During the court's admonishments of defendant, it asked her twice if anyone had "forced [her], threatened [her], or promised [her] anything" in exchange for pleading guilty. Both times, defendant stated that no one had done anything to cause her to plead guilty. The court further asked her if the decision was hers and hers alone, and she responded "yes." Later during those proceedings, she acknowledged that, as a collateral consequence of her guilty plea, she could permanently lose her ability to practice medicine in the United States. Consequently, defendant's allegation that her trial counsel coerced her guilty plea is rebutted by the record. In fact, the record affirmatively shows that defendant's guilty plea was voluntary. Because defendant cannot show her counsel coerced her guilty plea, her claim of ineffective assistance of counsel in this regard fails. Accordingly, defendant has not made a substantial showing that her trial counsel was ineffective.

¶ 30 Defendant next contends that the circuit court erred in ignoring and striking her *pro se* motion, which requested leave to file a second amended postconviction petition. Defendant argues that, in the motion, she made various allegations concerning the deficient representation

of her second postconviction counsel. Citing to *People v. Krankel*, 102 Ill. 2d 181, 187-89 (1984), she asserts that, when a defendant brings a *pro se* claim that her counsel's representation is deficient, the court must inquire into that claim.

¶ 31 Defendant cites to no case law holding the circuit court has a duty investigate postconviction claims of unreasonable assistance of counsel. We therefore find this argument forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Additionally, we cannot find error by the court in ignoring and striking the *pro se* motion because defendant chose to be represented by privately retained counsel, who moved to strike her *pro se* motion. We therefore find no error committed by the circuit court.

¶ 32 Defendant lastly contends that her postconviction counsel provided unreasonable assistance. Specifically, she argues that postconviction counsel "purposefully submitted a falsified document" as an attachment to the amended petition and "counsel's actions were closely aligned with those of the trial counsel to conceal the fact that [Bovis] had lied under oath." These claims are wholly conclusory, speculative and unsupported by anything in the record. We therefore reject these allegations of unreasonable assistance of postconviction counsel.

¶ 33 For the foregoing reasons, we affirm the circuit court of Cook County's dismissal of defendant's amended postconviction petition.

¶ 34 Affirmed.