2017 IL App (1st) 151374-U

No. 1-15-1374

Order filed October 20, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 5970
	)	
RAVON WOODS,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's *pro se* petition for postconviction relief was properly dismissed as frivolous and patently without merit when the petition failed to demonstrate that defendant was arguably denied the effective assistance of counsel.

¶ 2 Defendant Ravon Woods 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 2014)). On appeal, defendant contends the circuit court erred in dismissing his petition because his claim had an arguable basis in law and fact. Specifically, defendant claims that he was arguably denied

the effective assistance of counsel when counsel gave defendant erroneous advice, causing defendant to reject a "deal to a lesser charge for a lesser sentence." We affirm.

¶ 3 Following a bench trial, defendant was found guilty of three counts of attempted murder and two counts of aggravated battery. He was sentenced to 12 years in prison for each of the attempted murder convictions, and to 5 years in prison for each of the aggravated battery convictions. All sentences were to run concurrent to each other.

¶ 4 The evidence at trial established, through the testimony of Rollon Hill, Karla Hill, Derrick Houston, Latrincha McGee, and Serwreatha McGee, that on November 9, 2009, Latrincha and Tyressa Little, the mother of defendant's children, engaged in a verbal altercation after Latrincha closed a door in Tyressa's face. Although Latrincha removed herself from the argument, Tyressa and defendant followed her to a second location. At this point, Tyressa was holding a "stick" that looked like a table or chair leg. Tyressa gave the stick to defendant and began to fight with Latrincha. At one point, Latrincha flipped Tyressa onto the grass and began to punch her in the face. Defendant then walked up and hit Latrincha on the back of the head twice with the "stick" as though he was swinging a baseball bat. Rollon responded by starting to fight defendant. Initially, defendant blocked Rollon's blows with the "stick." Karla then grabbed the "stick" and threw it away. Ultimately, defendant stabbed Rollon in the stomach. Defendant then walked to Karla and stabbed her in the chest. Defendant finally walked to where Latrincha and Tyressa were still fighting and stabbed Latrincha twice in the back. Defendant then picked Tyressa up and they left.

¶ 5 Although the defense presented the testimony of Tyressa, who testified that she was one month pregnant in November 2009, and that it was she who stabbed Latrincha and another

woman who had grabbed her hair during the fight, the trial court found Tyressa's testimony "not credible" and that it was "physically impossible" for Tyressa to have reached around and stabbed Latrincha in the back. In finding defendant guilty of attempted murder and aggravated battery, the court found that when Latrincha got the "upper hand" in the "cat fight," defendant walked up and whacked Latrincha with a table leg and then stabbed Rollon, Karla and Latrincha. Defendant was sentenced to 12 years in prison for each of the attempted murder convictions, and to 5 years in prison for each of the aggravated battery convictions. All sentences were to be served concurrently.

¶ 6 On appeal this court affirmed defendant's convictions for attempted murder and vacated the convictions for aggravated battery pursuant to the one-act, one-crime rule. See *People v. Woods*, 2012 IL App (1st) 111170-U, ¶ 33.

¶ 7 In December 2014, defendant filed the instant *pro se* postconviction petition alleging, in pertinent part, that he was denied the effective assistance of counsel when he relied upon counsel's statement that " 'he did not believe that the defendant would get [*sic*] found guilty of attempted murder,' " to reject an offer of six years in prison if he pled guilty to the charge of attempted murder. Attached to the petition in support were defendant's "sworn declaration" and a July 2014 letter from counsel.

¶ 8 In his "sworn declaration," defendant stated that he rejected the plea deal based upon "faulty" advice from counsel, which resulted in defendant "getting more time." He further stated that counsel stated that if defendant went to trial, he would not be convicted of attempted murder; rather, defendant would be convicted of the lesser charge of aggravated battery. Defendant further stated that he "considered" this information, as well as the information from

counsel that defendant would receive "the minimum sentence" because this was defendant's "first offense" and he did not have a "background," and the fact that counsel "knew more about the law" when rejecting the plea and going to trial. Defendant finally stated that after trial he was found guilty of attempted murder and sentenced to 12 years in prison, and that he "would have taken the plea if not given that faulty information." In the July 2014 letter, attached to the petition, counsel stated that he had "no letters or documents showing a plea offer" in defendant's case. However, the letter indicated that counsel remembered that the State offered defendant "six years" if he entered a guilty plea, that counsel told defendant about the offer prior to trial, and that defendant "rejected" the offer. The court summarily dismissed the petition as frivolous and patently without merit in a written order.

¶ 9 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 2014). 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. *Id.* at 11-12. 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." *Id.* at 16. A petition lacks an arguable basis in law when it is grounded in "an indisputably meritless legal theory," for example, a legal theory which is completely contradicted by the record. *Id.* A petition lacks an arguable basis in fact when it is based on a "fanciful factual allegation," such as

one that is "fantastic or delusional." *Id*. at 16-17. This court reviews the summary dismissal of a postconviction petition *de novo*. *People v. Tate*, 2012 IL 112214, ¶ 10.

¶ 10 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." *Id.* at 17. A defendant's failure to satisfy either prong of the *Strickland* test will defeat an ineffective assistance of counsel claim. *People v. Enis*, 194 Ill. 2d 361, 377 (2000).

¶ 11 We note that in *Tate*, our supreme court held that questions of trial strategy, such as allegations that trial counsel failed to call certain witnesses, are better suited to second stage review where the parties are represented by counsel and the burden of making a substantial showing is on defendant. See *Tate*, 2012 IL 112214, ¶ 22. However, in this case, we are not being called upon to second guess decisions made during the course of trial that might have affected the outcome such as which witnesses to call, how to cross-examine individual witnesses or what arguments to make. Instead, we are simply being asked whether counsel's advice before trial constituted a good faith and reasonable assessment of likely outcomes. Therefore, we do not find that this is a case, like *Tate*, better suited for second stage proceedings.

¶ 12 A defendant's "sixth amendment right to the effective assistance of counsel applies to the plea-bargaining process." *People v. Hale*, 2013 IL 113140, ¶ 15 (citing *Lafler v. Cooper*, 566 U.S. 156, 162-63 (2012)). "This right to effective assistance of counsel extends to the decision to

reject a plea offer, even if the defendant subsequently receives a fair trial." *Id.* ¶ 16 (citing *People v. Curry*, 178 Ill. 2d 509, 518 (1997)). A claim of ineffective assistance of counsel during a plea bargain is governed by *Strickland*. *Id.* ¶ 15.

¶ 13 In *People v. Curry*, 178 Ill. 2d 509 (1997), *abrogated on other grounds*, *People v. Hale*, 2013 IL 113140, our supreme court distinguished between those cases where counsel's advice was predicated on an understanding "which was plainly erroneous when viewed at the time of plea negotiations," and those cases were a defense recommendation was "the product of a defensive strategy or judgment which was proven to be unwise only in hindsight." *Id.* at 529. In the instant case, defendant's postconviction petition does not allege that counsel affirmatively misstated the consequences of rejecting the plea offer; rather, defendant stated that he relied on counsel's statement that counsel " 'did not believe that the defendant would get [*sic*] found guilty of attempted murder,' " when rejecting a plea offer of six years in exchange for a guilty plea to the charge of attempted murder. In other words, defendant relied on counsel's professional judgment regarding the outcome of the case when rejecting the plea offer.

¶ 14 This court has previously held that "[a]n attorney's honest assessment of a case, when made based on his or her professional experience, cannot be considered misleading." *People v. Buchanan*, 403 Ill. App 3d 600, 607 (2010). See also *People v. Wilson*, 295 Ill. App. 3d 228, 237 (1998) ("It is well settled in Illinois that an attorney's honest assessment of a defendant's case may not be the basis for holding a guilty plea involuntary."). In other words, "attorneys are regularly called upon to assess the strength of cases, [and] must do so in advising clients whether to take plea deals." *Buchanan*, 403 Ill. App 3d at 607. See also *People v. Bien*, 277 Ill. App. 3d

744, 751 (1996) ("A defense attorney's honest assessment of a defendant's case cannot be the basis for holding a defendant's guilty plea was involuntary.")

¶ 15 In the case at bar, defendant contends that counsel believed that defendant would not be convicted of attempted murder at trial. Rather, counsel believed that defendant would be convicted of the lesser charge of aggravated battery and would receive "the minimum sentence" because this was defendant's "first offense." Defendant has offered nothing to indicate that this was anything other than counsel's honest assessment of defendant's case. The record reveals that at trial, the defense theory was that defendant was protecting his pregnant girlfriend and presented the testimony of Tyressa, who testified that it was she rather than defendant who stabbed two of the victims. That the defense's theory of the case was not ultimately successful does not, in and of itself, establish deficient performance. See *People v. Fuller,* 205 Ill. 2d 308, 330 (2002) (to succeed on a claim of ineffective assistance of counsel a defendant must show that his counsel's advice fell below an objective standard of reasonableness; "not whether a court would in retrospect consider the advice to be right or wrong").

¶ 16 *People v. Hobson*, 386 Ill. App. 3d 221 (2008), is instructive. In that case, the defendant alleged: " 'When I told him [defense counsel] that I shot the deceased in self defense, he told me to waive a jury and take a bench trial. He told me that the judge *** would find me not guilty if I took a bench trial, that he knew the judge and the judge was alright.' " *Id.* at 242.

¶ 17 On appeal, the court stated that "defense counsel's advice to defendant to waive his right to a jury because 'he knew the judge and [the judge] was alright' and would find him not guilty, constituted a prediction based upon counsel's evaluation of the mitigating circumstances of the

case which counsel intended to assert on behalf of defendant and his knowledge by reputation and/or by experience of the trial judge's previous record." *Id*. at 243.

¶ 18 Similarly, here, counsel made a candid prediction that defendant would not be convicted of attempted murder based upon counsel's evaluation of the case, including the fact that the defense planned to present a witness who claimed that it was she rather than defendant who stabbed two of the victims. The mere fact that counsel's belief that defendant would, at worst, be found guilty of the lesser offense of aggravated battery rather than attempted murder was incorrect does not render his representation outside the range of competence expected of attorneys in criminal cases. See *People v. Gray*, 2012 IL App (4th) 110455, ¶¶ 49-53 (in determining that the defendant was not arguably denied the effective assistance of counsel and affirming the summary dismissal of the defendant's *pro se* postconviction petition, the court held, *inter alia*, that a reviewing court should assume that counsel "is a rational person with sound judgment, making an honest, realistic assessment of defendant's chances in a trial in the light of all the evidence"). Accordingly, as defendant has failed to demonstrate that counsel's performance arguably fell below an objective standard of reasonableness (*Hodges*, 234 Ill. 2d at 17), his *pro se* postconviction petition was properly summarily dismissed.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.