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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 Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-4062
)	
NATHANIEL R. LEGORE,)	Honorable
)	Joseph V. Salvi,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in summarily dismissing defendant's postconviction petition, because defendant failed to attach necessary supporting evidence or adequately explain its absence. Even otherwise, defendant's allegations would not arguably meet the standard for a claim of ineffective assistance of counsel. Therefore, we affirmed.

¶ 2 Following a jury trial, defendant, Nathaniel R. Legore, was convicted of the first-degree murder (720 ILCS 5/9-1(a) (West 2008)) of his father, Guillermo Legore. Defendant now appeals from the trial court's summary dismissal of his *pro se* petition under the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). Defendant argues

that he alleged a gist of a constitutional claim that his trial counsel was ineffective for failing to support her “alternative suspect strategy” with evidence showing that Guillermo’s live-in girlfriend, Phyllis Curry, had the same motive and opportunity to kill Guillermo as did defendant. We affirm.

¶ 3

I. BACKGROUND

¶ 4 We begin by summarizing the evidence presented at trial. On March 2, 2009, Guillermo was working as a security guard at a Waukegan middle school. At about 11 a.m., he received a cell phone call and told the assistant principal that he had to go home for a family emergency and would be right back. At about 4:30 p.m., emergency personnel were called to Guillermo’s home. There were no signs of forced entry to the house. Curry directed the police to Guillermo, who was face down in a closet. It was later determined that he had suffered an “execution-style” gunshot wound to the back of the head. A forensic pathologist opined that Guillermo’s body was in the early stages of rigor mortis and lividity (pooling of the blood) at 5:30 or 5:40 p.m. that day, which usually begins four to six hours after death.¹ He testified that rigor mortis and lividity could take longer if the ambient temperature was cooler.

¶ 5 All of the evidence linking defendant to the murder was circumstantial. Defendant left Boston at the end of February 2009 wearing a tan, puffy coat with a hood. He stayed at the Great Lakes Navy Lodge from February 27, 2009, to March 3, 2009. Cell phone records showed that the last call Guillermo answered on his cell phone was at 11:06 a.m. on March 2, 2009, from a pay phone at the Great Lakes train station. Surveillance video showed a man in a tan coat in the pay phone area at 11:04 a.m. A utility worker near Guillermo’s home saw a person walk by that

¹ Based on this estimate, Guillermo may have been killed between 11:30 a.m. and 1:40 p.m.

day at about 11:15 a.m. wearing a dark, puffy winter parka. Surveillance video showed defendant entering the naval base at 11:47 a.m.

¶ 6 The State theorized that defendant killed Guillermo because defendant had financial problems and hated his father. Defendant was not employed and left Boston after the cousin he had been living with lost his job and told him that he needed to move out. The day after Guillermo's murder, defendant came to the police station asking why Guillermo's house was boarded up and saying that the police should not have Guillermo's car. Defendant's half-sister ran into him on March 6, 2009, and he had all of his belongings in a duffel bag. He stayed with her for a couple of days and told her many times that he wanted to get into Guillermo's house. For the next two or three weeks, defendant stayed with a family that he knew in Guillermo's neighborhood, and he said that he would like to live in Guillermo's house and pay the mortgage on it. According to defendant's twin brother (a convicted felon), defendant was upset with Guillermo in October 2006 because Guillermo never paid back the money that he received from selling defendant's furniture.

¶ 7 The police interviewed defendant three times. During the first interview on March 7, 2009, defendant said that he did not remember where he was on March 2 and that he did not care what happened to Guillermo. During the second interview on January 14, 2010, defendant admitted having a brown, down jacket when he came to Illinois from Boston, and he identified it from another surveillance video. Defendant's third interview took place on December 6, 2010. Defendant agreed that the only family members Guillermo had in the area on March 2, 2009, were himself and Curry. Defendant did not deny calling Guillermo from a pay phone at the train station that day but said that he did not remember what they talked about.

¶ 8 A defense witness testified that he worked the second shift at the same middle school as Guillermo. He testified that he called Guillermo at about 11 a.m. on March 2, 2009, to check if the school was open even though it was Pulaski day. Guillermo answered in the affirmative. The witness testified that he saw Guillermo at the school when he arrived there at about 1 p.m.

¶ 9 After the parties rested, the State filed a motion *in limine* to prohibit the defense from arguing in closing that Curry may have murdered Guillermo or that Guillermo's "possible life style" may have led to the murder. At a hearing on the motion, the State clarified that the "life style" referred to Guillermo dating a lot of women. The defense contended that it was allowed to argue, as an alternate theory, that Curry was the killer because she found Guillermo and called 911. Defendant's attorney stated, "Most of the discovery pertained to her in the first 100 pages." The trial court ruled that the defense could argue that Curry found the body and called 911 and could question why the State did not call her as a witness. However, the trial court prohibited the defense from arguing that she may have been responsible for Guillermo's death, as there was no evidence to support that theory. Similarly, there was no evidence to support that one of Guillermo's " 'girlfriends' " may have killed him, and the defense was precluded from asserting such an argument.

¶ 10 The jury found defendant guilty of first-degree murder, and the trial court sentenced him to 50 years' imprisonment. In his direct appeal, defendant argued that: (1) the indictment should have been dismissed with prejudice because it was secured by false testimony; (2) he was not proven guilty beyond a reasonable doubt; and (3) the State improperly shifted the burden of proof in rebuttal closing argument. We rejected defendant's arguments and affirmed his conviction. *People v. Legore*, 2013 IL App (2d) 111038, ¶ 1.

¶ 11 Defendant subsequently mailed a *pro se* postconviction petition, which was file-stamped November 4, 2014. Among other claims, defendant asserted that his trial counsel was ineffective for failing to investigate Curry. He alleged that Curry was an initial suspect; that she admitted to the police that she knew that Guillermo was cheating on her and that she was a beneficiary of Guillermo's life insurance policy; and that after discovering Guillermo's body, Curry phoned a man to come to the house before calling the police. Defendant alleged that he tried to obtain evidence or documents to support his claims but was "unable to receive it" "due to his incarceration." He thus stipulated to the evidence's "existence and merit." He alleged, several pages later in the petition and in conjunction with a different claim, that his public defenders denied him copies of the discovery and only skimmed through it with him during meetings. Defendant also alleged that his appellate counsel was ineffective for failing to raise on appeal the issues set forth in his postconviction petition.

¶ 12 On January 30, 2015, the trial court summarily dismissed defendant's postconviction petition, finding that it was patently without merit. It stated as follows in a memorandum order. Defendant was essentially arguing that trial counsel should have discovered evidence supporting the theory that Curry was an alternative suspect, such that the trial court would have denied the State's motion *in limine* seeking to bar such argument at trial. Defendant offered nothing to show that such evidence may have been available. Defendant's allegations were unsupported and conclusory and thus did not provide an arguable basis for his claim that counsel failed to properly investigate and call witnesses. Defendant asserted that he could not obtain evidence or documents due to his incarceration; however, it was clear that he was unable to provide evidence because he was merely speculating that such useful evidence might be obtained.

¶ 13 This court granted defendant leave to file a late notice of appeal.

¶ 14

II. ANALYSIS

¶ 15 On appeal, defendant challenges the trial court's summary dismissal of his postconviction petition. The Postconviction Act provides a means for people serving criminal sentences to assert that their convictions resulted from substantial denials of their constitutional rights. *People v. Cotto*, 2016 IL 119006, ¶ 26. It creates a three-stage process for adjudicating postconviction petitions. *Id.* At the first stage, the trial court independently determines, without input from the State, whether the petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1 (West 2014). A petition is frivolous or patently without merit only if it has no arguable basis in law or fact, meaning that it relies on an indisputably meritless legal theory or a fanciful factual allegation. *People v. Allen*, 2015 IL 113135, ¶ 25. At the first stage, the petition's allegations, liberally construed and taken as true, need to present only "the gist of a constitutional claim." *People v. Brown*, 236 Ill. 2d 175, 184 (2010). The petition needs to set forth only a limited amount of detail, and it does not need to include legal arguments or citations to legal authority. *People v. Delton*, 227 Ill. 2d 247, 254 (2008). Still, the Postconviction Act requires that the petition "have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2014). The requirement's purpose is to show that a petition's allegations can be objectively or independently corroborated. *Delton*, 227 Ill. 2d at 254. The supporting affidavits and exhibits must "identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations." *Id.* The failure to attach necessary supporting evidence or explain its absence will alone justify the petition's summary dismissal. *Id.*

¶ 16 If the trial court determines that the petition is not frivolous or patently without merit, the trial court is to docket the petition for second-stage proceedings (*id.*), during which the trial court

may appoint counsel to represent an indigent defendant, and counsel may file an amended petition (*Cotto*, 2016 IL 119006, ¶ 27). If the trial court does not dismiss the petition during the second stage, it will conduct an evidentiary hearing on the petition's merits during the third stage. 725 ILCS 5/122-6 (West 2012). We review *de novo* the first-stage dismissal of a postconviction petition. *People v. Smith*, 2015 IL 116572, ¶ 9.

¶ 17 Here, defendant appeals only the dismissal of his allegations of ineffective assistance of trial counsel. For a claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). At the first stage of postconviction proceedings, a petition alleging ineffective assistance of trial counsel may not be summarily dismissed if (1) counsel's performance arguably fell below an objective standard of reasonableness, and (2) the defendant was arguably prejudiced. *People v. Cathey*, 2012 IL 111746, ¶ 23. Under the performance prong, we consider whether, despite a strong presumption that counsel's representation fell within the wide range of reasonable assistance, there is an arguable basis that counsel performed objectively unreasonably under prevailing professional norms. *People v. Montes*, 2015 IL App (2d) 140485, ¶ 26. For the prejudice prong, we consider whether there is arguably a reasonable probability that, but for counsel's errors, the proceeding would have resulted differently. *Id.*

¶ 18 Defendant argues that his petition set forth an arguable claim that trial counsel's performance fell below an objective standard of reasonableness because, although her strategy was to argue that Curry was the true killer, and although there was ample evidence presented of Curry's opportunity to commit the killing, counsel did not sufficiently investigate and present evidence to the trial court that Curry had a *motive* to kill Guillermo. Defendant argues that that if counsel had pursued the evidence that he referred to in his petition (that Curry was the initial

suspect, believed Guillermo had been cheating on her, and was a beneficiary of his life insurance policy) it is arguable that the trial court would have allowed her to pursue the theory that Curry was the murderer.

¶ 19 Defendant argues that the record shows that the failure to present evidence of Curry as an alternative offender was also prejudicial. Defendant notes that evidence of an alternative suspect is admissible if it is not too remote or speculative. *People v. Beaman*, 229 Ill. 2d 56, 75 (2008). He points out that in affirming his conviction, we found it significant that Guillermo left work for a family emergency, that defendant was one of only two family members in the area (the other person being Curry), and that there were no signs of forced entry to the house. *Legore*, 2013 IL App (2d) 111038, ¶ 41. Defendant contends that this evidence could also pertain to Curry, and had his counsel investigated and presented evidence regarding her motive, the trial court would have allowed the defense to argue that Curry was the killer. According to defendant, given the closely balanced nature of the circumstantial evidence against him, it is arguable that the trial would then have resulted differently, as it would have tended to make it less probable that he committed the crime.

¶ 20 Defendant analogizes this case to *Beaman*. There, the defendant was convicted of murdering a woman whom he had dated. *Beaman*, 229 Ill. 2d at 60. The evidence showed that the victim had also dated the defendant's roommate. *Id.* The defendant argued in his postconviction petition that the State had violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose evidence that a third man had also been a suspect. *Beaman*, 229 Ill. 2d at 66. An evidentiary hearing on the defendant's postconviction petition revealed that: the State had evidence that the third man previously had a romantic relationship with the victim and told police that they planned to renew that relationship; he lived about 1½ miles from the victim's

apartment; he had been charged with domestic battery of a girlfriend, who told the police that he acted erratically because he took steroids; and he admitted that he had supplied the victim with drugs and that she owed him money. *Id.* at 66-68. The trial court found that the evidence pointing to the third man as a suspect was too remote and speculative to be admissible, and it denied the petition for postconviction relief. The appellate court affirmed. *Id.* at 69-70. Our supreme court reversed and remanded for a new trial (*id.* at 58), stating:

“[T]he evidence of [the third man] as an alternative suspect was crucial for petitioner because it countered the State’s circumstantial evidence against him and rebutted the State’s argument that all other potential suspects had established alibis. We conclude that there is a reasonable probability that the result of the trial would have been different if petitioner had presented the evidence establishing [the third man] as an alternative suspect. We cannot have confidence in the verdict finding petitioner guilty of this crime given the tenuous nature of the circumstantial evidence against him, along with the nondisclosure of critical evidence that would have countered the State’s argument that all other potential suspects had been eliminated from consideration (*id.* at 81).”

Defendant argues that, as in *Beaman*, the evidence against him was a relatively weak circumstantial case of motive and opportunity, and that evidence of Curry’s motive and opportunity to kill Guillermo was equal or superior to the evidence pertaining to him.

¶ 21 Defendant disputes the trial court’s statement that he offered nothing to show that the evidence pointing to Curry as an alternate suspect existed and that he did not even suggest what evidence might have been available. He contends that the petition clearly claimed that Curry was the initial suspect and that she admitted to the police that she knew Guillermo had been cheating on her and had her listed as a beneficiary of his life insurance policy. Defendant argues

that, when liberally construed, his petition indicated that these facts were subject to objective or independent corroboration through police reports or the officers who drafted the reports. Defendant maintains that for this reason, the failure to attach the pertinent police reports cannot be held against him.

¶ 22 Defendant further argues that attachments were not necessary because the record corroborates that such reports exist. At trial, defense counsel asked defendant whether Guillermo had many girlfriends, and the State objected. Defense counsel argued that the State's discovery showed that its witnesses believed that because Guillermo "dated several other women[,] they actually thought it was one of these other women or their husband killed [*sic*]." She also stated that a State witness was out with Guillermo the night before the murder, and Guillermo "picked up" another woman. Defendant argues that this exchange shows that defense counsel possessed evidence indicating that Guillermo dated numerous women and was out with one soon before he killed. Defendant argues that this evidence corroborates his postconviction allegation that Curry knew Guillermo was cheating on her.

¶ 23 Defendant argues that even if documentation would normally be required, there is an exception if the petition states "why the same are not attached." 725 ILCS 5/122-2 (West 2014). Defendant argues that to the extent counsel had discovery related to the claims, it was not possible for him to have attached the documents because she did not give him copies of discovery, as trial counsel acknowledged on the record.² Defendant also notes that Illinois Supreme Court Rule 415(c) (eff. Oct. 1, 1971) requires that discovery materials remain in the attorney's "exclusive custody." Defendant highlights his petition's statement that he tried to obtain supporting documents but could not do so due to his incarceration, and that he

² Trial counsel stated that she "show[ed]" defendant the discovery in jail.

“stipulate[ed] to its existence.” Defendant asserts that it would be highly unfair to dismiss his petition based on the failure to attach supporting documents to which he did not have access.

¶ 24 Defendant points out that his counsel asserted at trial that she should be able to argue that Curry was the killer because the State did not call Curry as a witness even though she found the body and called 911. Defendant maintains that this argument was futile and did not meet the *Beaman* standard of admissibility. Defendant argues that it was incumbent on counsel to make an adequate record to both enable her to argue that Curry was the murderer and to preserve the issue for appeal. Defendant argues that by not further investigating the claims alleged in his postconviction petition and presenting the evidence to the trial court, counsel ensured that the State’s motion to bar such an argument would be granted and that defendant would not have an adequate record to challenge that ruling on direct appeal.

¶ 25 The State responds that the trial court was correct in characterizing defendant’s allegations as “unsupported and conclusory” and, therefore, not providing an arguable basis for his claim that trial counsel failed to properly investigate and call witnesses. The State argues that defendant’s factual allegations are no more detailed than those found wanting in *Delton*, 227 Ill. 2d at 247. There, the defendant was convicted of two counts of aggravated battery to a police officer for an incident that occurred after a traffic stop. *Id.* at 249. He alleged in his postconviction petition that his trial counsel was ineffective for failing to investigate his claim that the arresting officers were the aggressors and had a history of harassing him. *Id.* at 251-52. He alleged that counsel failed to investigate whether the officers had been disciplined, which would have corroborated his story of harassment and allowed a theory of self-defense. *Id.* at 252. The defendant further alleged that counsel failed to investigate all possible witnesses given that the incident took place in the parking lot of a condominium complex at 4 a.m. *Id.* The

defendant attached to the petition excerpts from the trial transcript and a four-line affidavit in which he swore that the petition's contents were " 'true and correct to the best of his knowledge.' "

Id. The trial court summarily dismissed the petition, finding that the defendant did not identify any witnesses or include any facts supporting his contentions about his complaints about the police. *Id.* at 252-53. The appellate court affirmed. *Id.* at 253.

¶ 26 On appeal to the supreme court, the defendant argued that his allegations regarding police harassment were supported by attached trial transcript excerpts. *Id.* at 255. His wife had testified on cross-examination that when the defendant exited the car, he said that he had made a complaint about the same officers and was tired of them harassing and bothering him. *Id.* at 255-56. In closing argument, defense counsel stated that the defendant was familiar with the officers and was loud and angry because he felt like they were harassing him. *Id.* at 256.

¶ 27 In explaining the requisite level of factual detail for a postconviction petition, the supreme court stated:

"This court has held that the purpose of section 122-2 is to establish that a petition's allegations are capable of 'objective or independent corroboration.' [Citation.] We have also held that the affidavits and exhibits which accompany a petition must identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations. [Citation.] 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.* at 254-55.

The supreme court stated that the transcript excerpts did not provide the necessary factual support for the defendant's allegations that his counsel did not investigate prior instances of

police harassment, as the attachments did not support his claim that, before trial, he told his attorney that he had filed a complaint against the same two officers. *Id.* at 256. The court stated the defendant's wife's testimony was taken from her cross-examination and was the first mention at trial of a complaint against the officers, and that counsel's reference to the complaint in closing did not show that he knew about it before trial. *Id.* at 257. The court stated that the petition did not mention any specifics about the conversation with counsel, and that the defendant could have attached an affidavit from his wife attesting to the date and nature of the conversation. *Id.* at 257. The court further stated that the defendant could have easily supported his petition with a copy of the complaint that he filed or with details about the filing. *Id.* at 258. Last, the court stated that the defendant's allegation that his counsel failed to investigate all possible witnesses was a broad conclusory allegation of ineffective assistance of counsel that was not permissible under the Postconviction Act. *Id.* The court therefore affirmed the summary dismissal of the postconviction petition. *Id.* at 258-59.

¶ 28 The State argues that, like the defendant in *Delton*, defendant points to his trial counsel's statements and arguments alluding to Curry as an alternate suspect and urges that she should have somehow come up with the evidence to support that theory. The State argues that the record shows that defendant was informed of all of the State's discovery as it was tendered. The State contends that even if it might be difficult for an incarcerated defendant to obtain police reports and affidavits, it was incumbent upon defendant to demonstrate that he at least attempted to obtain the information. The State argues that Rule 415(c) was not a barrier to obtain copies of discovery, as it pertains to trial proceedings as opposed to posttrial or collateral proceedings. The State argues that defendant did not allege that he lacked discovery materials while preparing

his petition, and even if he had, defendant could have given a specific description of the report and its contents.

¶ 29 In response to defendant's argument that counsel's failure to adequately investigate Curry thwarted her strategy to argue that Curry was the killer, the State points out that the trial court allowed the defense to argue that defendant was not the killer and that someone else was, without arguing that it was a particular person in the absence of any supporting evidence. The State maintains that having the strategy to blame someone else did not require counsel to know that Curry specifically was the killer. The State argues that, at trial, defense counsel was able to effectively raise questions surrounding Curry. She stated in closing argument that Curry called 911 at about 4:30 p.m., after finding the bloody victim, but her clothes were clean. Counsel argued that because the State did not call Curry as a witness, the jury did not know what time she arrived home, what she did before calling 911, whether she owned a brown winter coat with fur on it, and whether she owned any weapons. She further argued that the jury did not know if there was a domestic fight, if someone wanted revenge, if the murder was the result of a drug deal gone bad, or if it resulted from a burglary or robbery. The State argues that without an affidavit establishing the existence of evidence that Curry was the killer, there was no reason to view counsel's interest in Curry as anything more than a strategy to divert attention away from defendant.

¶ 30 The State additionally argues that the record actually suggests that Curry could not have been the killer. It points out that, according to the evidence, the time of death was approximately 11:30 a.m. to 1:30 p.m., or earlier if the temperature was cooler. At trial, the State called Dennis Bade as witness. The defense objected, and the State stated that Bade would testify that he worked with Curry at Webster Middle School and saw her there all day and at the end of the day

on March 2, 2009. The State told the trial court that the testimony was relevant because the defense was trying to show that Curry may have been involved in the murder. The trial court sustained the objection because the defense had not yet presented its case. The State now argues that, based on Bade's testimony, Curry would not have been able to commit the crime between 11:30 and 1:30. The State maintains that if defense counsel had tried to introduce testimony that Curry was the killer, the State would have been able to completely account for her whereabouts when the murder took place, and the defense would not have been able to point to Curry as a convenient scapegoat.

¶ 31 The State argues that this case is distinguishable from *Beaman* because there is no evidence that the State failed to tender evidence of Curry's involvement in the offense. The State asserts that defendant's entire discussion of *Beaman* is irrelevant because it simply assumes the existence of evidence of Curry's involvement. The State argues that there can be no realistic discussion of alternate suspects until it is known exactly what that evidence would be. The State maintains that although defendant alleged that he tried to obtain evidence but was unable to due to his incarceration, he provided no basis for believing that any evidence would be forthcoming because he did not detail his attempts. The State argues that defendant failed to "adequately detail where or from whom he allegedly became aware of the information, what steps he took to obtain the needed information, or what results his attempts garnered." The State argues that to hold that defendant's level of factual support is adequate to withstand a summary dismissal would serve as an invitation for defendants to simply make up allegations in order to take a legally-sanctioned fishing expedition, in the hope of finding information that is of some use.

¶ 32 In reply, defendant notes our supreme court has stated that requiring the attachment of documents to postconviction petitions will sometimes put an unreasonable burden on defendants.

See *People v. Collins*, 202 Ill. 2d 59, 68 (2002). Defendant argues that that is the situation here, as the supporting documentation would include police reports which trial counsel refused to provide him, and a life insurance policy. Defendant argues that although the State insists that Rule 415(c) is limited to pretrial and trial such that he was not precluded from obtaining discovery, the State does not cite authority for this proposition. Defendant argues that even otherwise, he was told by his trial counsel that he was not entitled to his own copy of discovery, and it would be unreasonable for him to understand that the limitation was not present after trial. Defendant argues that although there is a general requirement that a defendant who does not attach documents must explain their absence, in *People v. Allen*, 2015 IL 113135, ¶ 26, our supreme court indicated that a petition should not be summarily dismissed if there are facts from which the trial court could reasonably infer an explanation. Defendant maintains that this is such a case, as supporting documentation would have included reports previously denied to him. Defendant also argues that *Allen* recognized that the purpose of attaching supporting evidence is to show that admissible evidence supporting the claim is available and can be corroborated through later proceedings (*id.* ¶¶ 32-33), and he argues that the assertions in police reports and life insurance policies are capable of objective or independent corroboration in later postconviction proceedings.

¶ 33 We conclude that the trial court did not err in summarily dismissing defendant's postconviction petition, as defendant failed to adequately support his allegations with documentary evidence. As discussed, the Postconviction Act explicitly requires that the petition "have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2014). As our supreme court discussed in *Delton*, the requirement's purpose is to demonstrate that a petition's allegations can

be objectively or independently corroborated. *Delton*, 227 Ill. 2d at 254. The supporting documents must “identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition’s allegations.” *Id.* The failure to comply with section 122-2 by attaching the required supporting evidence or explaining its absence is an independent basis for a summary dismissal. *Id.*

¶ 34 Here, it is undisputed that defendant did not include any supporting evidence as attachments to his postconviction petition. Not only did he fail to attach the documents, he did not “identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition’s allegations.” *Id.* In other words, defendant did not even describe what information formed the basis of his own belief in his allegations. Defendant argues that we should infer that the information was available in police reports obtained in discovery. However, defendant did not mention discovery until four pages after his allegations regarding Curry, in conjunction with a different claim. Defendant also did not specifically refer to police reports in his petition. If defendant had learned of the “motive” evidence through police reports he briefly viewed when going over discovery with his trial counsel, he could have easily said as much, but he did not. In this manner, this case is similar to *Delton*, where the summary dismissal was upheld because, among other things, the defendant could have provided details about conversations with his counsel but failed to do so. See *Delton*, 227 Ill. 2d at 257.

¶ 35 Moreover, as defendant did not attach any supporting documents to his petition, he was required to explain the absence of such evidence. 725 ILCS 5/122-2 (West 2014). Defendant alleged that he tried to obtain evidence or documents to support his claims but was unable to due to his incarceration. He also stipulated to the evidence’s “existence and merit.” However, we agree with the State that this was insufficient. A defendant must be imprisoned in a penitentiary

to file a postconviction petition in the first place (725 ILCS 5/122-1(a) (West 2014)), so the mere fact of imprisonment cannot satisfy section 122-2's requirement that a defendant explain the absence of supporting documentation. Defendant provided no specifics as to what efforts, if any, he made to acquire supporting evidence. Indeed, defendant did not even state that contacting his counsel would have been futile because she had previously denied him copies of discovery.

¶ 36 We recognize that compliance with section 122-2 can be excused if the defendant's allegations are uncontradicted and "clearly supported" by the record. *People v. Johnson*, 183 Ill. 2d 176, 191 (1998). The record indicates that there were around 100 pages of discovery regarding Curry and that Guillermo was dating many women. However, it does not *clearly support* defendant's allegations that Curry was an initial suspect, that she knew Guillermo was cheating on her, that Curry was a beneficiary of Guillermo's life insurance policy, and that Curry called a man to come to the house before calling the police. Accordingly, based on defendant's lack of compliance with section 122-2, the trial court did not err in summarily dismissing his postconviction petition.

¶ 37 Even if defendant's petition satisfied section 122-2's requirements, we would still affirm the trial court's summary dismissal of the petition because defendant failed to set forth a claim that would arguably satisfy the *Strickland* test for ineffective assistance of counsel. A postconviction petition must state the gist of a claim for relief that is meritorious when considered in light of the record of the trial court proceedings. *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 33. Here, counsel's performance was not arguably deficient, and the outcome of the trial would not arguably have been different, if counsel had attempted to introduce evidence of Curry's motive to kill defendant through the evidence cited by defendant. Had counsel successfully presented such evidence at trial, the State would have been allowed to counter

evidence of Curry's involvement by having Bade testify that he saw Curry at Webster Middle School all day and at the end of the day on March 2, 2009. This testimony very strongly suggests that Curry could not have killed Guillermo during the window of time described by the forensic pathologist. Defendant's evidence would thus ultimately have weakened, rather than strengthened, counsel's closing argument questioning Curry's whereabouts. It also would not have affected the evidence that Guillermo stated that he had to go home for a family emergency immediately after receiving a call from a train station that was circumstantially linked to defendant, and which defendant did not deny making. Shortly after Guillermo's death, defendant expressed interest in acquiring his house and car and told the police that he did not care what happened to his father. Therefore, unlike *Beaman*, the proposed evidence (which had never been withheld from defendant by the State in the first place) did not counter the State's circumstantial evidence against defendant or show that another potential suspect lacked an alibi. See *Beaman*, 229 Ill. 2d at 81. As such, even if defendant adequately explained the lack of documentation supporting his allegations and/or his allegations were considered to be adequately supported by the record, summary dismissal was still warranted because there is not an arguable basis that counsel's performance was deficient nor is there arguably a reasonable probability that the proceeding would have resulted differently had counsel investigated and presented the evidence relied on by defendant.

¶ 38

III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 40 Affirmed.