

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

April 20, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 150169-U

NO. 4-15-0169

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
BRYAIN J. YOUNG,	)	No. 10CF1164
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Steigmann and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant failed to establish the trial court erred in summarily dismissing his *pro se* postconviction petition.

¶ 2 On February 10, 2015, the trial court summarily denied defendant Bryain J. Young’s *pro se* petition for postconviction relief. Defendant appeals, arguing the court erred in summarily dismissing his petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 2012, after a jury trial, defendant was convicted of first degree murder and armed robbery. This court affirmed defendant’s conviction in appeal No. 4-12-1065. See *People v. Young*, 2014 IL App (4th) 121065-U (May 29, 2014).

¶ 5 In November 2014, defendant filed a 21-page *pro se* petition for postconviction relief. Among defendant’s allegations in his petition, he stated he was denied his sixth

amendment right to effective assistance of counsel because his trial counsel failed to disclose “he also represented a family member that was a codefendant in this case that was testifying against [him].” While this sentence is not written clearly, the next paragraph of the petition clarifies the allegation, stating defendant’s attorney had represented the grandfather of one of his codefendants. According to the petition, after the trial, his defense counsel told him he might have “pre-judged” defendant based on things he had heard from people, including the codefendant’s grandfather. Defendant alleged:

“50. I feel that defendant wasn’t given effective assistance of counsel due to Trial Attorney Scott Reuter not being focused on representing me do [sic] to negative outlook towards defendant from his past and negative outlook others had toward him and any competent attorney would have brought this to the attention of the trial court, but by failing to do so I was denied effective assistance of counsel[.]

51. Defendant was denied his 6th amendment right to effective assistance of counsel when trial attorney failed to disclose that there could have been a conflict of interest.”

Defendant also claimed he was denied his sixth amendment right to effective assistance of appellate counsel because counsel failed to argue the trial court erred in the manner it answered questions submitted by the jury and his trial counsel was ineffective for agreeing with the trial court’s answer to the jury’s questions.

¶ 6 In February 2015, the trial court summarily dismissed defendant’s petition. The court found defendant did not support his claims with affidavits, records, or other evidence as

required by section 122-2 of the Post-Conviction Hearing Act (725 ILCS 5/122-2 (West 2014)).

The court also stated:

“7. The defendant makes numerous claims of ineffective assistance of trial and Appellate counsel. The Court finds these claims do not form an arguable basis that counsel’s performance fell below an objective standard of reasonableness and is not arguable that the defendant was prejudiced. *People v. Hodges*, 234 Ill. 2d 1[, 912 N.E.2d 1204]. There is also nothing in the record to establish that if Appellate counsel would have raised all of the issues that defendant is suggesting should have been raised, that the outcome of the defendant’s appeal would have been any different.”

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)), a defendant can argue his conviction resulted from a substantial denial of his constitutional rights. *People v. Coleman*, 183 Ill. 2d 366, 379, 701 N.E.2d 1063, 1070-71 (1998). A defendant cannot raise an issue in postconviction proceedings he could have raised on direct appeal. *People v. Blair*, 215 Ill. 2d 427, 443-44, 831 N.E.2d 604, 614-15 (2005). Defendant’s claims in this appeal center on the effectiveness of the representation he received during his trial.

¶ 10 A claim of ineffective assistance of counsel based on information contained in the appellate record may not be raised in a postconviction petition because it could have been raised on direct review. *Id.* An exception to this rule exists if defendant can establish his appellate counsel was ineffective for failing to raise the issue on direct appeal. *People v. Moore*, 402 Ill. App. 3d 143, 146, 930 N.E.2d 1057, 1060-61 (2010). Often, a defendant’s claim of ineffective

assistance of counsel is based on evidence outside the record. As a result, a postconviction petition is often a better means to pursue a claim based on ineffective assistance of counsel. *People v. Mefford*, 2015 IL App (4th) 130471, ¶ 82, 44 N.E.3d 616.

¶ 11 The trial court in this case summarily dismissed defendant's petition during the first stage of postconviction proceedings. At the first stage, the trial court independently reviews the postconviction petition and determines whether, taking the allegations in the petition as true, the petition is frivolous or patently without merit, with no arguable basis in either law or in fact. *People v. Tate*, 2012 IL 112214, ¶ 9, 980 N.E.2d 1100. The threshold for surviving the first stage of postconviction proceedings is low. *Id.* We review the summary dismissal of a postconviction petition *de novo*. *People v. Edwards*, 197 Ill. 2d 239, 247, 757 N.E.2d 442, 447 (2001).

¶ 12 We first address defendant's claim his petition should not have been summarily dismissed because his appellate counsel was ineffective for failing to argue on direct appeal his trial counsel was ineffective for agreeing with the trial court's suggested answer to a question submitted by the jury. At issue is the following question from the jury to the trial court: "Do we have to be unanimous on all [five] counts? Would it cause a mistrial if we agreed on all but one?" The trial court, with the agreement of the State and defense counsel, responded as follows: "No, you do not have to reach a unanimous verdict on all five counts. Please continue your deliberations."

¶ 13 On appeal, defendant acknowledges his petition focused on the trial court not addressing the jury's question regarding a potential mistrial. However, he cites no case authority for the proposition the court's answer to the jury's questions was inappropriate. Defendant could not have been prejudiced by his trial counsel's agreement to the court's answer if the court's answer was appropriate. Because this court is not a depository upon which an appellant may

dump the burden of argument and research, we find this argument forfeited for purposes of appeal. *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 522 (2001).

¶ 14 Defendant argues the answer was inappropriate because it could have confused the jury with regard to the need for a unanimous verdict. According to defendant's brief:

“The court should have emphasized that, while the jurors were not required to reach the same conclusion on *all* five verdict forms, unanimity was required on *each* of the five forms. By failing to clarify its response and emphasize the need for unanimity on *each* count, the court arguably contradicted its earlier instruction. It is fundamental that where jury instructions are contradictory, the jury cannot perform its constitutional instruction and that the giving of contradictory instructions on an essential element in a case is prejudicial error, not cured by the giving of another, correct instruction.” (Emphases in original.)

This argument is forfeited because it was not contained in defendant's petition. See *People v. Petrenko*, 237 Ill. 2d 490, 502, 931 N.E.2d 1198, 1206 (2010). Regardless, defendant cannot establish any prejudice from the court's answer to the jury's question. After the jury returned its verdicts, the jury was polled and its verdict was in fact unanimous on all five counts.

¶ 15 Next, defendant argues his right to effective assistance of counsel was denied because his trial counsel was conflicted as a result of having previously represented the grandfather of one of his codefendants, Ryan Walker. The grandfather had expressed his negative impressions of defendant to defendant's attorney. Defendant cites *People v. Spreitzer*, 123 Ill. 2d 1, 14-15, 525 N.E.2d 30, 34-35 (1988), for the proposition a trial counsel's past or contemporaneous association with the crime victim or a State's witness can create a *per se*

conflict of interest. A defendant does not have to show prejudice to receive a new trial if his attorney had a *per se* conflict of interest. *Id.*

¶ 16 We note defendant provides no authority for the proposition prior representation of a grandparent or similarly situated relative of a State's witness creates a *per se* conflict of interest. As a result, we find this argument forfeited. See *Elder*, 324 Ill. App. 3d at 533, 755 N.E.2d at 522.

¶ 17 III. CONCLUSION

¶ 18 We affirm the trial court's summary dismissal of defendant's *pro se* postconviction petition.

¶ 19 Affirmed.