

**NOTICE**  
Decision filed 03/23/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 140510-U

NO. 5-14-0510

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 10-CF-578
	)	
DARNELL CARRAWAY,	)	Honorable
	)	John Baricevic,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.  
Presiding Justice Moore and Justice Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly dismissed the defendant's postconviction petition.

¶ 2 The defendant, Darnell Carraway, appeals the circuit court's summary dismissal of his postconviction petition. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other document supporting his appeal. The defendant did not file a response. We considered

OSAD's motion to withdraw as counsel on appeal. We examined the entire record on appeal and found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of St. Clair County.

¶ 3 BACKGROUND

¶ 4 On July 2, 2010, a grand jury returned a four-count indictment against the defendant. On September 29, 2011, the defendant pleaded guilty to count II, home invasion, in exchange for the other counts being dropped. The court sentenced him to 25 years' imprisonment to be followed by a 3-year term of mandatory supervised release.

¶ 5 The defendant did not move to withdraw his guilty plea or file an appeal.

¶ 6 On September 16, 2014, the defendant filed a postconviction petition alleging ineffective assistance of counsel. The defendant argued that his counsel should have moved to suppress conflicting statements and evidence. In support of this claim, the defendant referenced officer narratives by page number, yet he failed to attach those narratives to his petition. He also referenced reports regarding fingerprint evidence and DNA samples that were inconclusive regarding his involvement. Again, he attached none of the reports regarding this information. The defendant also made a one-sentence claim that if granted an evidentiary hearing he would present a defense. He made no attempt to explain what that defense would be. Despite claiming that he was attaching multiple documents, the defendant only attached one affidavit—his own—stating that the facts presented in the petition "are true and correct to the best of my recollection."

¶ 7 The circuit court summarily dismissed the defendant's petition stating that the petition did not raise the gist of a constitutional violation. The circuit court's order also stated that the defendant made no showing that the outcome of the trial would have been different but for counsel's alleged mistakes. The defendant appeals.

¶ 8 ANALYSIS

¶ 9 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) allows a person convicted of a crime to "assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution." *People v. Coleman*, 183 Ill. 2d 366, 379 (1998). Evidence of the claim must be attached to the petition in the form of "affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2012). "[T]he failure to either attach the necessary 'affidavits, records, or other evidence' or explain their absence is 'fatal' to a post-conviction petition [citation] and by itself justifies the petition's summary dismissal. [Citation.]" *People v. Collins*, 202 Ill. 2d 59, 66 (2002). The Act provides a three-stage process for dealing with postconviction petitions. *People v. Tate*, 2012 IL 112214, ¶ 9. "At the first stage, the circuit court must independently review the petition, taking the allegations as true, and determine whether the petition is frivolous or is patently without merit. [Citation.] A petition may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." (Internal quotation marks omitted.) *Id.*

¶ 10 An allegation of a violation of the constitutional right to effective assistance of counsel is evaluated under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted in Illinois by *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). The standard has two prongs, both of which must be satisfied for a defendant to prevail on an ineffective-assistance-of-counsel claim. First, the defendant must show that his "counsel's representation fell below an objective standard of reasonableness and that counsel's shortcomings were so serious as to deprive the defendant of a fair trial." (Internal quotation marks omitted.) *Albanese*, 104 Ill. 2d at 525. Second, the defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (Internal quotation marks omitted.) *Id.* The reviewing court can address these requirements in either order. *Id.* at 527. A failure to satisfy either prong of the *Strickland* standard causes the allegation of ineffective assistance of counsel to fail; the court need not address both prongs. See *Strickland*, 466 U.S. at 670. The threshold to advance to second-stage proceedings in postconviction proceedings is much lower than the ultimate burden of showing ineffective assistance of counsel explained above: "[a]t the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed 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." *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). Broad conclusory allegations of ineffective assistance of counsel are not sufficient to defeat a summary dismissal. *People v. Delton*, 227 Ill. 2d 247, 258 (2008). We review a circuit court's summary dismissal *de*

*novo*. *Collins*, 202 Ill. 2d at 66. We recognize that the language used by the circuit court indicates it applied the ultimate *Strickland* standard of but-for causation instead of the arguably-prejudiced standard appropriate at the first stage. We may affirm the dismissal of a postconviction petition on any basis supported by the record. *People v. Wright*, 2013 IL App (4th) 110822, ¶ 23.

¶ 11 The defendant's claim that if granted an evidentiary hearing he would present a defense is entirely conclusory. As explained above, at the first stage, the circuit court is to review the petition and determine if it has any arguable merit in fact or in law. Although this is a relatively low threshold requiring only a limited amount of factual detail, the petition must allege sufficient facts from which the circuit court could find a valid claim of constitutional deprivation. *Delton*, 227 Ill. 2d at 254-55. The mere assertion that the defendant has a defense he would present if given an evidentiary hearing does not allow the circuit court to make that determination. In fact, it is not an assertion of a constitutional violation.

¶ 12 The defendant's allegation of ineffective assistance of counsel is meritless. The defendant argued that his counsel should have moved to suppress conflicting and inconclusive evidence. However, the defendant failed to explain what basis his counsel should have used to challenge conflicting evidence. He offered no argument for suppression of the evidence, other than the fact that it was contradictory. The contradictions may be pointed out and challenged before the trier of fact, but evidence cannot be suppressed because it is contradictory.

¶ 13 Additionally, the defendant made no attempt to show how a successful challenge to the admission of the evidence in question would have changed his decision to plead guilty. Therefore, it is not arguable that the defendant was prejudiced by the alleged failure to act by his counsel.

¶ 14 **CONCLUSION**

¶ 15 The circuit court properly dismissed the defendant's postconviction petition. OSAD's motion for leave to withdraw is granted, and the circuit court of St. Clair County's order is affirmed.

¶ 16 Motion granted; affirmed.