

No. 1-16-0383

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 11 CR 20959
)	11 CR 21046
ANDRE DEIS,)	
)	Honorable
Defendant-Appellant.)	Paula M. Daleo,
)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly entered a summary dismissal of defendant’s *pro se* postconviction petition when the claim that he was denied the effective assistance of counsel was patently without merit.

¶ 2 Defendant Andre Deis 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)). He contends that the circuit court erred in dismissing the petition when it presented a claim that he was arguably denied the effective assistance of counsel when counsel failed to “meaningfully”

investigate Mr. Deis's "intellectual disability." We affirm.

¶ 3

I. BACKGROUND

¶ 4 In June 2013, following a conference held pursuant to Supreme Court Rule 402 (eff. July 1, 1997), defense counsel informed the court that Mr. Deis wished to enter pleas of guilty to armed robbery with a firearm in case numbers 11 CR 20959 and 11 CR 21046, and to accept the trial court's "recommendation" of two concurrent 21-year prison terms.

¶ 5 Prior to accepting Mr. Deis's pleas, the trial court asked Mr. Deis whether he was pleading guilty freely and voluntarily and he answered yes. The court then asked whether anyone threatened or promised Mr. Deis anything to get him to plead guilty and Mr. Deis answered no. The court explained the possible sentencing ranges and asked if Mr. Deis understood. Mr. Deis answered yes. Next, the court again asked whether Mr. Deis was pleading guilty freely and voluntarily and whether anyone threatened or promised him anything in order to get him to plead guilty. Mr. Deis gave the same responses. The State then presented the factual bases for Mr. Deis's guilty pleas. These bases included that the robberies were on two separate occasions and that in one robbery, Mr. Deis pushed the cashier, who was nine months pregnant, to the ground, dragged her to the back of the store, and tore out a chunk of her hair. The trial court found that factual bases for the pleas existed and that the pleas were made freely and voluntarily, and accepted Mr. Deis's pleas.

¶ 6 The court then asked for arguments in aggravation and mitigation. In aggravation, the State primarily rested on the discussion in the Rule 402 conference, and also noted that the 22-year old Mr. Deis had six prior convictions. In mitigation, defense counsel argued that Mr. Deis had prior "struggles" and "challenges along the way, including a lot of challenges in school related to [Mr. Deis's] learning disabilities." The court sentenced Mr. Deis to two concurrent 21-

year prison terms.

¶ 7 In July 2015, Mr. Deis filed this *pro se* postconviction petition, alleging that he was denied the effective assistance of counsel when, among other things, counsel coerced him into pleading guilty, failed to “inquire into any asp[e]ct of his mental health and competency” and used “strong persuasive language to convince and frighten” him into pleading guilty. The petition further alleged that counsel failed to inquire with Mr. Deis’s family, teachers or other mental health professionals regarding his mental state. The petition finally asserted that Mr. Deis had “obvious mental deficiencies,” attended special education classes, was “slow,” and was not “competent enough to comprehend, understand or waive” his constitutional rights.

¶ 8 Attached to the petition was Mr. Deis’s “Affidavit Of Affirmation Under Penalty of Perjury” pursuant to section 1-109 of the Code of Civil Procedure (see 735 ILCS 5/1-109 (West 2014)), which is signed but not notarized and in which he averred that the contents of the petition were “true and accurate” to the best of his knowledge and belief. The “affidavit” further stated that “no notary [was] available.” Also attached in support was an unsigned, unnotarized “Affidavit of Andre Deis” in which he stated that, at the plea hearing, he was not “fully made aware” of the circumstances of his plea and was told by counsel to answer yes to the trial court’s questions. Neither affidavit contains any specifics as to Mr. Deis’s intellectual capacity or mental health.

¶ 9 The circuit court summarily dismissed Mr. Deis’s petition as frivolous and patently without merit. The circuit court’s written order stated that the motion was “entirely conclusory” and was “devoid of any facts” supporting Mr. Deis’s contentions.

¶ 10

II. JURISDICTION

¶ 11 Mr. Deis’s petition was dismissed on October 9, 2015. This court allowed Mr. Deis’s

motion for leave to file a late notice of appeal on March 22, 2016. This court thus has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 606 and 651, governing criminal appeals and appeals from final judgments in postconviction proceedings (Ill. S. Ct. R. 606 (eff. Dec. 11, 2014); R. 651(a) (eff. Feb. 6, 2013)).

¶ 12

III. ANALYSIS

¶ 13 The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings that 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 defendant need only “allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act.” *Id.* at 9. This court reviews the summary dismissal of a postconviction petition *de novo*. *People v. Tate*, 2012 IL 112214, ¶ 10.

¶ 14 On appeal, Mr. Deis contends that the circuit court erred in summarily dismissing his *pro se* petition because, in the petition, he made an arguable claim that he was denied the effective assistance of counsel when counsel failed to “meaningfully” investigate Mr. Deis’s intellectual disability. Mr. Deis argues that “counsel had reason to know that [his] intellectual ability was suspect,” and that his intellectual disability prevented him from understanding the guilty plea process.

¶ 15 The State responds that Mr. Deis’s claim is a “bald conclusory allegation” uncorroborated by any evidentiary support. The State notes that although the petition alleges that counsel did not inquire of Mr. Deis’s family, teachers or mental health professionals regarding

his mental state and intellectual issues and that Mr. Deis was in special education classes at school, no affidavits or education records are attached to the petition in support. The State further argues that Mr. Deis's own "affidavit" in support of the petition does not state that he told counsel about his intellectual issues.

¶ 16 To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate both that counsel's representation was 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 establish either *Strickland* prong, even under the lower postconviction standard that it is "arguable" that counsel's performance was deficient and that the defendant was prejudiced by that deficiency, is fatal to his claim of ineffective assistance of counsel. *People v. Cherry*, 2016 IL 118728, ¶ 24.

¶ 17 In the context of a first-stage postconviction proceeding alleging ineffective assistance of counsel, a defendant must allege some objective facts that support both prongs of *Strickland* and can be corroborated, or provide an explanation as to why facts and supporting documentation are absent. See *Hodges*, 234 Ill. 2d at 10. Mere speculation or conjecture is not enough to support a claim of ineffective assistance of counsel. *People v. Cooper*, 2013 IL App (1st) 113030, ¶ 58.

¶ 18 The "low threshold" at this first stage "does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional violation." *Hodges*, 234 Ill. 2d at 10. The Act requires that "[t]he petition shall 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 2006). The purpose of the “affidavits, records, or other evidence” requirement is to establish that a petition's allegations are capable of objective or independent corroboration. *Hodges*, 234 Ill. 2d at 10. Our supreme court has made clear that, “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.*

¶ 19 Here, the circuit court properly summarily dismissed Mr. Deis’s petition because Mr. Deis failed to allege in his petition any facts in support of his ineffective assistance of counsel claim and failed to provide any documentation of that claim, and also provided no explanation as to why all of this was absent. Instead, the essence of this petition is that the record does not demonstrate that counsel engaged in any investigation of Mr. Deis’s mental capacity or health. This conclusory allegation that counsel failed to “meaningfully” investigate Mr. Deis’s intellectual disability is simply not enough, even for first-stage postconviction proceedings, to survive dismissal.

¶ 20 Mr. Deis provides absolutely no specifics about what investigation was done, what investigation should have been done, or what that investigation would have revealed, beyond what counsel already knew. He also provides no documentation with respect to any of this. Mr. Deis offers nothing more than speculation that further investigation would have resulted in evidence that would have been favorable to him or how that evidence would have been used to secure a different outcome. See *Cooper*, 2013 IL App (1st) 113030, ¶ 58 (a defendant cannot rely on speculation or conjecture to justify his claim of ineffective assistance of counsel). Absent some facts detailing how counsel’s performance arguably fell below an objective standard of reasonableness, and some facts explaining how he was arguably prejudiced by such a poor

performance, Mr. Deis's postconviction claim of ineffective assistance of counsel must fail.

¶ 21

VI. CONCLUSION

¶ 22 Accordingly, we affirm the judgment of the circuit court.

¶ 23 Affirmed.