2018 IL App (1st) 161730-U
No. 1-16-1730
Order filed April 24, 2018

Second 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. 08 CR 19769
	)	
CHRISTOPHER JACKSON,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's dismissal of defendant's first-stage postconviction petition where defendant failed to present an arguable claim of ineffective assistance of counsel for failing to call certain witnesses and present evidence.

¶ 2 Following a bench trial, the judge found defendant Christopher Jackson guilty of first degree murder, attempted first degree murder, and home invasion, he was sentenced to natural life imprisonment for first degree murder, consecutive to concurrent terms of 21 years' imprisonment for attempted first degree murder, and 26 years' imprisonment for home invasion.

We affirmed Jackson's convictions on direct appeal. *People v. Jackson*, 2014 IL App (1st) 123258.

¶ 3 Jackson now appeals the summary dismissal of his petition for relief under the Post-Conviction Hearing Act, asserting that his petition raised an arguable claim of ineffective assistance of counsel. Jackson maintains that his trial counsel failed to (i) call two witnesses and (ii) introduce exculpatory evidence.

¶ 4 Jackson has failed to present an arguable claim of ineffective of counsel, and we affirm. The witnesses, Drs. Sullivan and Allen, would only be able to testify that Jackson was injured during the incident and could not explain how or by whom Jackson suffered each particular injury. Thus, their testimony would not serve to corroborate Jackson's theory of self-defense, or raise an arguable claim of prejudice. As for the photographs of the broken door hinge, this evidence in itself provides no support whatever with regard to Jackson's theory that he acted in self-defense.

¶ 5 Background

¶ 6 **A** detailed recitation of the underlying facts is included in our earlier decision on direct appeal. *Jackson*, 2014 IL App (1st) 123258.

¶ 7 On December 23, 2015, Jackson, through private counsel, filed a petition for relief under the Postconviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). In the petition, the subject of the current appeal, Jackson asserted that trial counsel provided ineffective assistance by failing to call his treating physicians, Dr. Ryan Sullivan and Dr. Allen (Dr. Allen's first name does not appear in the record), and failing to subpoena Pristina Jackson. He further contended counsel was ineffective for failing to have DNA testing performed on certain evidence and

failing to present other corroborative evidence in the form of photographs showing a broken door hinge. Jackson believes this evidence would have corroborated his theory of self-defense, thereby changing the trial's outcome.

¶ 8 The petition contained as attachments several documents, including two pages of an examination report completed by Dr. Sullivan, a letter and worksheet prepared by a forensic scientist, one page of an examination report signed by Dr. Allen, and three pages of an evidence log or police report purportedly prepared by the detectives. The petition further contained Jackson's own affidavit that the contents of the petition are true to the best of his knowledge.

¶ 9 The circuit court summarily dismissed Jackson's petition as frivolous and patently without merit. The court reasoned that the claims raised in Jackson's petition are either waived or barred by *res judicata*. Further, the court noted that Jackson failed to include necessary documents and, even if included, the documents would not have changed the outcome at trial as to satisfy the prejudice prong of an ineffective assistance of counsel claim.

¶ 10 Jackson filed a motion for reconsideration along with more documentation purportedly supporting the ineffective assistance of counsel claims. Specifically, he included an affidavit signed by Dr. Sullivan, in which he avers "I found that Mr. Jackson had recent multiple lacerations to his head, a large laceration to his left arm, and 2 small lacerations to his upper abdomen. I did not note any injuries to Mr. Jackson's chest area." Also included were affidavits from two keepers of records at Mount Sinai hospital and two photographs depicting a broken door hinge. The circuit court denied the motion for reconsideration.

¶ 11 Analysis

¶ 12 On appeal, Jackson contends his petition raised an arguable claim of ineffective assistance of counsel where trial counsel failed to call as witnesses Drs. Sullivan and Allen. He further asserts trial counsel was ineffective for failing to introduce exculpatory evidence in the form of photographs showing a broken door hinge on a bedroom door. He argues this evidence would have corroborated his theory at trial that he was acting in self-defense and that the person he killed was the initial aggressor. Another contention is forfeited, as Jackson does not provide any legal argument or cite any authority that his counsel was ineffective for failing to subpoena Pristina Jackson, who allegedly was in possession of Jackson's cell phone before turning it over to police. Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016); See *People v. Macias*, 2015 IL App (1st) 132039, ¶ 88.

¶ 13 The Postconviction Hearing Act provides a procedural mechanism for a defendant to assert a substantial denial of his or her constitutional rights in the original trial or sentencing. 725 ILCS 5/122-1 (West 2014); *People v. Allen*, 2015 IL 113135, ¶ 20. At the first stage of the proceedings, the trial court examines 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). If the petition has no arguable basis in either law or fact, it should be summarily dismissed as frivolous or patently without merit. *Tate*, 2012 IL 112214, ¶ 9. A petition lacks an arguable basis in law or fact when it is based on "an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. Allegations are fanciful when they are "fantastic or delusional," while an indisputably meritless legal theory is one that is completely contradicted by the record. *Id.* at 16-17.

¶ 14 To state a claim for ineffective assistance of counsel, the defendant must show both that counsel's performance was objectively unreasonable and that he or she was prejudiced as a result of counsel's performance. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). To prevail on the ineffective assistance of counsel claim, the defendant must establish both prongs. See *People v. Colon*, 225 Ill. 2d 125, 135 (2007). "That is, if an ineffective-assistance claim can be disposed of because the defendant suffered no prejudice, we need not determine whether counsel's performance was deficient." *People v. Graham*, 206 Ill. 2d 465, 476 (2003).

¶ 15 In a first-stage postconviction proceeding, the petition 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." *Hodges*, 234 Ill. 2d at 17. We review the summary dismissal of a postconviction petition *de novo*. *People v. Ligon*, 239 Ill. 2d 94, 104 (2010).

¶ 16 A defendant must generally raise an ineffective assistance of counsel claim on direct review to avoid possible forfeiture if the issue depends on facts contained in the record. *People v. Veach*, 2017 IL 120649, ¶ 47. As an initial matter, we note that the State argues the circuit court was correct in finding that Jackson's ineffective assistance claims barred for failing to call Drs. Allen and Sullivan. But the claim is based on facts outside the record—the supporting affidavit of Sullivan, as well as the examination reports of both Allen and Sullivan. While the trial record reveals Jackson was treated at Mount Sinai hospital following the incident, there is no indication in the record that Drs. Allen and Sullivan treated Jackson, and no information regarding their proposed testimony.

¶ 17 With respect to the photographs, however, it is unclear whether they were included in the original record as Jackson did not include in the record on appeal the common law record or exhibits from the original trial proceedings. Generally, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). We do note that Jackson attached to the postconviction petition a portion of an evidence log or police report purportedly prepared by detectives, which indicates that a photograph was taken of a damaged rear bedroom door. We further note that, during the trial, witnesses identified various photographs taken depicting the interior of the ground-floor apartment. Because the witnesses at trial identified various photographs of the interior of the apartment and Jackson failed to sufficiently furnish a complete record on appeal, we presume Jackson could have raised any claims regarding the photographs of the broken door hinge on direct appeal and, thus, it is forfeited. See *People v. Viramontes*, 2016 IL App (1st) 160984, ¶¶ 59-60 ("claims that could have been raised on direct appeal, but were not, are forfeited"). This is especially true where Jackson himself testified that he "pushed [White] so hard it was almost like the door came off the hinges," highlighting his awareness that the door may have been broken.

¶ 18 Even if the issue regarding the photographs were not forfeited, turning to the merits, Jackson's postconviction petition suffers from other deficiencies. Section 122-2 of the Act provides that, a 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 2016). Further, "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." *People v. Delton*, 227 Ill. 2d 247, 254 (2008). Failure to attach the

necessary documentation is fatal to a postconviction petition and, by itself, justifies the summary dismissal of the petition. *Id.* at 255.

¶ 19 With respect to Dr. Sullivan, Jackson attached an affidavit as well as an examination report. The affidavit states that Sullivan examined Jackson on September 26, 2008 at Mount Sinai Medical Center and references an attached evaluation report. Further, Sullivan avers "I found that Mr. Jackson had recent multiple lacerations to his head, a large laceration to his left arm, and 2 small lacerations to his upper abdomen. I did not note any injuries to Mr. Jackson's chest area."

¶ 20 Jackson, however, did not attach an affidavit from Dr. Allen or explain why he failed to include this necessary documentation. Instead, Jackson only attaches a form entitled "ED HISTORY & PHYSICAL EXAM WORKSHEET" that is purportedly signed by Allen. The form describes the examination of "John Doe" on September 26, 2008, and contains illegible handwriting in various sections. Because there is no affidavit, and the attached illegible "report" does not provide us with what Allen would testify to, further review of the claim is unnecessary. See *People v. Enis*, 194 Ill. 2d 361, 380 (2000) ("In the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary").

¶ 21 More importantly, Jackson's claims fail even if he could overcome these procedural hurdles. Examining the merits of Jackson's ineffective assistance of counsel claims, he cannot establish arguable prejudice because this evidence, even if properly presented, would not have changed the outcome at trial. Drs. Sullivan and Allen would only be able to testify that Jackson was injured during the incident and could not explain how Jackson suffered each particular

injury. See *People v. Pearson*, 188 Ill. App. 3d 518, 524 (1989) (no ineffective assistance of counsel where doctor's testimony that defendant was shot twice "would have been cumulative," because defendant and one of the State's witnesses had already testified defendant had been shot, and doctor's testimony "would not have contradicted that other evidence of [the defendant's] guilt").

¶ 22 Moreover, the doctors' testimonies would not shed light on the timeline of events inside the apartment such as whether the deceased was the initial aggressor or when Jackson's specific injuries occurred. Further, the photographs of the broken door hinge, while corroborating the chaotic scene described by the State's witnesses at trial, do nothing to support Jackson's theory that he acted in self-defense. Accordingly, Jackson cannot establish an arguable claim of ineffective assistance of counsel.

¶ 23 In reaching this conclusion, we find Jackson's reliance on *People v. Montgomery*, 327 Ill. App. 3d 180, 185 (2001) and *People v. Jacobazzi*, 398 Ill. App. 3d 890, 913 (2009), to be unpersuasive. In *Montgomery*, this court reversed the first-stage dismissal of the defendant's postconviction petition where counsel was arguably ineffective for failing to introduce medical evidence that the victim died from a seizure and not strangulation. *Montgomery*, 327 Ill. App. 3d at 185. But, in *Montgomery*, no physical evidence linked the defendant to the crime other than his statement to police. *Id.* Here, there was eyewitness testimony describing Jackson's actions as well as physical evidence in the form of gun residue present on both of Jackson's hands. Further, the proposed testimony from Drs. Sullivan and Allen say nothing about how or when Jackson suffered his injuries in a way that would lead us to find counsel was arguably ineffective for failing to introduce this evidence. Accordingly, unlike in *Montgomery*, the physical evidence and

eyewitness testimony was presented, and the purported medical testimony would be of limited relevance.

¶ 24 In *Jacobazzi*, the reviewing court remanded for an evidentiary hearing on whether counsel exercised reasonable judgment for declining to present a defense based on medical records indicating preexisting conditions that predisposed the victim to bleeding. See *Jacobazzi*, 398 Ill. App. 3d at 901-02, 915-16, 929. Here, though, Dr. Sullivan's affidavit simply indicates the location and size of lacerations on Jackson's body; there is nothing from which we can infer that Jackson acted in self-defense—no explanation on how Jackson suffered the wounds or who inflicted the wounds, and no timeline of when he suffered the wounds.

¶ 25 Affirmed.