2018 IL App (2d) 150654-U
No. 2-15-0654
Order filed May 22, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1221
	)	
CHRISTOPHER A. CARTER,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the judgment of the trial court when defendant forfeited his issues on appeal for failure to make cogent arguments and for other violations of Illinois Supreme Court Rules; notwithstanding the forfeitures, defendant's arguments were frivolous and patently without merit, and the trial court properly dismissed the postconviction petition at the first stage.

¶ 2 In 2012, defendant, Christopher A. Carter, was convicted of six counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1), (b)(1.2) (West 2008)) following a jury trial, and the circuit court of Du Page County sentenced him to natural life. We affirmed the conviction in *People v. Carter*, 2014 IL App (2d) 121053-U. Thereafter, defendant filed a *pro se*

petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)), asserting that his constitutional rights were violated due to ineffective assistance of counsel and judicial bias. The trial court summarily dismissed the petition at the first stage of the postconviction proceeding, finding that the arguments in the petition were frivolous and patently without merit. Defendant timely appealed. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2008, defendant was indicted on six counts of predatory criminal sexual assault of a child under sections 12-14.1(a)(1), (b)(1.2) of the Criminal Code of 1961. The charges stemmed from allegations that defendant committed acts of sexual penetration upon C.C. and T.C., who were ages 13 and 11, respectively, at the time of his arrest. They had been living with defendant since 2005, following their mother's death.[1] In 2008, C.C. attended "Aware," a sexual education program offered at her school to raise awareness and encourage reporting of sexual abuse. Thereafter, C.C. became upset and spoke with a teacher, who took the girl to the school's principal. The next day, the girls were taken to Juvenile Youth Services at the Naperville Police Department, where they were interviewed and sent for a physical examination at Edward Hospital in Naperville. The examining doctor opined that the girls had been subjected to sexual trauma. Defendant was arrested later that evening.

¶ 5 The jury heard evidence that the sexual abuse began when C.C. was 10 years-old and that it continued for more than three years. Both victims testified in detail as to the sexual and physical abuse that they endured at the hands of defendant. Internal examinations corroborated their testimony, with both victims showing clear indications of sexual trauma consistent with

[1] Up until his arrest, defendant believed he was the biological father of both girls, though DNA testing later revealed that he was the biological father only of C.C.

having been repeatedly penetrated by an adult male penis. A vaginal swab of T.C. yielded a DNA sample consistent with defendant's Y-STR DNA. Defendant's DNA was also found on the inside of two pairs of T.C.'s underwear.

¶ 6 Defendant testified, denying that he ever had sexual contact with C.C. or T.C. He attempted to justify the presence of his DNA in T.C.'s underwear by testifying that he used dirty clothes from the laundry hamper to clean himself after masturbating, though this testimony was refuted by other testimony and physical evidence in the record. Defendant further testified that he first noticed what he thought were herpes sores on his genitals in 1996. The parties stipulated that he tested positive for the herpes simplex virus 2 (HSV-2) while incarcerated in 2010, and that C.C. and T.C. tested negative for HSV-2 in 2011.

¶ 7 In the direct appeal of his conviction, defendant's attorney raised two claims of error regarding a limiting instruction provided to the jury regarding other crimes evidence[2] and a comment by the prosecutor during the State's closing argument. We determined that no error had occurred on either issue, and affirmed. *People v. Carter*, 2014 IL App (2d) 121053-U, ¶ 60.

¶ 8 In his postconviction petition, defendant raised numerous points alleging ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and judicial bias. His petition was an 18-page, single-spaced, handwritten document, with no headings or numbered paragraphs, which meandered from issue to issue. The trial court categorized the alleged constitutional violations into three major groups: (1) ineffective assistance regarding HSV-2 evidence, (2) ineffective assistance regarding defendant's positive parenting skills, and (3)

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[2] Defendant alternatively contended that his trial counsel was ineffective for failing to preserve the limiting instruction issue, but since we determined that the instruction was proper, we held counsel was not ineffective for failing to preserve this issue.

judicial bias. The trial court concluded that the record did not support defendant's allegations of ineffective assistance and that he had failed to attach required affidavits. As to the allegations of judicial bias, the court found that these were all issues in the record that could have been raised in the direct appeal, and that defendant had waived them by failing to do so.

¶ 9 II. ANALYSIS

¶ 10 At the outset, we note that defendant's opening brief violates multiple Illinois Supreme Court Rules. The rules of procedure concerning appellate briefs are not mere suggestions. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Every appellant, even a *pro se* appellant, is presumed to have full knowledge of the rules and must comply with them. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001). It is a basic requirement that a statement of the facts provide "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017). Defendant's statement contains both argument and facts irrelevant to the issues. He has also failed to provide citations to the record. It is thus within our discretion to strike defendant's statement of the facts, and even his entire brief for failing to conform to the rules. See *Hall*, 2012 IL App (2d) 111151, ¶ 7 (this court may justifiably strike any brief that lacks substantial conformity to supreme court rules). We are mindful of the seriousness of the crimes in this case and the ultimate effect our decision has on its various stakeholders. The errors in defendant's statement of facts are not so egregious as to hinder our review. We therefore decline the State's invitation to strike defendant's statement of facts. We proceed with our analysis by disregarding any inappropriate argumentation, comments, and irrelevant facts contained within defendant's statement of facts.

¶ 11 The Act provides a method whereby a person imprisoned in the penitentiary may assert that his or her conviction was the result of a substantial denial of his or her constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2012). A postconviction proceeding is not an appeal, but a collateral attack on the proceedings in the trial court. *People v. Tate*, 2012 IL 112214, ¶ 8. The action is limited to a review of constitutional claims not presented at trial. *People v. Greer*, 212 Ill. 2d 192, 203 (2004). A postconviction petition is not an avenue to relitigate guilt or innocence. *People v. Evans*, 186 Ill. 2d 83, 89 (1999). "[A]ny issues considered by the court on direct appeal are barred by the doctrine of *res judicata*, and issues which could have been considered on direct appeal are deemed procedurally defaulted." *People v. Ligon*, 239 Ill. 2d 94, 103 (2010).

¶ 12 Postconviction proceedings advance in three stages. At the first stage, the trial court conducts an independent review, taking the allegations of the petition as true, summarily dismissing any petitions that are frivolous or patently without merit. *Tate*, 2012 IL 112214, ¶ 9. Our supreme court relied on the Supreme Court of the United States in describing "frivolous or patently without merit" as referring to claims that have no arguable basis in law or fact, which includes such claims that are "'based on an indisputably meritless legal theory' as well as claims 'whose factual contentions are clearly baseless ***.'" *People v. Hodges*, 234 Ill. 2d 1, 13 (2009) (quoting *Neitzke v. Williams*, 490 U.S. 319, 346-47 (1989)). At the initial stage, petitioners need only present a limited amount of detail. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). *Pro se* petitioners are not excused, however, from providing any factual detail whatsoever. *Brown*, 236 Ill. 2d at 184. We review first-stage summary dismissals *de novo*. *Brown*, 236 Ill. 2d at 184.

¶ 13 Defendant raises 55 issues on appeal from the summary dismissal of his postconviction petition. He asserts conclusions unsupported by cogent legal arguments. Almost every

purported argument consists of a single paragraph with little or no reference to the record and only boilerplate authority.

¶ 14 The following example is typical of the other 54 issues, which the defendant expresses only in very general or conclusory fashion, without any explanation or factual support from the record. Here, defendant contends that:

> "How is it anything but a denial of Due Process for a trial court to change the spirit and substance of a petitioner's claims raised? A petitioner *pro se* [*sic*] is not required to allege facts supporting all elements of a constitutional claim. *People v. Brown*, 236 Ill. 2d at 188 [*sic*]. To change the words of petitioner is denial of Due Process and unfair. U.S. Const. Amend. XIV, Ill. Const. Art. 1 § 2 [*sic*]. Liberal construction is to be given to *pro se* petitions and they should be viewed with a lenient eye, *People v. Hodges*, 234 Ill. 2d at 21 (2009) [*sic*], and to change substance is a far cry from the dictates of the law and constitutions. 725 ILCS 5/122-2 *et seq.* (West 2012)."

Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) requires that appellate litigants present arguments that articulate their contentions and reasons therefor, and that those arguments be supported by legal authorities and citation to the record. "[M]ere contentions, without argument or citation of authority, do not merit consideration on appeal." *Hall*, 2012 IL App (2d) 111151, ¶ 12. When arguments are not supported by facts in the record, they are nothing more than bare contentions that may be deemed forfeited. *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 29. In this example, even viewed through the most lenient of legal lenses, while defendant cites legal authority, he fails to present a cogent legal argument supported by facts in the record. Likewise,

with respect to the other 54 issues defendant presents no cogent legal arguments. Consequently, defendant has forfeited each of his 55 issues on appeal.[3]

¶ 15 Forfeitures aside, defendant's contentions are without merit. The majority of defendant's allegations pertain to ineffective assistance of trial counsel, and to a lesser extent, appellate counsel. To prevail on a claim of ineffective assistance of counsel, a defendant must establish that (1) counsel's representation arguably fell below an objective standard of reasonableness, and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688-94 (1984). A failure to establish either *Strickland* prong is sufficient to deny a claim of ineffective assistance of counsel. *People v. Cherry*, 2016 IL 118728, ¶ 24. Mere speculation or conjecture is not enough to justify a claim of ineffective assistance of counsel. *People v. Cooper*, 2013 IL App (1st) 113030, ¶ 58. In the context of a first-stage postconviction proceeding, the petitioner need only allege at least some objective facts that support both prongs of *Strickland* which can be corroborated, or provide an explanation as to why they are absent. See *Hodges*, 234 Ill. 2d at 10.

¶ 16 Defendant's principal theory was that, had he been having intercourse with the girls, he would have transmitted HSV-2 to them, and they would have tested positive for the disease. The jury considered this argument at trial. Dr. Sangita Rangala was an expert who specialized in pediatric sexual assault. She examined both girls the night they told their story to the police.

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[3] We note that the State argues that at least 10 of the issues brought by defendant in this appeal were previously argued before the trial court and not challenged on appeal, and that they are therefore waived. See *Ligon*, 239 Ill. 2d at 103. Because we determine that defendant has forfeited these arguments for failure to comply with Rule 341(h)(7), we need not address the potential issues surrounding the doctrine of *res judicata*.

She testified that transmission rates among female children who have had sexual intercourse with an adult male were statistically "rare." Defendant blames his trial counsel for calling Dr. Rangala as his witness and failing to present Judy Malmgren, a sexual assault nurse examiner previously retained by the defense to conduct a records review from Edward Hospital of the medical exams, documents, and photographs of T.C. and C.C. Defendant asserted that Ms. Malmgren would have testified to higher transmission rates of HSV-2. The record, however, indicates that she did not include any information about transmission rates of sexually transmitted diseases in her pre-trial report, nor did defendant include an affidavit from her with his postconviction petition. Contrary to his assertions, none of the documentation submitted by defendant contravenes Dr. Rangala's testimony.

¶ 17 Defendant blames his trial counsel for a number of other alleged errors, contending that he should have called defendant's ex-girlfriend to testify that she transmitted HSV-2 to defendant. Defendant does not address the fact that the trial court granted the State's pre-trial motion *in limine* barring such testimony. Defendant additionally asserts that his attorney should have presented evidence tending to show defendant was a model father to the girls. Defendant's trial attorney explained his strategy to the court at a post-trial *Krankel* hearing. Rather than challenge the evidence of forensic trauma, counsel wanted to demonstrate that defendant did not cause the trauma. Counsel did not elicit testimony regarding defendant's positive parenting skills because it would have undermined his theory on behalf of defendant that the girls were lying so that they could move to St. Louis to be with their mother's family.

¶ 18 A defense attorney's choices regarding which witnesses to call and what evidence to present are trial strategy. *People v. King*, 316 Ill. App. 3d 901, 916 (2000). There is a strong presumption that trial strategy is sound, which is only overcome when it is "so irrational and

unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy." *King*, 316 Ill. App. 3d at 916. Defendant presents no allegations of ineffective assistance that are not directly refuted or unsupported by the record. Consequently, trial counsel's performance was not arguably objectively unreasonable. Because defendant has not presented the gist of a claim that his trial counsel's representation fell below an objective standard of reasonableness under the first prong of *Strickland*, we need not address the second prong of prejudice.

¶ 19 Defendant also alleges a number of constitutional violations that can be categorized as judicial bias. In order to sustain a claim of judicial bias post-conviction petitioners must establish a nexus between the alleged corruption by a judge and the judge's conduct at trial. *People v. Fair*, 193 Ill. 2d 256, 263 (2000). "A judge is presumed to be impartial even after extreme provocation." *People v. Jackson*, 205 Ill. 2d 247, 276 (2001). Among defendant's contentions are that the trial court "coached" and argued for the State during the trial, "never enforced the discovery rule," and permitted the State's "ruthless tactic of ambush." He suggests, without support, that the judge did not read the postconviction petition before dismissing it. In defendant's contention of judicial bias with regard to appellate counsel's meritorious claims, he asserts, "Appellant reiterates that there is a persuasive impression that the judge had already decided the entire case and is hopelessly biased." Defendant does not link this or other contentions of bias to any specific conduct by the judge at trial or in his postconviction review. At best, these arguments appear to be disagreements with various rulings rather than true complaints of bias. Nothing defendant presents overcomes the presumption of impartiality.

¶ 20 Finally, defendant asserts that his appellate counsel was ineffective for failing to advance these issues of judicial bias and ineffective assistance of trial counsel in his direct appeal. As

noted above, appellate counsel did raise two issues on direct appeal. "Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong." *People v. West*, 187 Ill. 2d 418, 435 (1999) (citing *People v. Collins*, 153 Ill. 2d 130, 140 (1992)). For the reasons explained above, the issues which defendant now faults appellate counsel for not raising were objectively without merit. Thus, appellate counsel was not incompetent for failing to include them.

¶ 21 Notwithstanding the procedural forfeitures, defendant fails to raise the gist of a constitutional claim.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 24 Affirmed.