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2018 IL App (3d) 150301-U

Order filed September 26, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0301 Circuit No. 06-CF-949
CLYDE EDWARD BRADLEY,)	Honorable David A. Brown Judge, Presiding
Defendant-Appellant.)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing defendant's postconviction petition at the second stage of proceedings where he failed to establish any deprivations of his constitutional rights.

¶ 2 Defendant Clyde Bradley filed a postconviction petition which was dismissed on the State's motion at the second stage of postconviction proceedings. He appealed the dismissal. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant Clyde Bradley was charged with two counts of heinous battery and four counts of aggravated domestic battery against his wife, Talefia Parker. 720 ILCS 5/12-4.1, 12-3.3(a) (West 2008). The charges were based on events that occurred between June 25 and July 26, 2006. Prior to trial, the State filed a motion *in limine* to bar evidence regarding Parker’s “activities related to sexual matters” during the marriage and evidence regarding Parker’s employment history and “records concerning workplace terminations, dismissals or inter-workplace issues.” The defense objected to the motion, arguing that the evidence was relevant to its theory that Parker’s injuries were caused by someone other than Bradley and related to a drug debt she owed. The defense also argued the information was relevant to Parker’s credibility, reflecting her motive to “extract money, quick money, if she can” to fund her drug addiction or pay off her drug debts. The trial court reserved ruling on the motion.

¶ 5 At trial, an emergency room nurse who treated Parker on July 27, 2006, testified and explained Parker’s injuries. The emergency room doctor who treated Parker on July 27, 2006, testified that Parker had numerous burns and other injuries that Parker said her husband caused. He admitted her to the hospital.

¶ 6 A detective who responded to the hospital and spoke with Parker testified. He then went to Bradley’s apartment, where he arrested Bradley. The apartment was photographed and evidence was collected, including a blank pistol. Bradley’s car, a Cadillac which Parker drove, was also searched and photographed, and evidence was collected from it. The parties stipulated that Parker’s blood was found inside the car and on items recovered from the apartment.

¶ 7 Bradley testified. He and Parker were married in February 2005. He worked as a security guard and a drug informant for the FBI. At some time after he and Parker married, she developed a drug problem. In late 2005, she asked him for \$5,000 to pay a drug debt. He insisted that he

pay the debt in person, which Parker refused. Around that same time, he saw burns on Parker's chest and right hand, injuries he did not cause. On April 12, 2006, Parker came home in the middle of the night bleeding with a leg wound, head trauma and burns to her chest and thigh. He did not cause the injuries. He drove Parker to the hospital. On the drive, Parker told him she had been with a group of women in Bloomington earlier in the evening. She told hospital staff and police officers that her injuries had been caused by a gang fight in Bloomington.

¶ 8 According to Bradley, his marriage began breaking down after the April 2006 incident. He suspected Parker of having an affair. In late June or early July 2006, Bradley talked to Parker about ending their marriage. In the morning of July 26, 2006, Bradley went to work at the mall. He carried a blank pistol as part of his security guard uniform. Parker picked him up at the mall after work and drove him home. After dinner, Parker told Bradley she was going out to pay off her drug debt and left around 7:30 p.m. She returned around 12:30 a.m., bleeding profusely from her face and with bloody clothes. He offered to take Parker to the hospital but she refused. The following morning, Parker again refused to go to the hospital.

¶ 9 Bradley noticed there was blood splatter in the apartment. He put Parker's bloody clothes in a garbage bag and placed the bag in his car trunk. He drove to the gym and the mall and noticed a large amount of blood inside the car. Bradley took the Cadillac to be cleaned. He planned to return to the apartment, pack Parker's belongings, and bring them to her grandmother's house. He told Parker of the plan. When he arrived home around 3:30 p.m., the front door was open but Parker was not home. He did not know she was at the hospital. He was awakened around 10 p.m., when the police arrived and he was arrested after consenting to a search of the apartment. Bradley did not cause her injuries.

¶ 10 Bradley's boss testified that he had known Bradley for 11 years. Parker would visit Bradley at work. In April 2006, he noticed Parker had a bruise on her face, which Parker said she sustained in a car accident. Bradley was at work on July 25 and 26, 2006.

¶ 11 Valencia McClain, a family friend, testified. She had known Bradley since 1986 and Parker since 2003. In late 2005, Parker told her that she was seeing someone in Bloomington. In January 2006, Parker came over unexpectedly around 11 p.m. Parker's hair was messed and it looked like she had been hit in the eye. Parker asked McClain to tell Bradley that the two women had been out together and that her eye injury was caused in a fight with some women.

¶ 12 Cynthia Smith, Parker's aunt, testified. On July 27, 2006, Parker called her and she went to Parker's apartment. Parker had burns all over her face, hands and neck and her eye was swollen shut. Smith was able to convince Parker to get medical care.

¶ 13 The trial court made a ruling on the State's motion *in limine* prior to Parker's testimony. The defense reiterated that the defense theory was that Parker had incurred a drug debt and falsely accused her co-workers of sexual assault and Bradley of the battery to obtain money to pay off her debt. The trial court granted the State's motion and barred admission of evidence regarding Parker's sexual activities and employment records.

¶ 14 Parker testified. She and Bradley began dating in 2003. Prior to their marriage, he had slapped her one time. At the end of 2005, their marriage began to change after she lost a considerable amount of weight. Bradley began accusing her of cheating on him. During the same time period, he began to harm her. On April 12, 2006, she went to the hospital with Bradley for treatment of a cut over her eye and a stab wound to her left leg. Parker said Bradley had accused her of cheating on him and tried to cut out her eye. He tied her legs together, tried to slice off her clitoris, stabbed her in the leg and stomped on her. On the way to the hospital, Bradley told her to

say that she had been injured in a gang fight in Bloomington. She told the police the same story. The hospital personnel suggested she be treated at a different hospital. Bradley drove her there. She told the police there the same story regarding the gang fight. She later told a Bloomington detective that she did not want to pursue the gang fight case. She refused hospital admission and went home with Bradley. She left with him because she was afraid of him. Bradley had threatened that if she left him, he would use his contacts to find and kill her. He was friends with a police chief and an FBI agent.

¶ 15 In early July 2006, Bradley again accused her of cheating on him. He burned her with boiling water, taped her to a chair and poured hot water down her pants and in her mouth. On July 25, 2006, Parker drove the Cadillac to pick Bradley up from work. He was angry at her. He drove her to an abandoned house in the country, where he picked up a large stick and put it in the trunk. He then took her to a cornfield, called someone about dogs and told her he was going to lock her in the trunk with the dogs. He then hit her with the stick and threw her against the car. He drove back to the mall and hit her in the face one time on the way. They went to a laundry mat and then to their apartment building, where they sat arguing in the car in the parking lot. Bradley stabbed her in the face a number of times with a pen. They went inside the apartment, where Bradley beat her with decorative acorns and hit her in the face with his fists. He ordered her to clean up the blood in the bathroom and hit her with a shaving cream can while she was cleaning. He struck her in the face with her ice pack. She denied going out on July 25 by herself to meet up with two men in a park to buy \$700 of crack cocaine or that they beat her when she told them the crack was no good.

¶ 16 The following morning, Bradley told her he was going to sell the Cadillac and left for work. Later than night, Bradley slashed her face with a knife or scissors. On July 27, 2006, after

Bradley left for work, Parker called her aunt, Cynthia Smith, and eventually went to the hospital. She told the medical staff and the police about what Bradley did to her. She testified about her injuries. She denied McClain's claims that Parker admitted she had an affair. She also denied she told Bradley she owed \$5,000 to a Bloomington drug dealer.

¶ 17 The parties concluded their cases. They agreed Bradley's blank gun should not be sent back with the jury. During deliberations, the jury sent out three notes, one of which asked if they could see the blank gun. Bradley objected, arguing that the gun was collateral. The trial court determined the jury could view the gun. The jury found Bradley guilty of heinous battery and aggravated domestic battery accompanied by brutal or heinous behavior indicative of wanton cruelty.

¶ 18 Bradley moved for a new trial. He argued the trial court erred when it barred him from raising particular evidence and when it allowed the State to introduce the gun. He further argued that his counsel was ineffective for failing to call other witnesses and for his inability to have certain evidence allowed and to have the court bar certain of the State's evidence. In response to the court's inquiry, counsel stated he should have called Jerel Newbill as a witness based on Newbill assisting Parker in taking money from Bradley after he was arrested. Counsel did not attempt to use Newbill because of the trial court's *in limine* ruling barring such evidence. Counsel acknowledged his performance could have been ineffective as alleged by Bradley. The trial court denied Bradley's motion. A sentencing hearing took place and the court imposed a 45-year term for heinous battery and a consecutive 14-year term for aggravated domestic battery.

¶ 19 Bradley appealed, alleging the trial court erred when it did not comply with Illinois Supreme Court Rule 431(b), barred evidence of Parker's prior false allegations of sexual assault against her co-workers and Parker's removal of money from Bradley's bank account after his

arrest, engaged in improper *ex parte* communications with the jury and imposed improper consecutive sentences. *People v. Bradley*, No. 3-08-0229 (2010) (unpublished order under Illinois Supreme Court Rule 23). Bradley also argued that counsel was ineffective for failing to object to certain hearsay testimony. *Id.* In affirming Bradley’s conviction and sentence, this court found, *inter alia*, that evidence regarding Parker’s false accusations against her coworkers and that her withdrawal of money from Bradley’s account were inadmissible as prior bad acts. *Id.*

¶ 20 Bradley filed a *pro se* postconviction petition. In his petition, he alleged that direct appeal counsel was ineffective for a variety of reasons and realleged arguments he made on direct appeal. In support of his petition, Bradley attached portions of the trial transcript and summaries of defense counsel’s investigator’s interviews with potential witnesses. Bradley also attached his affidavit in which he averred that he had asked trial counsel to call the witnesses interviewed by the investigator, and that they would have testified regarding Parker’s reputation and lifestyle, how she was injured and her false allegations of sexual assault. The summaries provided as follows.

¶ 21 Teirria Chalk, who was Bradley’s daughter from a former marriage, talked by phone to Parker several times in January 2007. She asked Parker, “What can we do to fix this?” Parker’s reply was to get her the Cadillac and deposit \$2,500-\$5,000 in Parker’s bank account. Antonio Tucker, Chalk’s stepfather, heard that Parker had withdrawn \$2,000 to \$2,500 from Bradley’s account without his permission.

¶ 22 Jo Lynn White trained Parker at a rehabilitation care center in 2005 or 2006. Parker falsely accused White of sexual assault, an internal investigation found no evidence of an assault and Parker was fired. Mark Burgess worked with Parker at a senior living center in late 2005 or early 2006. Bradley asked him if he had sexually assaulted Parker. Bradley apologized when

Burgess denied the assault. Brian Tranchitella worked at a nursing home with Parker in Spring 2006. Parker falsely accused him of sexual assault. The allegation was unfounded and Parker was fired.

¶ 23 Michael Linwood was aware that Parker had “dope dates” with Ricardo Johnson in summer 2006 before Bradley was arrested. Parker exchanged sex for crack cocaine. She also had dope dates with Shone Jones. Wesley Jackson served time in the Peoria County jail in 2007. While in jail, Jerel Newbill told him that Newbill and Parker withdrew \$1,000 from Bradley’s bank account. Newbill also told him that Parker had a relationship with the detective in Bradley’s case. In late 2005, when he arrived at “Shane’s” house, Shane told him that Parker had just given oral sex to a dog in exchange for cocaine. He knew Parker was regularly using crack cocaine in Fall 2007. Newbill was involved in a drug and sexual relationship with Parker from Fall 2006 to Spring 2007. Parker made two \$30 deposits into his commissary account after he was arrested.

¶ 24 The trial court appointed counsel for Bradley. Counsel filed an Illinois Supreme Court Rule 651(c) certificate. The State moved to dismiss the petition. At a hearing on the motion, postconviction counsel argued that Bradley’s *pro se* petition was well prepared, well supported and raised issues. Counsel stood on the petition and supporting documents. The trial court granted the State’s motion to dismiss. Bradley timely appealed.

¶ 25 ANALYSIS

¶ 26 The issues on appeal are whether the trial court erred in dismissing Bradley’s postconviction petition and whether postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c).

¶ 27 The first issue is whether dismissal of Bradley’s postconviction petition was in error. Bradley submits the trial court erred in dismissing his petition for two reasons. First, he argues

that he made a substantial showing that direct appeal counsel was ineffective for failing to raise the denied admission of Parker's false accusations of sexual assault against her coworkers and for failing to challenge the submission to the jury of the blank gun. Second, Bradley argues that he made a substantial showing that trial counsel was ineffective for failing to call witnesses concerning Parker's drug debts and to provide an offer of proof regarding their potential testimony in support of Bradley's financial motivation theory of the case.

¶ 28 Under the Post-Conviction Hearing Act, a defendant may assert that the proceeding resulting in his conviction substantially denied his constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2016). There are three stages of postconviction proceedings. *People v. Merritt*, 2017 IL App (2d) 150219, ¶ 17. At the first stage, the trial court may summarily dismiss the petition where it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2016). If the petition advances to the second stage, the trial court may appoint counsel to represent the defendant and amend the petition, if necessary, and the State may move to dismiss or answer the petition. 725 ILCS 5/122-4; 725 ILCS 122-5 (West 2016). At the third stage, the trial court conducts an evidentiary hearing. *People v. Mescall*, 403 Ill. App. 3d 956, 961 (2010).

¶ 29 Bradley argues that counsel on direct appeal provided ineffective assistance by failing to argue that the trial court's prohibition of evidence concerning Parker's false accusations of sexual assault against her co-workers prevented him from fully defending his financial motivation theory. Bradley further argues appellate counsel failed to raise the issue that the trial court erred when it allowed the blank gun to be sent to the jury during deliberations. Bradley submits that if appellate counsel had presented either issue, the result of the appeal would have been different and maintains that he made a substantial showing of a constitutional violation sufficient to allow his petition to advance to a third-stage evidentiary hearing.

¶ 30 At the second stage, the defendant bears the burden to show a substantial violation of a constitutional right. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). When a postconviction petition alleges ineffective assistance of appellate counsel, it must establish that counsel’s failure to raise the issue on appeal was not objectively reasonable and that the petitioner was prejudiced by the omission. *People v. Childress*, 191 Ill. 2d 168, 175 (2000). A petitioner is not prejudiced where the underlying issue lacks merit. *Childress*, 191 Ill. 2d at 175. A trial court’s dismissal of a postconviction petition at the second stage is reviewed *de novo*. *Childress*, 191 Ill. 2d at 174.

¶ 31 The trial court barred testimony regarding Parker’s sexual conduct during the marriage, her employment history, including records relating to “terminations, dismissals or inter-workplace issues,” and any contact by Parker with law enforcement regarding workplace assaults or misconduct. On direct appeal, this court found the trial court properly barred the evidence as prior bad acts. *People v. Bradley*, No. 3-08-0229 (2010) (unpublished order under Illinois Supreme Court Rule 23) (prior bad acts are inadmissible to impeach Parker’s character). Bradley argues he is presenting a different theory than previously raised. Regardless of what theory Bradley wants to support with evidence of Parker’s false allegations, this issue was raised on direct appeal. Issues decided on direct appeal are *res judicata* in a postconviction petition. *People v. Shriner*, 262 Ill. App. 3d 10, 12 (1994).

¶ 32 Bradley next argues that appellate counsel failed to raise the issue that the blank gun was improperly sent to the jury. He submits the gun was collateral to the offenses with which he was charged and its submission prejudiced him.

¶ 33 An exhibit may be taken into the jury deliberations when admitted into evidence and probative of any material issue. *People v. Blue*, 189 Ill. 2d, 123 (2000). Where the prejudicial effect of the exhibit outweighs its probative value, it should not be sent back with the jury. *Id.* A

gun is admissible where there is proof that connects it to both the crime and the defendant. *People v. Tucker*, 317 Ill. App. 3d 233, 241 (2000).

¶ 34 The trial court acknowledged the gun was not used in the offense but found that the gun provided “some evidence of Defendant’s position of authority, and therefore was relevant,” The court also surmised the jury wanted to see the gun as a means to gauge Parker’s credibility since the gun was referenced as fake and as a blank pistol, in contrast to Parker’s testimony that the gun worked. Parker described the gun as “in working condition.” Bradley testified he wore the gun as part of his work uniform, explained it shot blanks and that he carried it for show.

¶ 35 Bradley maintained at trial that Parker was a trained medical professional and aware of resources she could have used if her claims of spousal abuse were true. He also suggested Parker had opportunities to leave him. The State presented the blank gun as support for its theory that Bradley controlled Parker and that she stayed with him despite the abuse because she was afraid and powerless. The gun was probative to explain why Parker stayed with Bradley even though he continued to harm her and as a means to assess her credibility. In this manner, the gun was connected to the crime and to Bradley. The jury was entitled to view the gun to determine what weight, if any, to give it as evidence to decide the material issue of whether Bradley injured Parker. Because the gun was properly submitted to the jury, there was no issue for counsel to raise on appeal. We find counsel’s representation was not ineffective.

¶ 36 Bradley’s second claim of ineffective assistance concerns trial counsel and his failure to call several witnesses and present an offer of proof regarding the witnesses’ proposed testimony. He asserts the witnesses would have testified that Parker had a financial motive to falsely accuse him, suffered from a drug addiction, committed perjury in denying she had an affair, and asked Bradley’s daughter for money to drop the claims through the witnesses’ testimony. He argues

that trial counsel's failure to present exculpatory evidence was not sound legal strategy but ineffective assistance.

¶ 37 Counsel's decision as to whether to call witnesses is generally deemed the product of sound trial strategy and not subject to an ineffective assistance challenge. *People v. King*, 316 Ill. App. 3d 901, 913 (2000). When counsel has exculpatory evidence, failure to present it is not trial strategy. *Id.* Such evidence may include a witness with testimony to support a defense otherwise unsupported. *Id.* Testimony that a witness is a drug addict at the time of his or her testimony or when the events at issue occurred is proper on cross-examination as it reflects on the witness's credibility and recall ability. *People v. Collins*, 106 Ill. 2d 237, 270 (1985). A witness's prior inconsistent statement may be used for impeachment. *People v. Vera*, 277 Ill. App. 3d 130, 140 (1995). Counsel's failure to use a witness for impeachment may constitute ineffective assistance. *People v. Williams*, 329 Ill. App. 3d 846, 857 (2002). Financial motives in a trial's outcome are an appropriate subject for inquiry as is evidence a witness offered to drop the charges in exchange for payment. *People v. Hughes*, 51 Ill. App. 3d 985, 987 (1977); *People v. Pizzi*, 94 Ill. App. 3d 415, 419-20 (1981). Failure to make an offer of proof waives the issue on appeal. *People v. Andrews*, 146 Ill. 2d 413, 421 (1992).

¶ 38 Attached to Bradley's postconviction petition was a summary of the notes of the investigator's interviews with the witnesses Bradley maintains should have been called at trial. The summaries indicate several witnesses would have testified regarding Parker's alleged sexual conduct, particularly in regard to her drug use and debt. Bradley puts forth that the witnesses' testimony would have challenged Parker's credibility and impeached her testimony by establishing Parker was an addict with drug debts who was unfaithful to Bradley. Bradley also argues that counsel should have submitted offers of proof regarding the testimony of Parker's

former co-workers whom she falsely claimed sexually assaulted her. Further, Bradley argues in the alternative that the cumulative nature of the errors denied him a fair trial.

¶ 39 We are not persuaded by Bradley's assertions that counsel's failure to call the witnesses was ineffective assistance. Rather, we find counsel's rejection of the proposed witnesses to be sound trial strategy as counsel acknowledged in response to the trial court's inquiries. Because testimony regarding Parker's sexual activity during the marriage was barred, testimony of the proposed witnesses could not have been used to impeach Parker. General testimony that she used drugs does not support a financial motive and none of the witnesses testified any of Parker's conduct involved requests for money.

¶ 40 Trial counsel was aware of the witnesses and their potential testimony and reasonably determined that the witnesses would not assist the defense. None of the witnesses offered any information that Parker was injured by someone other than Bradley. The record supports trial counsel's determination not to call the proposed witnesses as a matter of trial strategy and not ineffective assistance. Furthermore, because the evidence was inadmissible and barred by a motion *in limine* order, an offer of proof was unnecessary and we find counsel was not ineffective for failing to present one.

¶ 41 The next issue is whether postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c). Bradley maintains that postconviction counsel provided unreasonable assistance where he stood on Bradley's petition and failed to attach affidavits in support of Bradley's claim or explain why they were not attached. According to Bradley, postconviction counsel did not provide reasonable assistance despite the submission of a Rule 651(c) certificate attesting that counsel fulfilled his statutory duties under the Post-Conviction Hearing Act.

¶ 42 At the postconviction stage, a defendant is entitled to a reasonable level of assistance. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007). Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) spells out what requirements postconviction counsel must satisfy to provide reasonable assistance, including that counsel consulted with petitioner “to ascertain his or her contentions of deprivation of constitutional rights,” examined the trial record, and made any necessary amendments to a *pro se* petition so that the claims are adequately presented. Incorporated into the requirement to adequately present a defendant’s claims is counsel’s obligation to look for evidentiary support for the claims. *People v. Johnson*, 154 Ill. 2d 227, 245 (1993). Compliance with the requirements of Illinois Supreme Court Rule 651(c) constitutes reasonable assistance. *Perkins*, 229 Ill. 2d at 42. “The filing of a Rule 651(c) certificate creates a rebuttable presumption that postconviction counsel provided reasonable assistance.” *People v. Miller*, 2017 IL App (3d) 140977, ¶ 47. A Rule 651(c) certificate may be rebutted by the record. *People v. Schlosser*, 2012 IL App (1st) 092523, ¶ 33 (citing *People v. Perkins*, 229 Ill. 2d 34, 52 (2007)). The failure to comply with Rule 651(c) requires remand so that the defendant’s claims may be adequately addressed. *People v. Suarez*, 224 Ill. 2d 37, 47 (2007). Whether postconviction counsel provided reasonable assistance is reviewed *de novo*. *People v. Bell*, 2014 IL App (3d) 120637, ¶ 9.

¶ 43 Bradley complains that postconviction counsel did not attach to his petition the affidavits of potential witnesses who would have bolstered his case regarding Parker’s financial motive to falsely accuse Bradley. Bradley asserts this omission constitutes a failure to make the necessary amendments to adequately present his claims and rebuts counsel’s Rule 651(c) certificate. The evidence regarding Parker’s false claims of sexual assault and her drug conduct was properly barred by the trial court. Trial counsel was not ineffective for failing to attach affidavits that

would reflect testimony that was barred. Postconviction counsel is not required to amend a *pro se* petition. See *People v. Malone*, 2017 IL App (3d) 140165, ¶ 10 (no ineffective assistance where postconviction counsel did not attach affidavits which would not have improved the petition). Here, amendment would have served no purpose. Bradley did not rebut postconviction counsel's Rule 651(c) certificate and we find counsel provided reasonable assistance.

¶ 44

CONCLUSION

¶ 45

For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 46

Affirmed.