2018 IL App (3d) 150498-U

Order filed March 14, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
| | ) | of the 12th Judicial Circuit, |
| | ) | Will County, Illinois, |
| Plaintiff-Appellee, | ) | |
| | ) | Appeal No. 3-15-0498 |
| v. | ) | Circuit No. 11-CF-1130 |
| | ) | |
| ADRIAN D. BLALOCK, | ) | Honorable |
| | ) | Daniel J. Rozak, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held*: Circuit court did not err in dismissing defendant's postconviction petition at the first stage of proceedings where that petition failed to state an arguable basis that he was prejudiced by counsel's allegedly deficient conduct.

¶ 2 Defendant, Adrian D. Blalock, appeals from the first-stage dismissal of his postconviction petition. He argues that the circuit court erred in dismissing the petition at that stage because it stated the gist of a constitutional claim. We affirm.

¶ 3 FACTS

¶ 4 On May 18, 2011, the State charged defendant via indictment with residential arson (720 ILCS 5/20–1.2(a) (West 2010)). The indictment alleged that on or about May 12, 2011, defendant damaged by means of fire a building that was the dwelling place of Theresa Mayfield. A jury trial began on June 12, 2012.

¶ 5 The State called defendant's daughter, La'Daysia Blalock, as its second witness.[1] La'Daysia, who was 13 years old at the time of trial, testified that she was with defendant on May 12, 2011, the day of the alleged arson, at approximately 3:15 p.m. While in their vehicle, La'Daysia saw defendant make a cell phone call during which defendant was angry and yelling. When defendant received that phone call, La'Daysia testified, "[defendant] turned around and turned on the highway. He went back on the highway and was driving really fast." Defendant was drinking Crown Royal; La'Daysia could read the label on the bottle when he picked it up.

¶ 6 Defendant drove past the home of Mayfield and pulled into "a driveway sort of thing, like an alley maybe" by Mayfield's house.[2] La'Daysia testified that Mayfield had been defendant's girlfriend, La'Daysia had met Mayfield through defendant, and that La'Daysia had been to Mayfield's residence before. La'Daysia could see half of Mayfield's house from where she sat, but not the front door. She testified that their vehicle was "not that far" from Mayfield's house, agreeing that it was "[j]ust around the corner." Upon parking in the alley, defendant exited his vehicle and went out of La'Daysia's sight. He was gone for approximately 15 minutes. Later, La'Daysia saw defendant "speed walking" back to the vehicle. Once inside the vehicle, defendant spoke on the cell phone with La'Daysia's uncle. La'Daysia described what she heard

[1] In defendant's direct appeal, this court exhaustively recited the facts adduced at his trial. *People v. Blalock*, 2014 IL App (3d) 120964-U. For the purposes of consistency between cases, we adopt that recitation in large part here, supplementing and amending where relevant to the particular issues of this appeal.

[2] While the witnesses at trial used both "house" and "apartment" to refer to Mayfield's dwelling place, the evidence showed that her residence was one of four units attached side by side, akin to a townhome.

in that phone conversation: "He said he did it, and he burned her house down. He burned her house down and he didn't say the name."

¶ 7 Defendant drove with La'Daysia to pick up Pamela Blalock, defendant's wife. When defendant and La'Daysia arrived at Pamela's office, defendant told La'Daysia "not to say anything." With Pamela in their vehicle along with La'Daysia, defendant drove past Mayfield's house. La'Daysia testified that the house was on fire, with fire trucks and police officers on the scene.

¶ 8 On cross-examination, defense counsel referenced La'Daysia's testimony that defendant had been drinking Crown Royal. Counsel asked La'Daysia if she had told police in a videotaped interview that defendant was drinking from a blue bottle. La'Daysia denied this. Counsel asked if La'Daysia had told police that defendant was drinking from a purple bag. La'Daysia responded: "Yeah, it was a purple bag, not blue. It was a purple bag."

¶ 9 Mayfield testified that she met defendant in January 2011, and in April of that year found out that she was pregnant with defendant's child. She testified that on the evening of May 11, 2011, she was at the home of Theresa Gant, her friend and co-worker, when she received a telephone call from defendant. Defendant told Mayfield that he had gotten into a fight with his wife, and asked Mayfield to come pick him up. Mayfield described defendant as both drunk and angry when she picked him up. They both then went to Mayfield's residence where they began discussing their relationship and Mayfield's pregnancy. Mayfield testified that during this conversation "[defendant] got really angry and he was really upset and I was scared."

¶ 10 During the argument, Mayfield left through the back door of her home to take her trash out. When she came around to the front, defendant was waiting for her. Defendant then took Mayfield's trash out for her, while urging Mayfield to call Pamela so that Pamela could reassure

Mayfield that the relationship between defendant and Pamela was over. Once on the telephone with Pamela, Mayfield requested that Pamela come to her house to pick up defendant because defendant was drunk. Defendant then took Mayfield's cell phone and threw it into the street. Mayfield testified that as she tried to walk away, defendant threatened her:

> "He told me if I don't go back in the house that he was going to tear my shit up, and then he said if he catches me back in the house he's going to put a bullet into my head. Then I kept walking, and he said if you don't come back to this house I'm gonna burn the bitch down."

Mayfield testified that she walked around her block because she saw that defendant "took off walking." After circling the block, Mayfield retrieved her vehicle.

¶ 11 Mayfield then drove to Family Dollar, where she worked with Gant, and the two then drove to Gant's house. That night, defendant showed up at Gant's house. Mayfield testified that defendant was in the front yard of Gant's house, along with Gant and Gant's husband, but she did not hear what was said because she remained inside.

¶ 12 The next day, Mayfield called the police before returning home. A police officer met Mayfield outside of her house. Upon arriving, Mayfield noticed that three bricks were stacked outside her front window and that the lock on that window was broken.[3] Mayfield went into the residence, accompanied by the police officer, and noticed that numerous things inside the home had been destroyed, including mirrors and electronics. As Mayfield described it, "anything in my room and the living room that could be broken, was." Mayfield went to Gant's home to change clothes and then to the Will County courthouse.

[3]Photographs introduced at trial show the first-floor window in question, with three wide landscaping stones stacked on the ground outside of the window, in a manner that would assist a person in entering the window from the outside.

¶ 13 Gant testified that she became friends with Mayfield in February 2011 and that she had known defendant for 20 years. Shortly after Gant arrived at her house with Mayfield on the night of May 11, 2011, defendant arrived at the house. Gant testified that while in the front yard of the house, defendant said "[t]hat he was going to blow her head off." Gant's husband told defendant to leave, and defendant complied. The next day, while working at Family Dollar, Gant received a telephone call from defendant. Gant described the conversation: "I asked him why he was doing the things he was doing, and he told me that I hadn't seen yet—I haven't seen anything yet. This is not a game. He's going to blow her car and her house up."

¶ 14 Shawn Carroll, a fire investigator with the Joliet Fire Department, testified as an expert in the field of fire investigation and the determination of cause and origin of fires. Carroll stated that on May 12, 2011, at approximately 4:30 p.m., he was called out to Mayfield's address. Upon arriving at the scene, Carroll conducted an investigation into the origin and cause of the fire. Carroll concluded that the fire had originated in a bedroom in Mayfield's unit and that the fire had been set intentionally.

¶ 15 Prior to trial, the State filed a motion *in limine* seeking to introduce evidence of defendant's prior acts. Specifically, the State sought to introduce that defendant had committed arson in 1993 and aggravated arson in 1999. Over defense counsel's objection, the court allowed the State to present evidence of the 1993 arson for the purposes of showing *modus operandi*, motive, intent, knowledge and absence of mistake on the part of defendant. The court allowed the State to present evidence of the 1999 aggravated arson for the same purposes with the exception of *modus operandi.*

¶ 16 Louis Silich testified that in 1993 he was a police officer for the City of Joliet. In February of that year, Silich investigated a fire at the residence of Cassandra Person. In his

investigation Silich learned that Person had been defendant's girlfriend. After an argument between defendant and Person occurring at Person's residence, Person told defendant that they should not see each other anymore. Person then left the residence with a former boyfriend. According to Silich:

> "[Defendant] stated after they left he went down to the kitchen and found a black apron with pink flowers on it. He threw it on top of the stove burner and cut on the gas. It started fire. He walked up the stairs to the second floor, went to the front master bedroom, which was Ms. Person's bedroom, and he threw the burning apron on top of the bedspread and the furry pillows. He stated that it caught on fire and that he found a pair of sweatpants on the floor. He took those sweatpants, started those on fire, and walked to the back bedroom, which was the bedroom of the children, and he threw that on top of the bedspread."

¶ 17 Dwayne Weis testified that in 1999 he worked for the Joliet police department and that in September of that year his assignment was with the arson task force. Weis testified that in the course of his investigation of a fire he interviewed defendant. Defendant told Weis that he had been in a van in Chicago with three other individuals. After an argument inside the van, defendant was kicked out. Defendant received a ride back to Joliet from his cousin, and then went to the home of the individual who kicked him out of the van. Another argument ensued on the front lawn of the home, at which point defendant left to retrieve a gas can from his home. Weis testified that defendant "[s]tated he went back to [the individual's home] and found what appeared to be a piece of rubber or carpeting and put gasoline on the carpeting." Defendant lit the piece of carpeting on fire and threw it on top of the porch in front of the building and also in the rear of the building.

¶ 18 The defense called Pamela Blalock as its only witness. Pamela testified that she picked defendant up on the night of May 11, 2011. She testified that when she picked him up "[h]e was walking towards—He was on Hickory and I picked him up on there." On cross-examination, when the State asked if Pamela had picked defendant up from a particular house, she responded: "He was walking. He was walking." Defendant spent that night at her home and he dropped her off at work the next morning. Pamela saw defendant around noon that day when he brought lunch to her office. Defendant and Pamela spoke on the telephone multiple times while Pamela was at work, including once around 3 p.m., when Pamela informed defendant of some possible job openings at warehouses. Pamela testified that "[s]oon after" at conversation, defendant picked up Pamela so they could drive to those warehouses. On the way, Pamela and defendant drove past Mayfield's street. Pamela initially estimated that this occurred around 3:30 p.m., but she later stated—on both direct and cross-examination—defendant picked her up from work at exactly 4:33 p.m.

¶ 19 The jury found defendant guilty, and the circuit court later sentenced him to a term of 30 years' imprisonment. This court affirmed that conviction. *People v. Blalock*, 2014 IL App (3d) 120964-U.

¶ 20 On June 12, 2015, defendant filed a *pro se* postconviction petition. In the petition, defendant alleged that his due process rights were violated when the State was allowed to introduce evidence of his prior offenses. Defendant also alleged that defense counsel provided ineffective assistance.

¶ 21 Defendant listed two primary grounds[4] on which counsel's performance was ostensibly deficient. First, he asserted that counsel had failed to use the police video recording of their interview with La'Daysia as substantive and impeaching evidence. Defendant claimed in the petition that La'Daysia told the police in the videotaped interview that defendant had parked their vehicle at Dick's Towing, which, according to defendant "is approximately 100 yards away or more from the entry way of victim's residence." Defendant claimed there is no view of Mayfield's housing complex from Dick's Towing. He further wrote in his petition: "However, while on the stand at trial, La'Daysia Blalock stated that the petitioner parked at a tire shop, only to place petitioner closer to victim's residence." Defendant also argued that this discrepancy, if brought to the attention of the jury, would have served to undermine La'Daysia's credibility, writing: "[I]t also brings into question the credibility of the key witness altogether wherein, could the key witness actually see what she testified to having seen?"

¶ 22 Defendant also contended that counsel was ineffective for failing to introduce defendant's medical records, which would have shown that defendant "was in a leg cast at the time of the crime." He argued that this information would have created a reasonable doubt as to whether defendant had the ability to climb through Mayfield's window.

¶ 23 The circuit court dismissed defendant's petition at the first stage, finding it frivolous and patently without merit.

¶ 24 ANALYSIS

¶ 25 Defendant contends on appeal that his postconviction petition stated the gist of a constitutional claim, and that the circuit court's first-stage dismissal of that petition was therefore erroneous. Specifically, defendant maintains that the allegations made in his petition, taken as

[4]Defendant also briefly asserted that counsel should have objected to the testimony regarding defendant's previous offenses.

true, create a basis on which it can be argued both that counsel's performance was deficient and that but for the deficiency, there is a reasonable probability that the outcome at trial would have been different.

¶ 26 The Post–Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)) provides a three-stage proceeding in which a criminal defendant can assert that his conviction was the result of a substantial denial of his rights under the United States Constitution, the Illinois Constitution, or both. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). At the first stage, the court must accept as true and liberally construe all of the allegations in the petition unless contradicted by the record. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A defendant need only allege sufficient facts to state the "gist" of a constitutional claim in order for his petition to be forwarded to the second stage. *Hodges*, 234 Ill. 2d at 9. That is, the petition must assert " 'legal points arguable on their merits.' " *Id.* at 11 (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)). The circuit court may summarily dismiss a first-stage petition as frivolous or patently without merit where it has no arguable basis in law or fact. *Id.* at 16.

¶ 27 To ultimately prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was objectively unreasonable and 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, 694 (1984). Of course, a defendant need not prove ineffective assistance by this standard at the first stage of postconviction proceedings. At this stage, "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." *Hodges*, 234 Ill. 2d at 17.

¶ 28 On appeal, defendant makes no contentions that the first issue raised in his postconviction petition—that his due process rights were violated when the State introduced evidence of prior bad acts—actually states the gist of a constitutional claim. Similarly, defendant does not address the fleeting argument from his postconviction petition that counsel was ineffective for failing to object to that evidence, likely because that claim was directly contradicted by the record. As defendant has effectively conceded those points, we need only consider whether defendant's petition stated the gist of a claim that defense counsel was ineffective for failing to impeach La'Daysia with the videotape of her interview and failing to introduce defendant's medical evidence.

¶ 29 Defendant first alleged in his petition that La'Daysia told the police that their vehicle was parked in front of Dick's Towing. He further alleged that Dick's Towing is at least 100 yards away from Mayfield's house, closer than the tire shop that La'Daysia testified at trial that their vehicle was parked in front of. He asserts that the greater distance undermines the State's timeline of events, and the discrepancy in La'Daysia's statements undermines her credibility.

¶ 30 Initially, we point out that La'Daysia did not testify at trial that defendant parked their vehicle at a tire shop. She merely testified that defendant drove down an alley and parked "not that far" from Mayfield's house. To that extent, defendant's factual claims are contradicted by the record. Even assuming that La'Daysia told police defendant parked at Dick's Towing, some 100 yards away, that cannot be said to conflict with her testimony that their vehicle was "not that far" from the house. La'Daysia testified that defendant was away from their vehicle for approximately 15 minutes. One hundred yards is not so great a distance that it would render it improbable that a person could walk that distance, set a fire, and return. In other words, even taken as true, defendant's allegations do not undermine the State's timeline of events in any way.

¶ 31 Moreover, had defense counsel brought these facts to light, La'Daysia's credibility would have been unharmed. As mentioned above, a prior statement that defendant parked their vehicle in front of Dick's Towing would not actually conflict with any of La'Daysia's trial testimony. Further, the precise establishment near which defendant parked his vehicle is largely an irrelevant fact. Counsel's efforts to undermine La'Daysia's credibility with a similarly irrelevant fact—the color of the bottle that defendant was drinking from—were unavailing. Indeed, as this court commented on direct appeal, "Despite her age, La'Daysia's testimony was detailed and consistent, and she made no indication that she had any difficulties recalling the events from 13 months prior. *** We find that *** La'Daysia Blalock was a credible and compelling witness against defendant." *Blalock*, 2014 IL App (3d) 120964-U, ¶ 30. Given the minor relevance of the facts alleged by defendant and La'Daysia's already strong credibility, it is not even arguable that defense counsel could have altered the outcome of the case by cross-examining La'Daysia on the point in question.

¶ 32 Defendant next alleged that his leg was in a cast during the events in question, and that counsel was ineffective for failing to introduce that fact into evidence. Specifically, he asserts that this information would call into doubt the State's theory that he entered Mayfield's house through her window.

¶ 33 Three witnesses at trial, including defendant's own witness, testified that defendant was ambulatory on the dates in question. Mayfield testified that defendant was able to take her trash out for her, then later pursued her on foot when she tried to walk away from the house. Pamela testified that defendant was walking when she picked him up after the fight with Mayfield on the night of May 11. La'Daysia testified that after defendant moved away from the vehicle and was

gone for 15 minutes, she saw him speed-walk back. Though Gant did not testify directly to seeing defendant on his feet, she testified that defendant was in her front yard at one point.

¶ 34 To be sure, these facts do not contradict defendant's allegation that his leg was in a cast. However, they necessarily shed light on the nature of defendant's purported immobility. That is, while it is possible that defendant's leg was in a cast of some sort, the injury and type of cast must have been such that he was still able to move about freely, to do so with a bag of garbage in his hand, and even speed walk. The facts on the record, supported even by the testimony of the defense witness, thus show that defendant retained a fair amount of mobility. Accordingly, the record rebuts any claim that defendant was so injured and immobile that he would not have been able to enter a first-floor window.

¶ 35 As this court recognized in defendant's direct appeal, the evidence against defendant was overwhelming. *Blalock*, 2014 IL App (3d) 120964-U, ¶ 29. Certainly, overwhelming trial evidence does not foreclose the possibility of a postconviction defendant making an arguable claim that he was prejudiced by counsel's errors. However, in the instant case, defendant's claims are largely contradicted by the record. What remains of his claims after those contradictions are simply of such a minor relevance, that even when taken as completely true, there is no way to envision those alleged errors having any possible effect on the outcome of the case. Because there is no arguable basis for prejudice, we find defendant's postconviction petition frivolous and patently without merit.

¶ 36 CONCLUSION

¶ 37 The judgment of the circuit court of Will County is affirmed.

¶ 38 Affirmed.