2018 IL App (4th) 160154-U

NO. 4-16-0154

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 28, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JAKE E. WILLIAMS,	)	No. 12CF1196
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Harris and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in summarily dismissing defendant's *pro se* petition for postconviction relief.

(2) This court lacks jurisdiction over defendant's claims the fines imposed by the circuit clerk were improper.

¶ 2 In October 2015, defendant, Jake E. Williams, filed a *pro* se petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2014)), alleging he was denied the effective assistance of counsel when counsel failed to object "to improper hearsay recordings of [an] inconsistent witness" and to file a posttrial motion to preserve the error for appeal. The trial court dismissed the petition, finding the statements admissible under section 115-10.1 of the Illinois Code of Criminal Procedure (Code) (725 ILCS 5/115-10.1 (West 2012)) and the petition, therefore, frivolous and patently without merit.

¶ 3 Defendant appealed, arguing the trial court erroneously dismissed his petition as it states the gist of a constitutional claim trial counsel provided ineffective assistance by not objecting to the witness's testimony as unduly prejudicial pursuant to Illinois Rule of Evidence 403 (eff. Jan. 1, 2011). Defendant further contends this court should vacate two clerk-imposed fines. In contrast, the State argues defendant, on appeal, is arguing a claim that does not appear in his postconviction petition. We agree with the State and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Charges and Verdict

¶ 6 On November 5, 2012, an altercation between two rival street gangs, Money Over Bitches (M.O.B.) and Black Out Mafia (B.O.M.), resulted in gunshot wounds to two members of B.O.M., Marcus Winlow, a.k.a "Lil Dude," who is the victim in this case, and Robert Jackson. Defendant was a member of M.O.B.

¶ 7 When the police arrived at the scene of the altercation, officers observed Winlow's mother, Michelle Brown, at the scene. Brown informed an officer defendant shot her son in the back. In her statements to the police, Brown stated she was walking to a bus stop behind Winlow and Kaythiese Fitch, a.k.a "K.K." The two men stopped to speak with Jackson. Defendant and five other members of M.O.B. approached the three members of B.O.M. The group crossed the street into an empty lot, where they began fighting. Defendant squared up to fight Winlow and then pulled out a gun. Winlow turned and ran away. He was shot in the back. Other members of M.O.B. also had guns.

¶ 8 In November 2012, Brown testified before the grand jury and defendant was indicted on four weapon-related charges: (1) attempt (murder) (720 ILCS 5/8-4 (West 2010))

(count I); (2) aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2010)) (count II); (3) aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)) (count III); and (4) possession of a firearm by a street-gang member (720 ILCS 5/24-1.8(a)(1) (West 2010)) (count IV). Two months later, defendant was indicted by grand jury on three additional counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2010)) (counts V, VI, and VII). The State abandoned count IV before trial.

¶ 9 By letter dated December 11, 2012, Brown recanted her statements to the police and the grand jury:

> "I, Michelle Brown, [am] serving as a witness in a felony case in which my son, [Winlow], was the victim. I am choosing to remove my statement as the witness in this case. My son had been shot [as] a result of a fight, and I was very frustrated and confused at the time the original statement was written. I began to name several gentlemen who had previously been in verbal altercations with [Winlow]. I did not see these gentlemen: [defendant], Deandre Daniels, Quinshawn Gardner, Antoine Smith, Kenneth King, or Raymond Davis at the crime scene. I do not hold any of these men accountable for the crime, and according to me they are not defendants in this case. I will not be attending trial as a witness, nor testifying, I would like for all charges to be dropped. Lastly, I am not being forced by anyone to remove my statement nor have I been promised anything in return to withdraw this

statement and I do not feel threatened nor that my life is in danger. I would like all the gentlemen upon release to be ordered to attend several churches and give their testimonies why they thank God for a second chance at life."

¶ 10 At trial, Brown testified consistent with her recantation, denying she saw defendant shoot Winlow. The State submitted into evidence, without objection from trial counsel, repeated statements Brown made to the police and before the grand jury that were inconsistent with her trial testimony. The jury found defendant guilty of aggravated battery with a firearm (count II), aggravated discharge of a firearm (count III), and aggravated unlawful use of a weapon (counts V, VI, and VII), but not guilty of attempt (murder) (count I). At sentencing, the trial court sentenced defendant to 18 years in prison for count II and a concurrent 3-year term for count V.

¶ 11 B. The Postconviction Petition

¶ 12 In October 2016, defendant filed his postconviction petition. Defendant asserted his "trial counsel was incompetent by not objecting to improper hearsay recordings of [an] inconsistent witness and by not objecting or filing mistrial-motion to jury's verdict in order to preserve errors for review on appeal." Regarding this argument, defendant stated the following:

"Trial counsel should have also objected to the improper hearsay recordings of witness Michelle Brown. In Brown's video/audio recorded statement, she claim[ed] to witness the shooting. But [she] testified at trial the statement she gave police was false. The State bolster[ed] Brown's false statement to

> overpower her trial testimony, which favored [defendant].
>
> Trial counsel should have objected and raised this issue again in a [posttrial motion]. Brown's statement that she admitted was false influenced the jury's decision [*sic*]. In fact the jury asked the court to listen[] to Brown's recorded interview again while deliberating. The jury wanted to hear Brown's hearsay conversations on the phone[.] Brown's conversations were not evidence in this case. The jury[']s requesting to listen to these irrelevant phone conversations shows they considered other information other than the evidence developed at trial. The Supreme Court has held that a defendant may establish a claim of bias by showing that the jury, in reaching its verdict, considered extraneous and prejudicial information other than the evidence developed at trial. ***."

¶ 13 Defendant attached to his petition excerpts from the testimony of multiple witnesses. Regarding Brown's testimony, defendant included two pages of the transcript regarding her conversation with the officer at the scene of the shooting. Defendant highlighted Brown's testimony she "was going by hearsay and making up my own story *** because I wanted somebody, you know, to go down."

¶ 14 In January 2016, the trial court entered an order dismissing defendant's petition as frivolous and patently without merit. The court addressed defendant's "claim relating to failing to object to hearsay" as to Brown's prior statement. The court observed the record showed the

statement was admitted under section 115-10.1 of the Code that permitted the admission of prior inconsistent statements as substantive evidence. The court found, had counsel objected, the statement would have been admitted as it met the criteria [1] of being inconsistent with the testimony of the witness at trial, [2] the witness would be subject to cross[-]examination concerning the statement, and [3] the statement narrated, described or explained an event of which the witness had personal knowledge and is proved to have been accurately recorded. See 725 ILCS 5/115-10.1(a), (b), (c)(2)(C) (West 2012).

¶ 15 C. Defendant's Trial

¶ 16 At the March 2013 trial, the State presented the testimony of Bloomington police officers Eric Riegelein and Michael Luedtke and detectives Clayton Arnold and Scott Mathewson. Officers Riegelein and Luedtke and Detective Arnold arrived at the scene of the shooting within minutes after it occurred. There were approximately six to eight people in the vicinity. Winlow, who had been shot in the back, laid in the road, while Brown tended to him. When Officer Riegelein asked Winlow who shot him, Winlow replied he did not know.

¶ 17 The State called Brown to testify. Brown testified she knew Ervina Daniels, defendant's mother, for approximately 20 years. Brown agreed she would look out for Daniels's children as if they were her own but testified she looked after all children that way. Winlow and K.K. arrived at Brown's apartment early in the afternoon on November 5, 2012. Winlow, who had a knot on his head, told Brown he had been in an altercation. After Winlow left her apartment a little after 3:45 p.m., Brown stayed inside that afternoon. She was preparing to catch the bus but could not remember if she was planning to go shopping or to an appointment.

¶ 18 According to Brown, she left her apartment a little after 4 p.m. after one of her

children told her Winlow had been shot. When Brown was standing outside the apartment, "[a] lady that was coming from down the street" also informed her Winlow had been shot. Brown did not hear gunshots. She ran to Winlow. When asked if it was true she was yelling when the police arrived, Brown testified, "Yes, I assume." She did not know what she was saying. She wanted to know who shot her son. When asked if she remembered talking to a police officer at the scene, Brown testified, "Um, I'm quite sure I did." Brown could probably remember half of what she told the officer. Brown agreed she named individuals who were there and told the officer who was responsible for shooting her son.

¶ 19 Brown testified, however, she did not know who was present because she did not see anyone. She acknowledged she "probably" told the officer defendant shot her son. When the State emphasized the discrepancy, Brown testified, "I was going by hearsay and making up my own story ***, because I wanted somebody, you know, to go down." Brown agreed she may have identified to the officer "the whole crew" of M.O.B. as being present. Brown remembered telling the officer she saw a gun that was black. She denied seeing a black gun. Brown testified, "I didn't see anything, sir. I wasn't out there."

¶ 20 Brown acknowledged she went to the Bloomington police department later that day to be interviewed. Brown acknowledged knowing the interview would be videotaped. She agreed she provided "a lot of details" in the interview room. In that interview, Brown stated she was walking to the bus stop to go shopping when she observed Winlow and K.K. walking in the street in front of her, but she testified that she did not walk to the bus stop. Brown agreed she "probably" told the interviewing officer defendant pulled out a gun and shot Winlow in the back after Winlow turned to run away. Brown agreed she "probably" had a conversation with

someone over her phone. When asked if she told the person on the phone "it happened right in front of your face," Brown testified, "I'm not quite sure." She agreed she probably said that. Brown said she was lying to that individual, as well, stating, "I wanted somebody to go down, and I knew I was being recorded." Brown did not recall telling the person on the phone the following: "you can call me a snitch if you want to. I am a snitch." She was "not quite sure" she made the statement. Brown admitted identifying defendant as the shooter from a photo the officer showed her.

¶ 21 Regarding her grand-jury testimony, Brown testified she recalled testifying before the grand jury that she walked behind Winlow and K.K. and the two young men stopped to talk with a friend. She recalled telling the jury she observed a group of men walking around the corner and the groups "scattered out onto the field." Brown told the jury a couple of fights occurred in the field. Brown agreed she said defendant approached Winlow and the two braced themselves to fight when defendant pulled out a gun and shot Winlow. During her trial testimony, however, Brown denied witnessing those events. Brown's testimony was that she did not leave the apartment and she was only repeating what she heard.

¶ 22 On cross-examination, Brown testified while comforting the injured Winlow she was "upset, confused and frustrated." Brown was yelling she wanted to know who shot Winlow. Brown admitted she told the police defendant shot her son but testified she did not witness the shooting as she was in her apartment. She named defendant because she knew the two had a "verbal altercation[]." She also identified the others because of the animosity between her son and the other group. Brown admitted repeating the same details she "made up or that were supplied by somebody else" during her grand-jury testimony. Brown testified she was telling the

truth at trial. Her written recantation was an attempt to set things right because she knew she provided information of which she did not have personal knowledge.

¶ 23 The State also called Steven Fanelli, a Bloomington police detective, to testify. Detective Fanelli interviewed Brown immediately after the shooting. Without objection, the videotape of the interview was played for the jury. On the recording, which lasted over 45 minutes, Brown repeatedly stated she saw defendant shoot her son.

¶ 24 The jury also received a transcript of Brown's grand-jury testimony without objection. In that testimony, Brown twice identified defendant as the shooter.

¶ 25 Winlow testified he and defendant "grew up together." Winlow agreed the two fought earlier on the day of the shooting but clarified the two "was rassling" not "fighting." No punches were thrown. Winlow denied having a knot on his head. Winlow testified he was shot by someone in a group of approximately 20 individuals who were dressed in black and wearing ski masks. Winlow could not identify the shooter.

¶ 26 Brentais Hawkins, a McLean County jail inmate, testified he was incarcerated on a pending burglary charge. According to Hawkins, he used to date defendant's mother. In December 2012, Hawkins and defendant were in jail at the same time. The two had a conversation about the events of November 5, 2012. Defendant told Hawkins M.O.B. and B.O.M. were in a fight. Defendant also told Hawkins an opposing member of M.O.B. "was getting the best of someone" and defendant shot at him. Defendant said he shot at "Lil Dude," Winlow.

¶ 27 A forensic scientist with the Illinois State Police tested the hoodie defendant was wearing and found no gunshot residue.

¶ 28 A recorded interview of defendant was also played for the jury. Defendant initially denied being at the scene at the time of the shooting. Later he admitted being at the scene but only to fight. Defendant stated he ran when he heard gunshots.

¶ 29 D. Defendant's Direct Appeal

¶ 30 Defendant pursued a direct appeal of his conviction. On appeal, he argued, in part, he was denied a fair trial when the trial court admitted multiple prior statements from Brown that she saw defendant shoot Winlow. Defendant maintained " 'the unnecessary repetition of this evidence improperly elevated Brown's prior statements over her trial testimony and suggested their truth by sheer force of repetition.' " *People v. Williams*, 2015 IL App (4th) 130637-U, ¶ 30. Defendant admitted failing to preserve the issue but asked this court to review it under the plain-error doctrine. *Id.* ¶ 34.

¶ 31 This court affirmed defendant's conviction, rejecting the application of the plain-error rule. We concluded the rule did not apply as defendant waived, not forfeited, his argument. *Id.* ¶ 36. The waiver resulted from trial court's express agreement the jury could consider the video-recorded interview as well as the grand-jury testimony. *Id.*

¶ 32 After the trial court dismissed defendant's postconviction petition, this appeal followed.

¶ 33 II. ANALYSIS

¶ 34 At the first stage of proceedings under the Act, a complainant files a petition, which must present only "a limited amount of detail[.]" *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). Upon the filing of a postconviction petition, the trial court's role is to examine it to ascertain whether the petition is frivolous or patently without merit. *People v.*

Andrews, 403 Ill. App. 3d 654, 658, 936 N.E.2d 648, 652-53 (2010). In making this determination, the court, with no input from the parties, considers the petition's allegations, taking them as true and liberally construing those allegations, to determine "whether the petition alleges a constitutional deprivation that is unrebutted by the record[.]" *People v. Couch*, 2012 IL App (4th) 100234, ¶ 11, 970 N.E.2d 1270. The first-stage threshold is low; defendant need only state the gist of a constitutional claim, pleading plead facts sufficient "to assert an arguably constitutional claim." *Brown*, 236 Ill. 2d at 184. Dismissal of the petition is required if the court finds the petition frivolous and patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). As this appeal follows a first-stage dismissal of defendant's postconviction petition, our review is *de novo*. *Couch*, 2012 IL App (4th) 100234, ¶ 13.

¶ 35 Despite acknowledging the low threshold for a postconviction petition at the first stage, the State maintains the dismissal should be affirmed. The State contends appellate counsel's claim on appeal does not appear in the postconviction petition. The State emphasizes the petition alleges trial counsel was ineffective for failing to object to the admission of Brown's hearsay statements not, as argued on appeal, that the prior inconsistent statements unfairly prejudiced defendant as a result of their allegedly cumulative and repetitive nature.

¶ 36 Defendant disagrees, arguing the petition states the gist of a constitutional claim trial counsel provided ineffective assistance when he failed to seek, under Illinois Rule of Evidence 403 (eff. Jan. 1, 2011), an edited or redacted version of the video to limit its prejudicial effect. In support of his argument the petition sufficiently states this claim, defendant points to the petition's allegations trial counsel was ineffective by not objecting to improper hearsay recordings of an inconsistent witness and the fact the state used Brown's "false statement" to

"bolster it." Defendant also cites our direct appeal.

¶ 37 The language of the postconviction petition provides no indication defendant intended to seek review of trial counsel's decision not to object to Brown's repeated identification of him as the shooter as unduly prejudicial. While a postconviction petition need only provide a limited amount of detail to survive the first stage (*Brown*, 236 Ill. 2d at 184), here, there are no facts or allegations that show defendant was complaining of anything other than the evidence was improperly admitted hearsay. There are no facts or allegations evidencing any concern over the repetition of Brown's identification of him as the shooter. Defendant did not mention or cite the direct appeal. Although defendant attached some transcript testimony to support his petition, this, too, did not show a repeated identification of defendant—only inconsistency between her statements to the police and her trial testimony. Defendant refers merely "to improper hearsay recordings of inconsistent witness" and a failure to file a posttrial motion—matters the trial court addressed.

¶ 38 To interpret defendant's postconviction petition as stating the gist of a constitutional claim trial counsel was ineffective for not making a motion under Illinois Rule of Evidence 403, a court must review, in addition to the petition itself, the record. This is not what the Act requires when a petition is filed. Section 122-2.1 mandates the trial court, within 90 days, "shall examine such petition and enter an order thereon pursuant to this Section." 725 ILCS 5/122-2.1(a) (West 2012). Nothing in the language requires the court examine all or part of the record to ascertain whether a petitioner's claims touch upon a constitutional claim that might be arguable. The general assembly did not place this burden on our courts. We do not find one exists.

¶ 39 In this case, the trial court dismissed the petition as frivolous and patently without merit upon finding trial counsel was not ineffective in not objecting to the admission of Brown's statements as hearsay as the statements were admissible under section 115-10.1 (725 ILCS 5/115-10.1 (West 2012)). In his appellate briefs, defendant concedes the statements were admissible under section 115-10.1. We agree. The court thus did not err in dismissing defendant's postconviction petition.

¶ 40 Defendant last argues two fines were improperly imposed by the circuit clerk and must be vacated. Pursuant to the Illinois Supreme Court's decision in *People v. Vara*, 2018 IL 121823, ¶ 23, we lack jurisdiction to review the circuit clerk's recording of fines. Accordingly, we will not consider this argument.

¶ 41 III. CONCLUSION

¶ 42 We affirm the trial court's judgment.

¶ 43 Affirmed.