

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 160397-U

NO. 4-16-0397

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
December 11, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RONALD S. WILKERSON,	)	No. 12CF798
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices DeArmond and Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court’s judgment dismissing defendant’s postconviction petition at the first stage of proceedings where defendant forfeited the claims raised on appeal by failing to include them in his petition.

¶ 2 In March 2016, defendant, Ronald S. Wilkerson, filed a *pro se* postconviction petition, alleging, in relevant part, a violation of his constitutional right to effective assistance of counsel in the proceedings leading to his armed robbery convictions. That same month, the trial court entered a written order summarily dismissing defendant’s postconviction petition as frivolous and patently without merit.

¶ 3 Defendant appeals, arguing the trial court erred by dismissing his postconviction petition at the first stage of postconviction proceedings where the petition stated the gist of a constitutional claim. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2012, the State charged defendant by information with the offense of armed robbery pursuant to section 18-2(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/18-2(a)(2) (West 2010)). In September 2012, the State charged defendant with a second count of armed robbery pursuant to section 18-2(a)(2) of the Code. In May 2013, defendant’s case proceeded to jury trial on both counts. Following presentation of the evidence, a jury returned guilty verdicts on both counts. Subsequently, the trial court sentenced defendant to consecutive 60-year terms on each count. Defendant appealed his convictions and sentences, and this court affirmed. *People v. Wilkerson*, 2015 IL App (4th) 130552-U, ¶ 105.

¶ 6 In March 2016, defendant filed a *pro se* postconviction petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2014)), consisting of over 60 handwritten and typed pages and nearly 60 pages of exhibits. Among many issues, defendant claimed trial counsel was ineffective for “trying to beat the whole case out.” Defendant stated he told trial counsel on the day of trial that “the jury would not see [him] as a bad person if [he] testified to—or stipulated to a cop out on accessory after the fact in a severed armed robbery [proceeding]” because it “would be credible to [a jury] that [he] had been found guilty already or copped out already to accessory after the fact, instead of trying to get [him] off of everything [(both armed robbery counts)] in a combined trial (joinder).” Later in March 2016, the trial court summarily dismissed defendant’s postconviction petition as frivolous and patently without merit.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant appeals the first-stage dismissal of his postconviction petition, arguing he presented the gist of a constitutional claim. Specifically, defendant asserts trial counsel

provided ineffective assistance by refusing to allow defendant to accept a plea deal and testify at trial. The State argues defendant forfeited these claims by failing to include them in his postconviction petition. We agree.

¶ 10 The Act provides a collateral means for a defendant to challenge a conviction or sentence for a violation of a federal or state constitutional right. *People v. Jones*, 211 Ill. 2d 140, 143, 809 N.E.2d 1233, 1236 (2004). At the first stage, the trial court determines whether the defendant’s petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2014). A postconviction petition may be “summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact.” *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). To survive summary dismissal, the postconviction petition need only present the gist of a constitutional claim. *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996). We review *de novo* the summary dismissal of a postconviction petition. *People v. Harris*, 366 Ill. App. 3d 1161, 1167, 853 N.E.2d 912, 917 (2006).

¶ 11 We note the Act does not provide for the assistance of counsel at the first stage of postconviction proceedings. Thus, appeals of first-stage dismissals often present “a moving target as to defendant’s allegations of constitutional deprivations.” *People v. Boyd*, 347 Ill. App. 3d 321, 332, 807 N.E.2d 639, 649 (2004). “On a regular and consistent basis the inarticulate allegations of constitutional deprivation presented by a *pro se* petitioner to the trial court take on a completely different meaning in both form and substance once appellate litigators become involved during the appeal of *pro se* petitions dismissed at the first stage.” *Id.* at 332-33. However, the Act provides that any claim of constitutional deprivation not raised in the petition

is forfeited and may not be raised for the first time on appeal. See 725 ILCS 5/122-3 (West 2014).

¶ 12 Defendant contends his petition raised an arguable claim his trial counsel rendered ineffective assistance by coercing defendant to refuse a plea deal offered by the State. However, even liberally construed, defendant made no such allegation in his petition. See *People v. Shief*, 2016 IL App (1st) 141022, ¶ 54, 62 N.E.3d 1154 (holding that even when liberally construed, the defendant forfeited his argument raising, for the first time on appeal, distinct reasons for appellate counsel’s ineffectiveness from those raised in his postconviction petition). Rather, he alleged he “did not agree to [his] attorney trying to beat the whole case out.” Defendant claimed he told trial counsel he “could cop out to something other than bank robbery” on one count and proceed to a jury trial on the remaining count. Nowhere does defendant allege the State had made him a plea offer and his trial counsel usurped his right to accept the State’s offer. In fact, the record indicates defendant rejected a plea offer from the State, and missing from his petition is any allegation that this rejection was due to any improper conduct or coercion of counsel. Therefore, because defendant failed to raise this issue in his postconviction petition, the claim is forfeited.

¶ 13 Defendant also contends his petition raised an arguable claim that his trial counsel rendered ineffective assistance based on counsel’s refusal to allow him to testify at trial. He points to the following allegation in his petition for support: “I told my attorney the jury would not see me as a bad person if I testified to—or stipulated to a cop out on accessory after the fact in a severed armed robbery.” Again, even liberally construed, this allegation does not amount to a claim defendant was denied his right to testify. Rather, it relates to defendant’s desire to “cop out” to “accessory after the fact.” Defendant made no allegation in his petition that he wished to

testify at his trial for armed robbery and counsel usurped his right to make that choice. Thus, defendant has also forfeited this claim.

¶ 14

### III. CONCLUSION

¶ 15

For the reasons stated, we affirm the trial court's judgment.

¶ 16

Affirmed.