2019 IL App (1st) 163012-U

No. 1-16-3012

Order filed May 10, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 00169
	)	
ARTHUR GRADY,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's summary dismissal of defendant's *pro se* postconviction petition is affirmed where defendant did not present an arguable claim of ineffective assistance of appellate counsel because he was not prejudiced by counsel's failure to raise a sufficiency of the evidence challenge on direct appeal.

¶ 2 Defendant Arthur Grady, appeals from the summary dismissal of his *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). Defendant contends the trial court erred in summarily dismissing his petition

because he set forth an arguable claim that his appellate counsel was ineffective for failing to challenge the sufficiency of the evidence on direct appeal. We affirm.

¶ 3 Following a 2013 jury trial, defendant was found guilty of first degree murder (720 ILCS 5/9-1(a)(1)(West 2012)) and sentenced to 60 years' imprisonment. We affirmed on direct appeal over defendant's argument that his sentence was excessive. *People v. Grady*, 2015 IL App (1st) 132160-U. Because we set forth the facts on direct appeal, we recount them here only to the extent necessary to resolve the issue raised on appeal. See *Grady*, 2015 IL App (1st) 132160-U.

¶ 4 Defendant's conviction arose from the January 30, 2009, shooting death of Ralph Turner, Jr. Defendant and Aaron Bronson were charged with the murder. Bronson pleaded guilty and testified against defendant. The State's theory of the case was that defendant and Bronson planned to rob the victim, whom they had followed out of a casino, but, when the victim resisted, defendant shot him.

¶ 5 The facts adduced at trial show that in the evening hours of January 29, 2009, Turner and his friends Rupert Evans, Robert Currie, Michael Wright and Anthony McGee had dinner at Binion's Steak House located in the Horseshoe Casino in Hammond, Indiana. Evans testified that after dinner, the group went to the casino roulette table to gamble. Currie was doing well gambling and winning money. In order not to spend all his money, Currie would give Turner some casino chips to cash in at the cashier. Evans explained that Turner acted as a "bank" for those winning at the roulette table. Evans left the casino about 2 a.m. on January 30, 2009. While he was at home, he received a call that Turner had been shot and killed. Later in the day, detectives from the Chicago police department came to his home and showed him a photo array. Evans did not identify anyone in the photo array. Later that same day, more detectives came to

his home with another photo array. This time, Evans was able to identify defendant's picture from the photo array. On January 31, 2009, Evans went to the police station on 111th Street and viewed a lineup. He identified defendant in the lineup as the person he saw watching him and his friends gambling at the casino two nights before.

¶ 6 Currie testified that on January 29, 2009, he owned a black Mercedes Benz and he drove his friends Turner, Wright, and McGee to the Horseshoe Casino in Hammond. Currie had a pass for dinner and a table in the VIP room of the casino. After dinner, the group decided to go to the gambling floor to play roulette. Currie testified he was winning at the table and would give some of his chips to Turner to cash in thereby "taking money out of the game." During the course of the evening, Currie won between six and nine thousand dollars and gave Turner a casino chip. After Currie finished gambling, he gave Turner, Wright and McGee a ride home. The group left the casino and went to the valet to retrieve Currie's car. On the way home, Currie drove, while Wright sat in the front passenger seat and Turner and McGee were in the back seat. When Currie got to Turner's home, Turner and McGee exited the car. Currie drove Wright home and then drove to his house. When Currie arrived at his house he received a phone call from McGee, who told him that Turner had been shot. Later that day, the police showed Currie a photo array but he could not identify anyone. Currie viewed a lineup on January 31, 2009, and identified defendant as being at the casino on January 30 watching them play roulette.

¶ 7 McGee testified that when the group finished gambling, Currie drove him, Turner, and Wright home. When Currie arrived at Turner's home on 81st Street and Eberhart Avenue, McGee and Turner exited the car and talked for a short while in front of Turner's home. McGee then walked to his car which was parked down the street from Turner's home. As he did so, he

saw a large dark colored truck travelling north down the street. McGee stood by the parked cars, believing that the truck was going to pass him. Instead, the truck stopped by Turner's home. McGee thought it was Turner's son, who had a dark colored truck. McGee saw an individual exit the truck. McGee described the person as tall and thin and about as tall as Turner. The person was wearing dark clothing and a dark colored "hoody." As McGee was about to open his car door, he heard a shot. He ran toward Turner's home but heard a second shot and hid between two parked cars. McGee ran to the corner and turned onto 82nd Street where he called Turner's wife and told her to call 911. McGee also called 911. McGee was unable to identify anyone in a photo array or lineup.

¶ 8 Pamela Snow Woodard testified that she is Turner's sister and lived in the same building as Turner but on the first floor. On January 30, 2009, Woodard was awoken from her sleep by a gunshot. Woodard looked out her front window and saw a body on her front lawn and a man in a hoody standing over the body going through the pockets. Woodard called 911. Woodard was unable to identify anyone in a lineup.

¶ 9 Debra Ann Foster-Bonner testified that on January 30 at approximately 3:40 a.m., she was awoken by two loud noises. Foster-Bonner looked out her front window and saw a large black Sports Utility Vehicle (SUV) driving in reverse on Eberhart. Foster-Bonner observed a tall, thin man dressed in dark pants and a large dark jacket with a hood stand in front of her windows. Foster-Bonner continued looking out her window and saw the man walk towards 82nd Street.

¶ 10 Chicago police officer Adam Rose testified that on January 30, 2009, a little before 4 a.m., he was on routine patrol and monitored a call of a shooting. The call described the offender as a male black wearing dark clothing. Rose saw defendant, who fit the description, about three

blocks away from the scene of the shooting at approximately 355 East 83rd Street. Rose stopped defendant to perform a field interview and handcuffed him for his protection. Rose searched defendant and took his driver's license to ascertain if he had any outstanding warrants. Rose noted that defendant's address on the driver's license was for a residence on the 6000 block of South Stony Island Avenue which was about three and a half miles away. Rose testified defendant was walking in a direction away from the Stony address. Rose did not detain defendant because there were no active warrants or investigative alerts for defendant.

¶ 11 Chicago police officers arrived on the scene and discovered Turner's body lying face up with blood on his chest. Turner's pants pocket was torn off and lying down the street from his body. The officers found a casino chip under his body and a cell phone on the street. Detective Barsch testified that he tried to determine the owner of the cell phone. When Barsch opened the cell phone, he observed a picture of a young girl that was the screensaver and the name "Nakkia" was printed across the front of the picture. Barsch then opened the call log and observed there were several calls to and from a person named Aaron. Barsch also observed phone numbers for "dad" and another that said "crib." After speaking to Turner's family members, Barsch determined the cell phone did not belong to Turner. Barsch also testified that, after speaking to McGee, he went to the casino and obtained surveillance video footage. Based on the footage and the cell phone recovered at the scene, the police compiled a photo array, and Barsch obtained a search warrant for defendant's apartment. There, defendant was arrested and two handguns were recovered from inside a speaker in the rear bedroom. When Barsch went into the middle bedroom of the apartment, he observed a photo that was the same photo of "Nakkia" as on the cell phone recovered from the crime scene. The guns were sent to the Illinois State Police Crime

Laboratory where it was determined that one of the guns fired the bullets recovered from Turner's body. The State introduced into evidence the surveillance video obtained from the casino which showed defendant wearing a black hoody and watching the roulette table as Turner and his friends played roulette.

¶ 12 Aaron Bronson, the co-defendant, testified that he shared an apartment with defendant and defendant's cousin Shawana Chester on 6300 South Champlain Avenue. Bronson also lived in South Bend Indiana. When Bronson lived on Champlain he would stay in the front bedroom of the apartment while defendant used the middle bedroom and Shawana used the back bedroom. After Bronson moved out of the apartment, Shawana moved into the front bedroom. In January of 2009, Bronson owned a dark blue Chevy Tahoe SUV. Bronson testified that on January 29, 2009, he and defendant went to the Horseshoe Casino in Hammond Indiana to gamble. Bronson wore a brown and tan hoody with a brown coat while defendant wore a black hoody, black jeans and a black hat. Bronson played poker at the casino but did not play cards with defendant. At some point in the evening, defendant approached Bronson and told him that he had lost all his money but some guys were playing roulette and they had about $30,000 in winnings. Defendant suggested to Bronson that they should rob the men. Bronson agreed.

¶ 13 Sometime later, defendant approached Bronson and told him that the men were leaving the casino. Bronson went to the parking lot to get his truck while defendant monitored the men. Bronson called defendant when he got to his truck and defendant told him that the men were in a "black Benz." Bronson picked defendant up and they began following the black Mercedes back to Chicago. When the black Mercedes turned onto Eberhart, Bronson pulled his car behind it and saw two men exit from the back seat of the Mercedes. Bronson testified he told defendant not to

exit his truck but defendant said he needed the money and jumped out. Defendant was wearing his hood up and had a mask to cover his face. Bronson watched as the Mercedes pulled away. Bronson saw defendant approach Turner, but Turner "stole on him." Bronson explained that "stole on" means the victim fought back and punched defendant in the face knocking him to the ground. As Bronson started to drive in reverse, he heard two to three gunshots.

¶ 14 Bronson drove back to the apartment on Champlain and waited for defendant, who arrived at the apartment about 6 a.m. Bronson and defendant talked about what had happened. Defendant told Bronson "there ain't no money." Defendant then went to Bronson's truck to search for his phone. Bronson testified that defendant said he threw the gun away but was going back to retrieve it because the gun may have his fingerprints on it. Bronson saw the gun later on that morning with defendant when defendant came back to the apartment. Bronson went back to South Bend until his arrest. He acknowledged that he entered into an agreement with the State to plead guilty to first degree murder and a sentence of 24 years' imprisonment in exchange for his truthful testimony.

¶ 15 On cross-examination, Bronson testified that the gun defendant used to commit the murder once belonged to Bronson but he sold it to defendant. Bronson admitted telling the police that defendant was driving his truck back to Chicago and that he jumped into the back seat to look for gloves and something to cover his face. On redirect examination, Bronson said he is "snitching" on defendant because defendant snitched on him.

¶ 16 Defendant testified that on January 29, 2009, he was at the Horseshoe Casino with Bronson. Defendant walked around the casino watching other gamblers play, while Bronson was at a table gambling. Defendant testified he stopped at Turner's table to see why people were

shouting. Defendant explained that whenever he heard people shouting in the casino, he would go over to the table to see what the excitement was. Defendant and Bronson decided to leave the casino. Bronson went to the parking garage to pick up his truck while defendant waited in the valet area of the casino. Bronson drove up and defendant got into the truck. Defendant plugged in his cell phone to charge and fell asleep. He was awoken when the truck came to a sudden stop. Defendant did not recognize where he was. He looked out of the window and saw two men on the sidewalk. The men started walking in opposite directions. Bronson jumped out of the truck and approached one of the men. The man punched Bronson and he fell to the ground. Defendant got out of the passenger seat in order to break up the fight. He then heard two gunshots. Defendant jumped into the driver's seat of the truck and drove in reverse down the block.

¶ 17 Defendant parked the truck about two blocks away and realized he did not have his cell phone. He decided to walk to a nearby gas station to make a phone call. On his way to the station, he was stopped by the police and they ultimately let him go. Defendant eventually went home and went to sleep. Bronson came home and the pair discussed what happened after defendant left the scene. Defendant was arrested later that afternoon. He testified that the gun recovered from his apartment belonged to Bronson. Defendant testified he wore a black coat, black hoody, black jeans and a black hat on the night of the shooting and Bronson wore a brown coat with a design on the back and a brown hoody. Defendant denied talking to Bronson about robbing anyone.

¶ 18 The jury found defendant guilty of first degree murder and the court denied his motion for new trial. After a hearing, the court sentenced him to 60 years' imprisonment. We affirmed

on direct appeal over defendant's contention that his sentence was excessive. *Grady*, 2015 IL App (1st) 132160-U.

¶ 19 On July 6, 2016, defendant filed a *pro se* postconviction petition raising numerous claims. In pertinent part, defendant argued that he received ineffective assistance of appellate counsel based on counsel's failure to challenge the sufficiency of the evidence to sustain his conviction on direct appeal**.**

¶ 20 On September 28, 2016, the trial court issued a written order dismissing defendant's *pro se* postconviction petition as frivolous and patently without merit. Specifically, the court found that defendant's claim of ineffective assistance of appellate counsel was without merit where he did not suffer prejudice from counsel's decision to not challenge the sufficiency of the evidence on appeal.

¶ 21 In this court, defendant contends that the trial court erred in summarily dismissing his petition because he presented an arguable claim of ineffective assistance of appellate counsel based on counsel's failure to raise a sufficiency of the evidence argument on direct appeal.

¶ 22 The Act (725 ILCS 5/122-1 *et seq.* (West 2014)) provides that the circuit court adjudicates a petition for postconviction relief in three distinct stages. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). At the first stage, the trial court must independently review the petition, taking the allegations as true, and determine whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2014). The court may dismiss a petition only if it is " ' frivolous or is patently without merit. ' " *People v Cotto*, 2016 IL 119006, ¶ 26 (quoting 725 ILCS 5/122-2.1(a)(2) (West 2014). A petition is frivolous or patently without merit if it " 'has no arguable basis *** in law or fact.' " *People v. Papaleo*, 2016 IL App (1st) 150947, ¶ 19 (quoting

People v. Hodges, 234 Ill. 2d 1, 11-12 (2009)). At this stage, a defendant need only "allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Hodges*, 234 Ill. 2d at 9. We review the summary dismissal of a petition *de novo. Id.*

¶ 23 The constitutional right to effective assistance of counsel applies to counsel on a direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). Claims of ineffective assistance of appellate counsel are governed by the same test used in assessing claims of ineffective assistance of trial counsel set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Lacy*, 407 Ill. App. 3d 442, 457 (2011).

¶ 24 In the context of first stage postconviction proceedings, a defendant must show it is arguable that (1) appellate counsel's failure to raise an issue on direct appeal was objectively unreasonable, and (2) defendant was prejudiced by counsel's deficient performance *i.e.* there is a reasonable probability that the appeal would have been successful. *People v. Petrenko*, 237 Ill. 2d 490, 497 (2010). The failure to establish either prong of the *Strickland* test defeats a claim of ineffectiveness. *People v. Henderson*, 2013 IL 114040, ¶ 11. If we can dispose of defendant's claim on the basis that he suffered no prejudice, we need not address whether counsel's performance was objectively unreasonable. *People v. Salas*, 2011 IL App (1st) 091880, ¶ 91. Appellate counsel need not brief every conceivable issue on appeal and may refrain from developing nonmeritorious issues without violating *Strickland. People v. Guerrero*, 2018 IL App (2d) 160920, ¶ 43. Therefore, unless the underlying issue is meritorious, the defendant suffers no prejudice from counsel's failure to raise it on appeal. *People v. Childress*, 191 Ill. 2d 168, 175 (2000).

¶ 25 Here, defendant has alleged that his appellate counsel was ineffective for failing to argue on direct appeal that the State did not prove him guilty of first degree murder beyond a reasonable doubt. In order to assess the merit of this underlying issue we must determine whether it would have been successful if raised on direct appeal. For the reasons that follow, we find that it would not.

¶ 26 The standard of review on a challenge to the sufficiency of the evidence is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring,* 324 Ill.App.3d 458, 460 (2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This court will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 27 In arguing that a challenge to the sufficiency of the evidence would have been successful on direct appeal, defendant does not dispute any of the elements of the offense of first degree

murder. Rather, he essentially claims that he was not the offender. In support of this argument, he points to the fact that he was stopped by police shortly after the shooting and police did not recover a weapon or robbery proceeds from his person. He also maintains that the "key evidence" against him, the testimony of codefendant Bronson, was significantly impeached.

¶ 28 We are not persuaded by defendant's argument where the evidence presented against him was overwhelming and thus sufficient for the jury to reasonably conclude that he was guilty of the first degree murder of Turner. Rupert Evans and Robert Currie testified to seeing defendant at the casino watching them play roulette. Both identified defendant in a lineup. Video surveillance footage from the casino shows defendant, wearing a black hoody and black jacket, watching the victim play roulette. McGee testified that, shortly before the shooting, he saw a truck stop by Turner's home and a person exit the truck. He described the person as tall and thin, and wearing dark clothing and a dark hoody. McGee then heard a gunshot. After hearing another gunshot, called 911. Pamela Woodard, Turner's sister, testified she heard a gunshot shot and looked out her window. She saw a body on the ground in front of her house and a man in a hoody going through the pockets of the man who was on the ground. A neighbor, Foster-Bonner, who lived on the block heard two loud noises and looked out her window. She saw a dark SUV travelling in reverse down her block. She also saw a tall, thin man dressed in dark pants and a large dark jacket with a hood stand in front of her windows. The man then walked towards 82nd Street. Chicago police officer Rose testified he responded to a call of a shooting and was given a description of a male black in dark clothing. Rose saw defendant, who matched the description, approximately three blocks from scene of the shooting. Defendant's cell phone was recovered near Turner's body. The murder weapon was recovered from defendant's apartment.

¶ 29 In addition to this evidence, co-defendant Bronson testified and corroborated witnesses' version of events. Bronson related that he and defendant went to the casino to gamble. Defendant lost all himsmoney but saw Turner and his friends winning at the roulette table and suggested they should rob the men. Bronson agreed and followed Turner and his friends home. When defendant got out of Bronson's truck to rob Turner, Turner fought back and struck defendant in the face knocking him down. Bronson heard a gunshot. He put his truck into reverse and drove away. Bronson waited for defendant at their apartment. When defendant came home and told Bronson what had happened, Bronson fled to Indiana. Bronson explained that he once owned the gun defendant used to murder Turner, but that he had sold it to defendant. This evidence, and the reasonable inferences therefrom, was sufficient for the trier of fact to find defendant guilty of first degree murder. See *People v. Brown*, 2013 IL 114196, ¶ 71 (citing *Wheeler*, 226 Ill. 2d at 117) (The trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt).

¶ 30 In reaching this conclusion, we note that contrary to defendant's argument the fact that Officer Rose did not recover a weapon or robbery proceeds from defendant is not surprising given that the evidence showed defendant disposed of the weapon after the shooting and Turner did not have money on his person. Bronson testified that, after the shooting, defendant told him that he threw the gun away and that he was going back to retrieve it because it may have fingerprints. Defendant also told Bronson that "there ain't no money." We also note that defendant's argument regarding Bronson's testimony being significantly impeached is

unavailing where, as mentioned, Bronson's testimony corroborated the sequence of events as related by the other witnesses.

¶ 31 Thus, if appellate counsel had challenged the sufficiency of the evidence to sustain defendant's conviction on direct appeal, there would not have been reasonable probability that this court would have over turned his conviction. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007) (a reviewing court will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt."). Accordingly, defendant suffered no arguable prejudice from counsel's failure to challenge his conviction on direct appeal, and therefore the trial court did not err in summarily dismissing defendant's postconviction petition as frivolous and patently without merit.

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.