2019 IL App (1st) 171678-U

No. 1-17-1678

Order filed May 22, 2019

Third Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 12 CR 17902 |
| | ) | |
| LAVALLE ARCHER, | ) | Honorable |
| | ) | Thaddeus L. Wilson, |
| Defendant-Appellant. | ) | Judge, presiding. |

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Ellis and Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held*: Summary dismissal of defendant's postconviction petition is affirmed over his contention that he presented arguable claims that trial counsel was ineffective for failing to properly cross-examine two State witnesses regarding their prior conduct and for failing "to prepare defendant for trial prior to testifying in his own defense."

¶ 2 Defendant Lavalle Archer appeals from the first-stage dismissal of his attorney-drafted petition for relief pursuant to the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2016). On appeal, defendant contends that summary dismissal was improper because his

petition raised arguable claims that trial counsel was ineffective for failing to properly cross-examine two State witnesses regarding their prior conduct and for failing "to prepare defendant for trial prior to testifying in his own defense." For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the shooting of Jeremy Luckett in a Chicago alley in the early morning hours of August 25, 2012. Following a bench trial, defendant was found guilty of four counts of attempted first degree murder, one count of aggravated battery with a firearm, and one count of aggravated discharge of a firearm. The trial court merged the counts into one count of attempted first degree murder and sentenced defendant to 31 years in prison.

¶ 4 On direct appeal, defendant contended that the State failed to prove the requisite intent for his crimes beyond a reasonable doubt and that his trial counsel was ineffective for failing to argue provocation in mitigation at his sentencing hearing. This court affirmed defendant's conviction and sentence. *People v. Archer*, 2016 IL App (1st) 141820-U. In our order, we set forth the underlying facts of the case in detail. Given the nature of defendant's current claims, we will repeat those facts to some extent here.

¶ 5 At trial, the victim, Jeremy Luckett, testified that he did not remember much about the incident. He remembered meeting up with a cousin and his sisters, Lanetta Luckett and Jocelyn Luckett, and being shot in the leg while in an alley. He remembered not having any weapons on him during the incident.

¶ 6 Jocelyn Luckett testified that around 2 a.m. on the morning in question, she and Lanetta met Jeremy and their cousin at a gas station. As they walked toward their grandmother's neighborhood, they were approached by an SUV in which defendant was the front-seat passenger. Defendant and the other people in the SUV asked where they could find drugs, and

Jeremy pulled the women away. The SUV drove off, but then approached the group a second time at the corner of the alley. Defendant again asked about drugs. When Jeremy tried to usher the women away, defendant became "upset" with Jeremy and the two exchanged words. Jocelyn, who was standing near the SUV, saw defendant show a gun to Jeremy through the SUV's open window. The gun was in defendant's waistband, and he showed it by raising his shirt and placing his hand on it. Lanetta intervened, telling Jeremy they should leave. As Jeremy began to walk away down the alley, Jocelyn saw defendant jump out of the SUV, take out his gun, and move toward the alley. Lanetta yelled to Jeremy to run, which he did, and defendant began firing "directly where" Jeremy had gone. Defendant fired two shots and then a "couple more." Jeremy tried to "dodge the bullets" but fell. When Jeremy yelled that he had been hit, defendant ran back to the SUV and, before he fully got in it, put the gun in Jocelyn's face, pointing it at her from a distance of about three feet. The SUV then drove away. Jocelyn ran into the alley to help Jeremy and saw a police car with two female officers arrive "[a]lmost immediately." Jocelyn also stated that neither Jeremy nor anyone in their group had any weapons.

¶ 7 Spencer Clark testified that in the early morning hours of the day in question, he was walking toward the gas station when he saw defendant in the passenger seat of an SUV. A man Clark did not know was in the driver's seat. Clark got in the back seat, and the group drove a short distance and then pulled over. Defendant rolled down his window and began talking to someone outside the SUV. Clark could not see who it was and was not paying attention to the conversation, but soon realized it was mounting to "a situation," so he got out of the SUV. He then saw defendant had been talking to Lanetta, who was in a group that included Jeremy and Jocelyn. Clark told defendant that Jeremy and his sisters were "good people" and then went over

to speak with Jeremy, who was quietly leaning on the wall of the alley. At some point, Clark walked a short distance away, saw defendant get out of the SUV, and saw Jeremy run into the alley. Clark heard one gunshot, saw Jeremy lying on the ground in the alley, and watched the SUV drive away, whereupon police arrived. Clark testified that he did not see the shooting, nor did he see defendant with a gun.

¶ 8 Chicago police officer Tiffany Nard testified that she and her partner were on routine patrol driving toward the intersection of Chicago Avenue and Orleans Street when she heard three to five gunshots. She saw a crowd standing near the mouth of the alley. She testified that when she and her partner arrived, the shots "were still going" and she saw defendant holding a gun aimed at "the beginning point of the alley" and shooting. When defendant stopped shooting, he jumped into the passenger side of an SUV that was behind him and drove away. Nard clarified that "all of this was happening simultaneously": she saw the crowd and defendant shooting, she and her partner drove towards them, defendant got into the SUV and drove away, she and her partner stopped and got out of their car, Nard saw Jeremy shot and lying on the ground in the alley about 10 to 15 feet from where defendant had been standing, and she called for emergency services. Nard further testified that she and her partner got back in their car and pursued the SUV. They received assistance and the SUV was eventually curbed.

¶ 9 Chicago police officer M. Musgraves testified that he assisted Nard in curbing the SUV. As Musgraves approached the SUV's passenger side, he observed defendant reaching underneath the passenger seat. Once defendant was detained and removed from the SUV, Musgraves searched underneath the passenger seat and discovered a loaded handgun lying on top of a metal lockbox. Defendant was arrested and taken to the police station. Musgraves gave defendant

*Miranda* warnings, after which defendant related that he had had an altercation with the victim during which the victim reached into his waistband as if to imply he had a gun. Defendant pulled out his gun at this point, fired one shot into the air, and then fired three to four shots down the alley.

¶ 10 Chicago police detective Michael Bell testified that he gave defendant *Miranda* warnings and questioned him about the incident. Defendant told him that he had a verbal altercation with Jeremy at the gas station before the shooting during which Jeremy implied he had a gun in his waistband. After defendant left the gas station, he saw Jeremy walking down the street. Jeremy approached the SUV and began "talking shit," so defendant got out of the SUV. Jeremy began to run down the alley, and defendant shot at him. Bell stated that defendant indicated he did so because he felt "fronted off" by Jeremy in front of the SUV's driver and he "had a reputation to uphold."

¶ 11 Bell further testified that he also spoke multiple times with Jeremy. During their first interview, which took place in the emergency room a few hours after the shooting, Jeremy recounted that he was leaving the gas station when a man pulled up and began talking to the women who were with him. Jeremy related to Bell that he told the women not to talk to the man in the vehicle because he was a stranger, and a verbal altercation ensued during which the man implied he had a handgun in his waistband and then drove away. Jeremy further told Bell that the same vehicle pulled up to the group a second time to continue the verbal altercation, whereupon the man exited the vehicle, chased after Jeremy down the alley, and fired at him five times. At their second interview, which took place later on the day of the shooting at the hospital, Bell presented Jeremy with a police advisory form which Jeremy signed. Bell also presented Jeremy

with a photo array. Jeremy viewed it, positively identified defendant's photo as the man who shot him, circled his picture, and signed it. Finally, Bell testified he interviewed Clark, who stated that defendant shot Jeremy as Jeremy was running away.

¶ 12 On cross-examination, Bell testified that no weapon was recovered from the alley. He also confirmed that five casings were recovered from the alley, and that there were 10 live rounds left in the weapon recovered from the SUV.

¶ 13 The parties stipulated that Jeremy was treated in the emergency room for a gunshot wound to the right thigh.

¶ 14 Defendant testified that on the morning in question, his friend drove him to a gas station to drop him off at its food mart. When they arrived, defendant got out of his friend's SUV and saw two women. He asked one of them for her name, whereupon a man standing near the door of the food mart, whom defendant identified in court as Jeremy Luckett, yelled to her not to speak to strangers. Jeremy seemed upset, so defendant got back into the SUV and told his friend drive to a different gas station. On their way, defendant saw Clark. The driver pulled over at the edge of an alley so Clark could cross the street and join them. As they waited for Clark, defendant looked in the SUV's passenger side mirror and saw a group of people coming from the first gas station toward the SUV. In the front of the group was Jeremy, who had a gun in his hand. Defendant told his friend to pull away, but his friend was not paying attention. Defendant related what happened when Jeremy was about eight feet away:

> "I'm seeing this guy gaining on us. I had to make a decision at that time. I had the weapon on the side of the door. And so at that time I grabbed the weapon. I opened the door. I was standing like in-between the door and the car. I fired. I

> pulled the trigger about three times, up and down, toward the ground, away from me, you know. And he ran away. Once he ran, I got back in the car."

¶ 15 Defendant reiterated that he never pointed the gun at Jeremy, but rather, fired the gun "down at the ground" so as to scare Jeremy away from the SUV and give himself and his friend a chance to get away from the scene. He also specified that when he got out of the SUV, Jeremy had his gun pointed at defendant and the SUV. Because he thought Jeremy was going to "shoot [them] up," he was scared and fired his own gun out of fear. After defendant fired his gun and got back into the SUV, his friend drove off. Clark never got into the SUV and defendant did not know where Clark was. Defendant did not see Jeremy fall to the ground, nor did he keep shooting until Jeremy fell. He admitted that, while he did not intend to shoot in Jeremy's direction, he did shoot at the ground between him and Jeremy "down toward the alley."

¶ 16 Defendant testified that he and his friend were quickly pulled over. Defendant was taken to the police station, where he talked with officers. Defendant denied telling the police that he never saw a gun, that Clark had gotten in the back seat, that Jeremy was "talking shit" to him, that Jeremy "fronted [him] off" in front of the SUV's driver, or that he had a reputation to uphold.

¶ 17 Following closing arguments, the trial court found defendant guilty of four counts of attempted first degree murder, one count of aggravated battery with a firearm, and one count of aggravated discharge of a firearm. In the course of doing so, the court noted at the outset that defendant had alleged the affirmative defenses of self-defense and defense of others, and acknowledged his testimony that he did not intend to shoot anyone but only got out of the SUV and shot his gun into the ground out of fear for his life and safety, as Jeremy was pointing a gun

at him. However, after reviewing the evidence presented, the court concluded that defendant "was seen shooting at Jeremy Luckett several times while Jeremy fled down that alley," that defendant intended to shoot at Jeremy, and that defendant did so with the intent to kill Jeremy. The court further found that defendant's actions constituted a substantial step towards the commission of first degree murder by personally discharging a firearm in Jeremy's direction. The trial court subsequently merged the guilty findings into one count of attempted first degree murder and sentenced defendant to 31 years in prison.

¶ 18 On March 27, 2017, defendant filed the attorney-drafted postconviction petition at issue in the instant appeal. In the body of the petition, he set forth three claims: (1) trial counsel was ineffective for failing to properly cross-examine and impeach Jeremy about his prior violent conduct; (2) trial counsel was ineffective for failing to properly cross-examine and impeach Jocelyn with the fact that she had been arrested and charged for attacking a police officer who was investigating the shooting; and (3) trial counsel was ineffective for failing to discuss with him the legal defense of self-defense, to prepare him for his testimony, to file an answer alerting the State or the court that he would be pursuing a self-defense theory, and to investigate the criminal histories of Jeremy and his relatives despite defendant's request that he do so.

¶ 19 In support of his claim regarding Jeremy, defendant attached an arrest report reflecting that on October 31, 2010, Jeremy was arrested for battery and resisting a peace officer. The narrative section of the report related that when officers responded to a call of a person shot and directed Jeremy to move away from the victim, Jeremy became hostile, said, "F*** ya'll bitches, you ain't finna do s*** to me, that's my fams," pushed two officers, and swung at and struck one officer's cheek with an open hand. A certified statement of conviction / disposition attached to

the petition indicated that Jeremy pled guilty to one count of battery, received a sentence of 12 months of supervision, and had that supervision term discharged.

¶ 20 In support of the claim regarding Jocelyn, defendant attached an arrest report showing that on August 25, 2012, Jocelyn was arrested for battery and resisting a peace officer. The narrative section of the report related that while a police officer was investigating at the scene of Jeremy's shooting, Jocelyn slapped the officer's face and then, while the officer was attempting to place her in custody, struck his eye with a closed fist. A certified statement of conviction / disposition attached to the petition indicated that following a bench trial, Jocelyn was found guilty of battery and sentenced to three months of supervision, which was thereafter discharged.

¶ 21 In support of the claim regarding self-defense, defendant attached a self-executed affidavit in which he averred that he told trial counsel he had acted in self-defense, that counsel "did not discuss with me the legal theory of self-defense," that counsel "did not prepare me to testify about self-defense," and that "[t]o the best of my knowledge, [counsel] did not alert the State or the court that I would be presenting a self-defense theory."

¶ 22 Defendant also averred in his affidavit that he repeatedly asked counsel to investigate the backgrounds of Jeremy and his family members, that counsel never informed him Jeremy had a criminal record relating to violence, and that to the best of his knowledge, counsel was aware that multiple family members of Jeremy's were arrested at the scene of the shooting.

¶ 23 On June 20, 2017, the trial court dismissed the postconviction petition as frivolous and patently without merit.

¶ 24 On appeal, defendant contends that his petition should not have been summarily dismissed because it set forth three arguable claims of ineffective assistance of trial counsel. He

also contends that on direct appeal, appellate counsel failed to argue the issues raised in his petition, that he "was not afforded the effective assistance of *** appellate counsel," and that appellate counsel was "prejudicially deficient." However, defendant did not allege ineffectiveness of appellate counsel in his petition. Because any issues to be reviewed must be presented in the petition filed in the circuit court, defendant may not raise the issue of appellate counsel's ineffectiveness for the first time in this appeal. See *People v. Jones*, 211 Ill. 2d 140, 148 (2004).

¶ 25 In cases not involving the death penalty, the Act provides a three-stage process for adjudication. 725 ILCS 5/122-1 (West 2016); *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The instant case involves the first stage of the process, during which the trial court independently assesses the petition, taking the allegations as true. *Hodges*, 234 Ill. 2d at 10. Based on this review, the trial court must determine whether the petition "is frivolous or is patently without merit," and, if it so finds, dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2016).

¶ 26 A petition may be dismissed as frivolous or patently without merit "only if the petition has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 16. A petition has no arguable basis in law when it is founded in "an indisputably meritless legal theory," for example, a legal theory that is completely belied by the record. *Id.* A petition has no arguable basis in fact when it is based on a "fanciful factual allegation," which includes allegations that are "fantastic or delusional" or contradicted by the record. *Id.* at 16-17; *People v. Morris*, 236 Ill. 2d 345, 354 (2010). Our review of a first-stage dismissal is *de novo*. *Hodges*, 234 Ill. 2d at 9. Pursuant to this standard, we review the trial court's judgment, not the reasons given for it. *People v. Jones*, 399 Ill. App. 3d 341, 359 (2010).

¶ 27 Traditionally, to establish ineffective assistance of counsel, a defendant must show (1) that counsel's representation fell below an objective standard of reasonableness; and (2) but for counsel's errors, there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). However, our supreme court has indicated that in the context of first-stage postconviction proceedings, a defendant need not conclusively establish these factors; in *Hodges*, our supreme court held that "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. Where a claim of ineffectiveness may be disposed of on the ground of lack of sufficient prejudice, "that course should be followed." *Strickland*, 466 U.S. at 694.

¶ 28 Defendant first argues that his petition should not have been summarily dismissed because it set forth an arguable claim that trial counsel was ineffective for failing to cross-examine Jeremy regarding his prior violent conduct. He asserts that this line of cross-examination would have been directly relevant to his theory of self-defense because the facts surrounding Jeremy's prior arrest were "eerily similar to those of the instant matter." Defendant maintains that Jeremy's prior "aggressive instigation and violent behavior" would have corroborated the version of events he presented when he testified on his own behalf at trial, in which Jeremy acted aggressively and potentially violently, and would have been admissible under *People v. Lynch*, 104 Ill. 2d 194 (1984), because he and the State presented conflicting accounts of what occurred on the night in question. He further asserts that evidence of Jeremy's prior arrest was readily available to counsel through Jeremy's public courtroom file or an inquiry

with the State, and that counsel had no reasonable basis for not investigating and attempting to introduce this evidence of Jeremy's prior violent conduct.

¶ 29 As an initial matter, we note that it is unlikely the evidence of Jeremy's altercation with the police could have been admitted at trial. When a defendant is claiming self-defense, the victim's aggressive and violent character is relevant to show who was the aggressor, and the defendant may show it by "appropriate evidence," such as a prior conviction. *Lynch*, 104 Ill. 2d at 200. A prior altercation or an arrest, without a conviction, can be adequate proof of violent character only when it is supported by firsthand testimony as to the victim's behavior. *People v. Cook*, 352 Ill. App. 3d 108, 128 (2004). Here, the certified statement of conviction attached to defendant's petition indicates that Jeremy pled guilty to one count of battery, received a sentence of supervision, and had that supervision term discharged. The successful completion of a period of supervision does not result in a conviction. 730 ILCS 5/5-6-3.1(f) (West 2016); *People v. Schuning*, 106 Ill. 2d 41, 48 (1985). As such, evidence of the altercation between Jeremy and the police would have been admissible only if one or more eyewitnesses to the incident had been called to testify. While it is not impossible that trial counsel could have presented such a witness, in our view, it is extremely unlikely.

¶ 30 Admissibility aside, even if we were to find that it is arguable counsel acted unreasonably in not introducing evidence of Jeremy's prior encounter with the police, we cannot find that defendant was arguably prejudiced by trial counsel's failure to do so. As we observed in our order on direct appeal (*Archer*, 2016 IL App (1st) 141820-U, ¶¶ 21, 34), the evidence presented at trial overwhelmingly supported defendant's conviction for attempted first degree murder, and showed that any provocation by Jeremy in this case was wholly disproportionate to the manner

in which defendant retaliated. Clark testified that Jeremy was quietly leaning against a wall when defendant got out of the SUV, and that after Jeremy went into the alley, shots were fired. Corroborating this, Jocelyn testified that as Jeremy began to walk away down the alley, defendant jumped out of the SUV, moved toward the alley, and fired several shots "directly where" Jeremy had gone. Officer Nard testified that she saw defendant shooting a gun that he was aiming at "the beginning point of the alley." Officer Musgraves testified that defendant admitted he pulled out his gun following a verbal altercation with Jeremy and fired several shots into the alley where Jeremy had run. Similarly, Detective Bell testified that defendant told him after Jeremy approached the SUV and began "talking shit," he got out of the SUV and then shot at Jeremy as Jeremy began to run down the alley.

¶ 31 Given the testimony provided by Clark, Jocelyn, Nard, Musgraves, and Bell, the evidence that defendant was not acting in self-defense was so overwhelming that it precludes a finding of arguable prejudice. There is no reasonable probability that the trial outcome would have been different if counsel had introduced evidence that almost two years earlier, Jeremy pushed two officers and struck one officer. Defendant's claim of ineffectiveness was frivolous and patently without merit and was properly dismissed by the circuit court. See *People v. Richardson*, 2015 IL App (1st) 113075, ¶ 21 (where evidence of guilt was overwhelming, it was not arguable that the defendant was prejudiced by counsel's alleged deficient performance, and the petition lacked an arguable basis in law); *People v. Dobbey*, 2011 IL App (1st) 091518, ¶ 69 (where evidence of guilt was overwhelming, the defendant could not demonstrate arguable prejudice and summary dismissal of the postconviction petition was proper).

¶ 32 Defendant next argues that his petition should not have been summarily dismissed because it set forth an arguable claim that trial counsel was ineffective for failing to impeach Jocelyn's credibility with her arrest and conviction for resisting a peace officer who was investigating Jeremy's shooting. He argues that counsel's failure to investigate and present evidence of Jocelyn's arrest and conviction was arguably unreasonable where it would have discredited the State's version of events. He further asserts that counsel's failure was arguably prejudicial because Jocelyn's testimony was crucial to the State's case, she was implicitly biased because her brother was the person who was shot, and, where conflicting versions of events were presented at trial, introduction of Jocelyn's "attempted obstruction of the investigation to which she was testifying at trial" would have given the trial court a reason to doubt her credibility. Defendant explains, "[I]t is of great importance and relevant to her credibility as a witness, that prior to trial, she had already attempted to obstruct the investigation into her brother's shooting."

¶ 33 Defendant's arguments with regard to Jocelyn fail. First, the record contradicts defendant's assertion that trial counsel failed to investigate Jocelyn's arrest. During cross-examination of Detective Bell, counsel asked the detective to confirm that two of Jeremy's sisters "were arrested for physical altercation with your colleagues in the alley." In addition, defendant averred in his affidavit that counsel was aware that several of Jeremy's family members were arrested on the night of the shooting. As such, it is not arguable that counsel was ineffective for failing to investigate Jocelyn's arrest.

¶ 34 Second, we note that defendant's references to Jocelyn's "conviction" are inaccurate. As explained above, the successful completion of a period of supervision does not result in a conviction. See 730 ILCS 5/5-6-3.1(f) (West 2016); *Schuning*, 106 Ill. 2d at 48. The documents

attached to defendant's petition reveal that Jocelyn was found guilty of battery and sentenced to three months of supervision, which was thereafter discharged. Thus, Jocelyn does not stand convicted of battery.

¶ 35 Nevertheless, evidence of an arrest, while not admissible to impeach credibility generally, is admissible to show that the witness's testimony may be influenced by bias, interest, or motive to testify falsely. *People v. Triplett*, 108 Ill. 2d 463, 475 (1985). However, when impeaching by showing bias, interest or motive, the evidence used must not be remote or uncertain and " 'must give rise to the inference that the witness has something to gain or lose by his testimony.' " *Id.* at 475-76 (quoting *People v. Phillips*, 95 Ill. App. 3d 1013, 1020 (1981)). Put another way, the arrest or charge must show that the State had some "leverage" over the witness. *Id.* at 481-82.

¶ 36 Here, there is no suggestion that the State had leverage over Jocelyn, or that Jocelyn expected any leniency from the State in exchange for her testimony. Indeed, the certified statement of conviction / disposition attached to defendant's petition reflects that her term of supervision was discharged on November 15, 2013, a month before defendant's trial commenced on December 16, 2013. Rather than suggest that Jocelyn expected favorable treatment from the State, defendant proposes that she was implicitly biased because she wanted her brother's shooter to be brought to justice, and that evidence of her arrest was relevant to that bias in that it would have shown she attempted to obstruct the investigation into her brother's shooting. We cannot agree with defendant's reasoning. The evidence he proposes should have been introduced by counsel to show bias, interest, or motive does not give rise to an inference that Jocelyn had something to be gained by her testimony, and was too remote, uncertain, and speculative to be

admissible for impeachment purposes. See *id.* at 477. It is not arguable that counsel acted unreasonably by not introducing evidence of Jocelyn's arrest.

¶ 37 *Arguendo*, even if we were to find arguable deficient performance, we would find no arguable prejudice. As discussed in detail above, the evidence at trial overwhelmingly supported defendant's conviction for attempted first degree murder. *Archer*, 2016 IL App (1st) 141820-U, ¶ 21. As such, there is no reasonable probability that the outcome of the trial would have been different if counsel had introduced evidence that Jocelyn was arrested for slapping and hitting an officer who was investigating at the scene of the shooting. Defendant's claim of ineffectiveness was frivolous and patently without merit and was properly dismissed by the circuit court. See *Richardson*, 2015 IL App (1st) 113075, ¶ 21 (where evidence of guilt was overwhelming, it was not arguable that the defendant was prejudiced by counsel's alleged deficient performance, and the petition lacked an arguable basis in law); *Dobbey*, 2011 IL App (1st) 091518, ¶ 69 (where evidence of guilt was overwhelming, the defendant could not demonstrate arguable prejudice and summary dismissal of the postconviction petition was proper).

¶ 38 Finally, defendant argues that his petition should not have been summarily dismissed because it set forth an arguable claim that trial counsel was ineffective for failing to prepare him for the affirmative defense of self-defense. Defendant notes that in his affidavit, he averred that counsel "did not discuss with me the legal theory of self-defense" and "did not prepare me to testify about self-defense." In his brief on appeal, defendant asserts that due to counsel's failures, he essentially went into trial "blind," with no guidance as to how to testify and no knowledge as to what facts were critical to his defense, what words to use, or how to respond to cross-examination.

¶ 39 Once again, we cannot find that defendant has shown arguable prejudice resulting from counsel's alleged failure. In his opening brief, defendant has failed to identify a single answer that he gave while testifying that would have been different if he had been better prepared by trial counsel. In his reply brief, he has identified one: he asserts that defense counsel should have prepared him not to "openly admit[ ] to dealing drugs on [the] stand, unprompted, when he said that one of the witness's sisters did not want to date him because 'she [doesn't] date drug dealers.' " However, the trial court sustained the State's objection to this testimony, which cured any prejudicial effect it may have had. See *People v. Cunningham*, 2012 IL App (3d) 100013, ¶ 14 (in a bench trial, it is presumed the trial judge considered only competent evidence unless the record affirmatively demonstrates the contrary). Moreover, defendant's complete statement was that Jeremy's sister looked at him, looked at the SUV, and then said she did not date drug dealers. Thus, defendant's statement implied that the vehicle was what made Jeremy's sister suspect he was involved in the drug trade. Given that defendant had already testified that the SUV belonged to his friend, we cannot see how this stricken statement prejudiced him.

¶ 40 Defendant's claim of self-defense was defeated by overwhelming evidence supporting his conviction for attempted first degree murder. *Archer*, 2016 IL App (1st) 141820-U, ¶¶ 21, 34. We agree with the State that no amount of witness preparation by defense counsel would have changed the outcome of defendant's trial. Where it is not arguable that defendant was prejudiced by counsel's alleged failure to prepare him to testify regarding self-defense, the claim is frivolous and patently without merit and was properly summarily dismissed by the circuit court.

¶ 41 The three claims of ineffective assistance of trial counsel that defendant advances on appeal lack an arguable basis in fact and in law. See *Morris*, 236 Ill. 2d at 354; *Hodges*, 234 Ill.

2d at 16. In these circumstances, summary dismissal of the petition was proper. Defendant's appellate contentions fail.

¶ 42 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 43 Affirmed.