2019 IL App (4th) 160191-U

No. 4-16-0191

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 4, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MAURICE A. JACKSON,	)	No. 03CF687
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted the Office of the State Appellate Defender's motion to withdraw as appellate counsel and affirmed the trial court's dismissal of defendant's section 2-1401 petition as no meritorious issue could be raised on appeal.

¶ 2 This appeal comes to us on a motion from the Office of the State Appellate Defender (OSAD) to withdraw as appellate counsel on the ground no meritorious issue could be raised on appeal. We grant OSAD's motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Indictment

¶ 5 In April 2003, the State charged defendant, Maurice A. Jackson, by information with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2002)) for the death of Demarcus Cotton. The information was superseded by a grand jury indictment.

¶ 6 B. *Pro Se* Letters

¶ 7 Between October 2003 and April 2004, defendant sent four *pro se* letters to the trial court. In those letters, defendant (1) requested a plea offer of less than 20 years because he did not commit the offense and needed to provide for his unborn child, (2) explained his defense counsel was "good" but not giving his case the full attention it deserved, (3) requested to be transferred to a facility where he could see his family and work on his case more easily, and (4) requested the court order defense counsel to send him copies of various pretrial motions.

¶ 8 C. Motion to Suppress

¶ 9 Defense counsel filed a pretrial motion to suppress an inculpatory videotaped statement by defendant. The motion argued defendant's statement was involuntary because his low intelligence level (1) made him susceptible to police pressure, (2) predisposed him to answer questions to please the questioner, and (3) made it more likely he would confess to a crime he did not commit. The motion also argued defendant's cognitive disability prevented him from intelligently waiving his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed.2d 694 (1966)).

¶ 10 At a hearing on the motion to suppress, the parties stipulated to a number of facts concerning defendant's cognitive disability, the State presented testimony concerning the events surrounding defendant's statement as well as testimony concerning a prior incident where

defendant gave a statement after being informed of his *Miranda* rights, and the defense presented defendant's testimony concerning the events surrounding his statement.

¶ 11 In 1992, defendant was placed in special education classes during the spring of his first grade year. In 1995, defendant was reevaluated and found to no longer qualify for special education services. In 1996, Marty Traver, a licensed clinical psychologist, evaluated defendant when he was 11 years old and determined he had "Borderline Intellectual Functioning and Disruptive Disorder Not Otherwise Specified." In 1997, Myra Gillespie, a licensed psychologist, evaluated defendant and found his overall cognitive ability fell within the borderline range and his adaptive behavior fell within the mildly mentally handicapped range. Gillespie determined defendant was not eligible for special education services but he did need additional help with his schooling and learned slower than an average child of his age. In 2000, Linda Morgan, a child welfare specialist with the Department of Children and Family Services (DCFS), requested defendant receive additional tutorial services. Morgan noted defendant (1) performed very well on word analysis and could read orally at the 10th grade level but had no comprehension of what he read orally at any grade level and (2) scored at grade level 5.4 for vocabulary and at grade level 6.5 for comprehension by reading silently. In 2003, defendant stopped attending school. That same year, defendant filled out four job applications with the assistance of a social worker, who found it necessary to repeat instructions to defendant for every application.

¶ 12 Detective Patrick Funkhouser testified defendant came to the police station willingly to speak to detectives on April 21, 2003. Defendant provided information that led the detectives to believe he committed a crime. Funkhouser informed defendant of his *Miranda* rights, and defendant indicated he understood his rights and agreed to waive them. Defendant

answered questions about Cotton's death and agreed to provide a videotaped statement. Detective Funkhouser testified defendant was "very cooperative" and never asked for an attorney or for the interview to stop. The State played the videotaped statement for the trial court.

¶ 13 Detective Mark Huckstep testified he interviewed defendant in October 2000 concerning a prior juvenile charge. During that interview, defendant was informed of his *Miranda* rights and indicated he understood those rights and was willing to waive them. Detective Huckstep testified he never observed anything about defendant to cause him to believe he did not understand his rights or was confused about what was occurring.

¶ 14 Defendant testified, when he encountered the police on April 21, 2003, he felt he had no choice but to go to the station for questioning. He indicated he provided a statement only because the police told him he could go home if he gave a statement but would be arrested for murder if he did not make a statement. Defendant acknowledged he was read his *Miranda* rights and stated to the officers he understood those rights. Defendant testified he did not in fact understand his rights.

¶ 15 After hearing the evidence, the trial court denied the motion to suppress and found defendant's statements were voluntary. Relying on defendant's demeanor in the videotaped statement, the court noted:

> "The [d]efendant has a markedly different personality when viewing the tape, as he does here in court. On the tape, he was very forthcoming, he was very specific. He tried to be as accurate as he could with regards to the initial confrontation. And answered the

questions without any hesitation. In court, he seems to be a bit more hesitant. And that goes to credibility."

The court further noted it considered the stipulations and stated:

"And I supposed had the motion been made back in 1980 [*sic*], as to whether or not he understood his *Miranda* rights, that would have been a closer question than it is now. He's some four years older. He's obviously, again, able to express himself appropriately. When viewing the tape, I believe he understood those rights and he was appropriately advised of his rights before the taped statement was then made."

¶ 16 D. Jury Trial

¶ 17 In May 2004, the trial court conducted a jury trial. We have previously set forth the evidence presented as follows:

"On the evening of April 20, 2003, police officers responded to reports of a shooting in the 400 block of West Eureka Street in Champaign. When officers arrived, they found 17-year-old Demarcus Cotton lying in the street, the victim of an apparent gunshot wound. Cotton died at the hospital. An autopsy revealed a bullet wound to the abdomen had caused massive blood loss, leading to cardiac arrest. There was also an insignificant gunshot wound to the right elbow, and a bullet fragment was found in

Cotton's right shoelace. Three shell casings were collected at the scene of the shooting.

The next morning police officers spoke to defendant, an 18-year-old male. Defendant agreed to accompany them to the Champaign police station, where the officers spoke to him in an interview room. Defendant eventually admitted he had been present on Eureka Street. He stated he had been armed with a handgun and had fired the gun at a person with whom he had been involved in an altercation earlier in the day. At this point, the officers advised defendant of his rights under [*Miranda*].

Defendant agreed to give a videotaped statement, which was later introduced at trial. Defendant stated that he had met Cotton 9 to 10 months earlier, when Cotton tried to sell marijuana to defendant and his friend, Tyran Bascomb. Defendant and Bascomb did not buy the drugs but stole them from Cotton. On the afternoon of April 20, Cotton and two other men confronted defendant about the marijuana. Cotton attempted to strike defendant, and defendant struck back. Defendant ran to Priscilla Lee's house, where his friend Bascomb was present. Priscilla Lee's daughter, Mary, was Bascomb's girlfriend. Defendant and Bascomb came outside, and more fighting ensued until Lee

screamed that she was calling the police. As Cotton left, he told defendant to meet him at Beardsley Park.

Defendant stated that he had previously returned a gun to Cole Baker. Defendant and Bascomb went to Baker's home, where Baker gave Bascomb the gun. Defendant's cousin, Ashanti, gave defendant and Bascomb a ride to Beardsley Park, where they spoke to a friend, who said he would speak to Cotton in hopes of ending the dispute. When Cotton spotted defendant, however, a verbal exchange took place. Defendant saw Cotton take a portable music player from his pocket, but he did not see a weapon. Cotton advanced on defendant in a manner that indicated to defendant he wanted to fight. While Cotton was still a distance away, defendant pulled out the gun, fired it twice with his back toward Cotton, and prepared to run. Bascomb then called out 'gimme the gun, gimme the gun.' Defendant gave the gun to Bascomb and 'then I looked back one time and start running. And then[, officer,] that's when I heard the gunshot and then we got back into the van.' Defendant and Bascomb returned to Lee's house, and Bascomb took the gun and hid it in a tree in the backyard.

The State called Bascomb as a witness. Bascomb, 22 years old, was in custody for delivery of a controlled substance. In 2000 and 2001 he had been convicted of misdemeanor theft. In 2000,

2001, and 2002, he had been convicted of obstruction of justice. Bascomb confirmed that defendant, his close friend, had come to Lee's house with Cotton chasing him and trying to fight. Cotton had five friends with him. Bascomb intervened and fought with one of Cotton's friends. Cotton and defendant yelled that they were going to 'mirk' (kill or fight) each other. Bascomb and defendant were told to meet Cotton and his friends at Beardsley Park.

Bascomb accompanied defendant to Baker's house but did not know the reason for going there. He saw defendant speak to Baker but did not hear them or see Baker give defendant anything. Bascomb and defendant were given a ride to Beardsley Park. Defendant began playing with the gun, causing it to jam. Bascomb unjammed the gun and returned it to defendant but kept the clip. He was afraid defendant did not know how to handle a gun and decided it would be dangerous for defendant to be in possession of a loaded gun. Bascomb told defendant to 'just not use the gun.' Bascomb also told defendant to just fire 'a warning shot.' Defendant said he only wanted to fight and that he would fire the gun into the air to scare people.

After they saw Cotton, a few friends went to talk to him and see if they could quell tempers. Meanwhile Bascomb and defendant discussed the clip. Bascomb testified defendant asked

him for the clip, and they had an argument about it, but Bascomb ended up giving it to him. When Cotton saw defendant he became enraged, and the two exchanged words. As Cotton approached, defendant pulled out the gun and fired three shots at Cotton. Bascomb ran after the first shot. Defendant was close behind. They returned to Priscilla Lee's house. Bascomb testified he never touched the gun after he had unjammed it and that defendant had not given him the gun during the shooting. At some point, defendant disposed of the gun but Bascomb did not see where he put it.

Various witnesses testified a number of shots were fired, and after a pause, other shots were fired. Other witnesses testified only three shots were fired. Some witnesses testified a man with a snake design on his jacket had the gun after the shooting and defendant did not have the gun.

Bascomb's girlfriend, Mary Lee, testified that after the shooting, at her mother's house, she observed defendant to be in shock. She asked what happened and defendant stated 'I shot him.' Mary asked Bascomb if that was true and Bascomb confirmed what defendant had stated. Defendant was asked what he was thinking and said, 'Man, I don't know. The gun just went off.' Police found the gun in a tree in Priscilla Lee's yard. A ballistics

> test established the gun to be the one that had fired the fatal shot and the bullet fragment found in Cotton's right shoelace." (Alterations in original.) *People v. Jackson*, 372 Ill. App. 3d 605, 606-09, 874 N.E.2d 123, 125-26 (2007).

Based on this evidence, the jury returned a verdict finding defendant guilty.

¶ 18 E. Sentencing

¶ 19 In July 2004, the trial court held a sentencing hearing. The court was presented with a report composed by Dr. Traver detailing her findings from a posttrial psychological evaluation of defendant, a presentence investigation report (PSI), various reports from DCFS involving defendant, and a victim impact statement. The State presented testimony from several police and correctional officers who had prior contacts with defendant. The defense presented testimony from Joanne Radcliffe, a court appointed special advocate who had served as defendant's advocate since 1998, when he was 11 years old.

¶ 20 The following is gleaned from Dr. Traver's report. Dr. Traver asked defendant to describe his understanding of his situation. Dr. Traver found defendant had an "accurate" understanding of his situation. He did not recall the possible range of punishments associated with his crime but did not believe the death penalty was possible. He also was able to provide his personal, family, educational, medical, employment, and substance abuse history. Dr. Traver performed several psychological tests on defendant. Intelligence testing placed him in the mildly mentally retarded to borderline range of intellectual functioning, with a full scale intelligence quotient (IQ) of 73. Dr. Traver believed defendant had a cognitive impairment and should be classified at the top of the mildly mentally retarded range. He had relative strengths in his ability

to read social situations, perceptual motor skills, and short-term memory, but he had extreme deficits in comprehension ability, information learned in school, mathematical computation, and vocabulary. Another test showed defendant's overall adaptive behavior was in the low range. He had an adequate functioning in interpersonal relationships and receptive language but had never lived alone or held a driver's license, could not maintain employment or manage money, and depended on others for most things. A test designed for individuals within the criminal justice system revealed defendant was "Profile Type 5," which includes "markedly antisocial" individuals who may appear to be cooperative but in fact have poor social adjustment and difficulties in relating to others and can be hostile, aggressive, and irrational. A substance abuse test suggested defendant had a high probability of having a substance abuse disorder. Dr. Traver diagnosed defendant with alcohol and cannabis dependence under controlled conditions, dysthymic disorder, mild mental retardation, and antisocial personality disorder. Her global assessment of his functioning was that he had major impairments in judgment, thinking, occupational and social functioning, and self-care skills.

¶ 21 The PSI indicated defendant had a prior juvenile adjudication for unlawful use of a firearm and adult convictions for illegally transporting alcohol and driving on an expired license. Defendant told the probation officer who prepared the PSI he could read and write "enough to get by." He also said he worked two jobs in 2002 and 2003 but quit the first job because he did not like working nights and quit the second job because he was having family issues. He did not believe he had any mental or emotional problems.

¶ 22 The police and correctional officers testified to several prior incidents involving defendant, including the events that led to his adjudication for unlawful use of a weapon. Several

of the prior incidents involved defendant's use of physical force against others as well as the display of firearms.

¶ 23 Court-appointed special advocate Radcliffe testified she met with defendant about every two weeks from 1998 through 2002. She described defendant's background as chaotic. Defendant's mother was 14 or 15 years old and defendant's father was 16 years old when defendant was born. Defendant's mother was now deceased and his father was a registered sex offender and incarcerated. Defendant lived with his grandmother and six to nine other people in a dirty house that had drug activity. When Radcliffe was first appointed to defendant's case, she was informed he was "mildly handicapped." She indicated, "Off and on he was deemed to be special ed, the next year he would be out of special ed." She observed firsthand he did not work well on his own and had difficulty staying focused and getting his work done without supervision. Radcliffe indicated Judge Townsend, who presided over defendant's juvenile proceedings, took extraordinary steps to get defendant back on path. Radcliffe discussed how defendant became a different person after he attended a camp. He had high self-esteem and rose to the top level in school. Radcliffe believed defendant was easily manipulated and his attitude depended on his friends. Radcliffe spoke with defendant about the incidents testified to by the police and correctional officers at the sentencing hearing. Defendant usually indicated the incidents occurred because he was "hanging out with my guys."

¶ 24 In issuing its recommendation, defense counsel argued defendant's cognitive disabilities warranted a reduced sentence.

¶ 25 After considering the evidence and recommendations presented, the trial court sentenced defendant to 40 years' imprisonment. In so ruling, the court noted it found defendant's

"mental status" to be mitigating. It determined defendant understood the circumstances surrounding the events and the problems that guns created. The court summarized:

> "So again, although the court has considered the mental status of the defendant, there's no indication that he didn't understand the gravity of the situation when he first involved himself with weapons. And obviously the gravity of the situation now that he involves himself again with weapons, and someone dies as a result."

Finally, the court noted while defendant's mental status may have allowed him to be easily influenced by others, he had made his own choices not to work with people who were trying to help him.

¶ 26 F. Direct Appeal and Prior Collateral Proceedings

¶ 27 Defendant appealed from his conviction and sentence, arguing the State failed to prove his guilt beyond a reasonable doubt and the trial court erred by refusing to instruct the jury on involuntary manslaughter and the definition of self-defense/justified use of force. In April 2007, we affirmed. *Jackson*, 372 Ill. App. 3d at 605.

¶ 28 In October 2007, defendant filed a *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2006)), arguing several trial errors and ineffective assistance of appellate counsel. The trial court summarily dismissed the petition, and defendant appealed. In December 2008, we affirmed. *People v. Jackson*, 4-07-1004 (2008) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 29 In July 2009, defendant filed a *pro se* motion for leave to file a successive postconviction petition, arguing, in part, his counsel on direct appeal was ineffective in failing to challenge the denial of his motion to suppress statements as his mental retardation prevented him from knowingly and intelligently waiving his *Miranda* rights. The trial court denied defendant leave to file the successive petition, and defendant appealed. In June 2010, we granted OSAD's motion to withdraw as counsel and affirmed. *People v. Jackson*, 399 Ill. App. 3d 1247 (2010) (table) (unpublished order under Supreme Court Rule 23).

¶ 30 In February 2012, defendant filed a *pro se* petition for injunctive relief, arguing an impropriety occurred in the grand jury indictment. The trial court dismissed the petition, and defendant appealed. In November 2012, we affirmed. *People v. Jackson*, 2012 IL App (4th) 120241-U.

¶ 31 In December 2013, defendant filed a *pro se* petition for "Summary Relief," arguing the version of the first degree murder statute in effect in 2003 was unconstitutional. The trial court dismissed the petition, and defendant appealed. In November 2015, we granted OSAD's motion to withdraw as counsel and affirmed. *People v. Jackson*, 4-14-0116 (2015) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 32 In February 2014, defendant filed two *pro se* petitions for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). In his first section 2-1401 petition, defendant argued the State failed to properly charge him with accountability for his co-defendant's conduct. In his second section 2-1401 petition, defendant argued, in part, the trial court's finding he understood his *Miranda* rights must be vacated because the court did not have a true understanding of his mental retardation when it made that

finding. Defendant attached several trial documents and transcripts to support his claim as well as an affidavit from a relative, Jermaine Davis. In that affidavit, Davis explained defendant had needed help throughout his entire life because he had never been able to comprehend even "the most simplest thing." Davis also explained how, no matter what services the family tried to provide defendant, his condition only got worse and all of the family understood defendant was "severely mentally retarded." The trial court dismissed defendant's two petitions, and defendant appealed. In November 2015, we granted defendant's *pro se* motion to withdraw his notice of appeal.

¶ 33 In April 2014, defendant filed a third *pro se* section 2-1401 petition. In his petition, defendant argued the indictment should be dismissed because it was not signed by all grand jurors. Defendant did not pursue a ruling on this petition.

¶ 34 In August 2014, defendant filed a *pro se* "Petition for Findings of Unconstitutionality," challenging the mandatory supervised release attached to his sentence. The trial court dismissed defendant's petition. Defendant did not appeal the court's ruling.

¶ 35 G. Fourth *Pro Se* Section 2-1401 Petition

¶ 36 In October 2015, defendant filed a fourth *pro se* section 2-1401 petition. In his petition, defendant alleged he was denied due process because the trial court never held a hearing on his competency to stand trial, despite evidence of his mental retardation, which demonstrated he was unfit. As evidence of his unfitness, defendant cited the testimony of Radcliffe at the sentencing hearing, the claims made by his attorney throughout the trial proceedings indicating his "insanity was in issue," and the findings made by Dr. Traver prior to sentencing. Defendant also argued his failure to raise this issue at trial could be excused because he was incompetent.

¶ 37 Over defendant's objections, the trial court granted the State two extensions of time to respond to defendant's section 2-1401 petition. In its written motions for extensions, the State indicated defendant had a pending appeal and this court would not release the transcripts until the appeal was resolved.

¶ 38 On January 12, 2016, the State filed a motion to dismiss defendant's section 2-1401 petition. The State argued (1) defendant failed to cite any facts not already known to him or his trial counsel at the time of trial, (2) defendant's correspondences to the court before trial and his *pro se* filings after trial showed he understood the nature and purpose of the proceedings against him and assisted in his own defense, (3) the petition was untimely, and (4) defendant forfeited his claim by failing to raise it in prior proceedings.

¶ 39 On January 25, 2016, defendant filed a response to the State's motion to dismiss his section 2-1401 petition. Defendant argued, in part, all the letters he mailed to the court before trial and his *pro se* pleadings filed after trial had been prepared with the assistance of fellow inmates. Defendant also argued the untimeliness of his petition as well as any procedural bar should be excused due to his incompetence.

¶ 40 On February 1, 2016, the trial court entered a written order granting the State's motion to dismiss defendant's section 2-1401 petition. The court found the petition (1) failed to state a cause of action, (2) was barred by prior judgments, and (3) was untimely. Defendant filed a notice of appeal, and the court appointed OSAD to represent defendant on appeal.

¶ 41 In March 2018, OSAD filed a motion for leave to withdraw as counsel, asserting no meritorious claim could be raised on appeal. We granted defendant leave to file additional

points and authorities, and he has responded. The State has also filed a brief and defendant has filed a reply brief.

¶ 42 II. ANALYSIS

¶ 43 OSAD contends any argument suggesting the trial court erred in dismissing defendant's fourth *pro se* section 2-1401 petition would be without merit. In so concluding, OSAD has considered both procedural and substantive challenges to the court's dismissal.

¶ 44 A. Procedural Issues

¶ 45 OSAD asserts no reasonable argument could be made to suggest the trial court committed a procedural error in dismissing defendant's section 2-1401 petition.

¶ 46 A section 2-1401 petition is ripe for adjudication after the opposing party has had 30 days to answer. *People v. Carter*, 2015 IL 117709, ¶ 16, 43 N.E.3d 972; *People v. Laugharn*, 233 Ill. 2d 318, 322, 909 N.E.2d 802, 804-05 (2009). Here, defendant filed his section 2-1401 petition in October 2015, and the trial court dismissed it in February 2016, well beyond the 30-day period for the State to respond. The petition was clearly ripe for adjudication.

¶ 47 Section 2-1401 states parties must comply with the notice and pleading requirements that exist "by rule." 735 ILCS 5/2-1401(b) (West 2014). Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011) provides a trial court may extend the time to file a responsive motion "for good cause shown on motion after notice to the opposite party." Here, the trial court did not err by granting the State its extensions as the State provided defendant written notice of its extension motions and the extensions were based on the absence of the necessary transcripts to respond to defendant's petition.

¶ 48 We agree with OSAD and find no reasonable argument could be made to suggest

the trial court committed a procedural error in dismissing defendant's section 2-1401 petition.

¶ 49 B. Substantive Issues

¶ 50 OSAD asserts no reasonable argument could be made to suggest the trial court committed a substantive error in dismissing defendant's section 2-1401 petition.

¶ 51 "To obtain relief under section 2-1401, the defendant must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." (Internal quotation marks omitted.) *People v. Pinkonsly*, 207 Ill. 2d 555, 565, 802 N.E.2d 236, 243 (2003). "A section 2-1401 petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition." *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182 (2000). "[A] section 2-1401 petition *** requires the court to determine whether facts exist that were unknown to the court at the time of trial and would have prevented entry of the judgment." *Pinkonsly*, 207 Ill. 2d at 566.

¶ 52 The gist of defendant's section 2-1401 petition is had the trial court conducted a fitness hearing, the evidence would have demonstrated he was unfit to stand trial and, in turn, prevented him from being convicted and sentenced. In support of this claim, defendant cited the testimony of Radcliffe at the sentencing hearing, the claims made by his attorney throughout the trial proceedings indicating his "insanity was in issue," and the findings made by Dr. Traver prior to sentencing.

¶ 53 While a claim that a defendant was unfit to stand trial may properly be raised in a section 2-1401 petition (see *Haynes*, 192 Ill. 2d at 461; *People v. Hinton*, 52 Ill. 2d 239, 244, 287 N.E.2d 657, 660 (1972)), defendant's claim is legally deficient in two respects. First, defendant failed to cite any new evidence outside the trial record to support his claim. Defendant relies on evidence that was available and presented before the entry of the final judgment of conviction and sentence. See *People v. Jackson*, 91 Ill. App. 3d 595, 604, 414 N.E.2d 1175, 1182 (1980) (noting a petition for relief from judgment is the appropriate remedy where facts exist which raise a *bona fide* doubt of a defendant's fitness and the trial judge was not apprised of them at trial); *Hinton*, 52 Ill. 2d at 244-45 (finding a defendant failed to establish he was entitled to relief on his petition as the supporting evidence of defendant's past mental health history had been submitted to the court prior to trial). Second, defendant forfeited his claim. Defendant could have raised his claim in the trial court or on direct review as it was based on evidence of record at that time. See *People v. Mamolella*, 42 Ill. 2d 69, 72, 245 N.E.2d 485, 486 (1969) (indicating it was not the purpose of section 2-1401's predecessor "to have claims considered which could have been presented in the trial court and on direct review of a conviction").

¶ 54 Moreover, even if defendant's claim was not forfeited and evidence available and presented during trial proceedings could alone support a section 2-1401 claim suggesting a defendant was unfit to stand trial, the evidence cited by defendant does not show he was unfit to stand trial. It was undisputed defendant had limited intellectual ability. A defendant's limited intellectual ability does not, however, automatically render him or her unfit for trial. *People v. Lucas*, 140 Ill. App. 3d 1, 7, 487 N.E.2d 1212, 1217 (1986). Rather, "[t]he critical inquiry is whether the facts presented a *bona fide* doubt that defendant understood the nature and purpose

of the proceedings against him and was able to assist in his defense." *Id.* At no point during the trial proceedings was there any claim suggesting defendant's cognitive disabilities prevented him from understanding the nature and purpose of the proceedings and assisting in his own defense. The absence of any such stated concern by trial counsel, particularly in light of counsel's extensive investigation into defendant's intellectual disability and the impact it had on his ability to render a voluntary statement and his culpability for committing the offense, suggests counsel did not have any doubts in that regard. See *People v. Woodard*, 367 Ill. App. 3d 304, 320, 854 N.E.2d 674, 690 (2006) (relying in part on absence of any statements from trial counsel expressing concerns about defendant's fitness). The trial court also made several findings before and after trial suggesting it did not have any doubts of defendant's fitness. Defendant's mailing of several detailed *pro se* letters to the court and his testimony showing his ability to describe the details of his interrogation and give appropriate answers to questions asked of him on direct- and cross-examination further undermine any argument suggesting he did not understand the nature and purpose of the proceedings against him and was unable to assist in his defense. Finally, Dr. Traver concluded, following her posttrial interview of defendant, that he had an accurate understanding of his current circumstances.

¶ 55 We note defendant continues to argue in his response to OSAD's motion to withdraw as counsel the fact he mailed various *pro se* letters to the trial court does not undermine his claim he was unfit to stand trial because he prepared those documents with the assistance of fellow inmates. We disagree. Regardless of who prepared the documents, it is clear defendant was at least capable of discussing his case with others in a manner allowing him to seek his desired outcome.

¶ 56 We agree with OSAD and find no reasonable argument could be made to suggest the trial court committed a substantive error in dismissing defendant's section 2-1401 petition. See *People v. Harvey*, 379 Ill. App. 3d 518, 521, 884 N.E.2d 724, 728 (2008) ("We may affirm the trial court's judgment on any basis supported by the record, regardless of the actual reasoning or grounds relied upon by the circuit court.").

¶ 57 III. CONCLUSION

¶ 58 We grant OSAD's motion to withdraw as counsel and affirm. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 59 Affirmed.