2019 IL App (4th) 170239-U

NO. 4-17-0239

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 14, 2019
Carla Bender
4th District Appellate
Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | McLean County |
| JOHN E. SMITH, | ) | No. 12CF229 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Robert L. Freitag, |
| | ) | Judge Presiding. |

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

**ORDER**

¶ 1 *Held*: The appellate court reversed, concluding the trial court erred by dismissing defendant's postconviction petition at the first stage of proceedings where defendant stated an arguable claim of ineffective assistance of counsel.

¶ 2 In August 2016, defendant, John E. Smith, filed a petition for postconviction relief. In October 2016, the trial court summarily dismissed the postconviction petition, finding the petition was frivolous and patently without merit. In November 2016, defendant filed a motion to reconsider the dismissal of his postconviction petition. In December 2016, defendant filed another petition for postconviction relief. In March 2017, the trial court denied the motion for reconsideration.

¶ 3 Defendant appeals, arguing the trial court erred by dismissing his postconviction petition at the first stage because the petition stated arguable claims of ineffective assistance of trial counsel where (1) trial counsel failed to investigate and present evidence impeaching a

witness's credibility and failed to investigate and call another witness to corroborate his defense and (2) trial counsel failed to challenge the reliability of two witnesses' statements where the State failed to call the Child Advocacy Center forensic interviewer to testify about the circumstances of the interviews at the pretrial hearing. For the following reasons, we reverse.

¶ 4 I. BACKGROUND

¶ 5 In August 2012, a jury convicted defendant of one count of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2010)), three counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2010)), and one count of sexual exploitation of a child (720 ILCS 5/11-9.1(a)(2) (West 2010)), based on incidents involving defendant and two unrelated children, S.N. (born January 20, 2007) and B.N. (born November 15, 2002). The trial court sentenced defendant to an aggregate sentence of 42 years' imprisonment. In March 2015, this court affirmed defendant's conviction and sentence on direct appeal. *People v. Smith*, 2015 IL App (4th) 130205, 29 N.E.3d 674.

¶ 6 A. Pretrial Proceedings

¶ 7 In July 2012, the trial court conducted a hearing pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2010)). Georgenea N. testified her daughters, S.N. and B.N., made certain statements to her regarding incidents where defendant touched the girls. The State also offered two video recordings of interviews Mary Whitaker, a trained forensic interviewer, conducted with S.N. and B.N. at the Child Advocacy Center. Defendant stipulated the exhibits were fair and accurate recordings of the interviews. At the hearing, the trial court asked defense counsel if he had any objection to the recordings and counsel responded, "No, Your Honor, I think the court should view them. I may be making some motions not related to foundation later." The parties proceeded to argue the admissibility

of S.N.'s and B.N.'s out-of-court statements. In part, the State argued the court could review the reliability of the recorded interviews conducted at the Child Advocacy Center and rely on the recording to provide "context and insight for the statements that were given before." Defense counsel stated his argument did not address the content of the Child Advocacy Center interviews other than his observation that the interviews took place the day after the children made statements to Georgenea.

¶ 8 The trial court entered a written order regarding the admissibility of S.N.'s and B.N.'s out of court statements that addressed the recorded interviews as follows:

> "[T]he court finds that the time, content[,] and circumstances of the statements made to Mary Whitaker during separate interviews at the Child Advocacy Center, found in People's exhibits 1 and 2, do provide sufficient safeguards of reliability, and are therefore admissible. In reaching this conclusion, the court has considered the fact that the evidence at the hearing indicated that there was some further conversation between [Georgenea] and her daughters following S.N.'s initial disclosure in the car. The court has found that the evidence regarding those conversations is insufficient to allow the court to make a finding as to whether those statements made by the children are sufficiently reliable; the court has not made a finding that the statements were tainted, or the result of adult prompting or suggestion by [Georgenea]. Even though a child victim may have spoken to other adults prior to being interviewed by police or child welfare investigators, that fact does

not preclude the admission of out-of-court statements describing sexual abuse that are otherwise shown to be sufficiently reliable in their time, content[,] and circumstances, [citation]. In this case, after reviewing [P]eople's exhibits 1 and 2, the court finds that the manner of questioning and the time, content[,] and circumstances of the statements are sufficiently reliable and therefore the statements made during the subsequent interviews are admissible."

¶ 9 B. Trial

¶ 10 On direct appeal, this court summarized the evidence introduced at trial of B.N.'s and S.N.'s allegations as follows:

"At the time of the incidents giving rise to this case, defendant was in a romantic relationship with Sarah M[.], a mother of five children. B.N. and S.N., the children of [Sarah's] friend Georgenea N., occasionally spent the weekend at [Sarah's] house. [Sarah's] house has three levels: a basement, a main floor, and an upstairs floor. [Sarah's] bedroom and the living room are on the main floor. The basement has a laundry area and a play area with baby dolls, a baby doll bed, and a play kitchen. All the alleged incidents occurred in the living room, basement, and [Sarah's] bedroom on either the weekend of February 16 to February 19, 2012, or the weekend of March 1 to March 4, 2012.

B.N., a nine-year-old girl, testified she was sitting on the couch in the living room on the main level of [Sarah's] home.

Defendant came into the living room and picked up B.N., cradling her like a baby. Further, she testified defendant used his hand and rubbed her vagina over her clothing. Defendant rubbed her vagina three times, all in the same incident. Defendant did not immediately stop at B.N.'s request but eventually put her down.

B.N. further testified she saw defendant touch S.N. on one occasion. S.N. was sitting on the couch in [Sarah's] living room and B.N. was hiding in a hallway. B.N. stated she hid in the hallway because she suspected defendant would touch S.N., just as he had touched her. The State elicited no further testimony from B.N. regarding the incident with S.N.

S.N., a five-year-old girl, testified about two incidents involving defendant. One incident occurred in [Sarah's] bedroom, where defendant was playing a video game. S.N. was watching the video game, and both S.N. and defendant sat on the bed. She testified defendant touched her vagina over her clothing.

The second incident involved defendant, S.N., and one of [Sarah's] children, C.M., a five- or six-year-old girl. S.N. and C.M. were in the basement of [Sarah's] home playing with baby dolls. Defendant came down to the basement and pulled down both S.N.'s and C.M.'s pants and underpants. S.N. testified defendant inserted one of his fingers into her vagina while she was lying on the baby doll bed. When S.N. said, 'ouch,' defendant

said, 'let's stop' and removed his finger from her vagina. Defendant said, 'oh, that's nice' while looking at S.N.'s exposed lower body. S.N. further testified defendant's pants were down, his penis was exposed, and defendant told S.N. to look at his penis." *Smith*, 2015 IL App (4th) 130205, ¶¶ 5-9.

¶ 11 Georgenea testified that at the time the incidents occurred, her daughters B.N. and S.N. lived with her. However, at the time of the trial, her daughter B.N. stayed with Georgenea's parents and S.N. stayed with her father while Georgenea looked for a permanent place to live. According to Georgenea, B.N. and S.N. occasionally stayed with Sarah, her best friend of 13 years. B.N. and S.N. spent one weekend in February and one weekend in March 2012 at Sarah's house. Defendant was at Sarah's house both weekends.

¶ 12 Approximately three or four days after her daughters spent the weekend at Sarah's house in March 2012, S.N. told Georgenea that defendant touched her "hooha." Georgenea testified S.N. used the term "hooha" to refer to her vagina. Georgenea went to her boyfriend's house where she proceeded to talk to S.N. more to find out what happened. Georgenea also talked to B.N. and then went to the Bloomington police station. According to Georgenea, she told the police what happened and the officers indicated the Child Advocacy Center would contact her the next day to set up interviews with B.N. and S.N. At that time, none of the police officers tried to talk to the girls. The following day, Georgenea took B.N. and S.N. to the Child Advocacy Center to be interviewed.

¶ 13 The State called two witnesses to testify regarding prior uncharged incidents similar to the allegations in defendant's trial. Jill G., defendant's stepdaughter from a previous relationship, testified defendant began coming into her bedroom at night when she was five years

old and would insert his fingers into her vagina. Defendant would also touch Jill's vagina over her clothes and expose his penis to her. Jennifer G., Jill's cousin, testified that when she was four or five years old, defendant brought her into Jill's bedroom, pulled down her pants, and inserted his finger into her vagina.

¶ 14 Mary Whitaker, a forensic interviewer with the Child Advocacy Center, testified she completed special training to interview children and had conducted over 2500 child interviews. Whitaker testified, "[W]hen I interview children, the purpose is to hear what they have to say in their own words, so I use open-ended, non-leading questions." According to Whitaker, she used her training to interview B.N. and S.N. at the Child Advocacy Center in March 2012. Recordings of the interviews were played for the jury and largely corroborated the in-court testimony of the two girls.

¶ 15 Defendant presented numerous witnesses and testified on his own behalf, denying he sexually abused B.N., S.N., Jennifer, or Jill. Defendant further denied being at Sarah's house on the February weekend the alleged incidents occurred. Carla M., Erica M., and Sarah all testified they were at Sarah's house on the March weekend the alleged incidents occurred. According to Sarah, defendant was at her house that weekend but spent most of his time outside working on her car. Defendant admitted he was at Sarah's house that weekend in March and testified he only entered the home a couple of times to use the bathroom or get a drink. Defendant further presented testimony about an argument between Sarah and Georgenea on the weekend in question. Although the substance of the argument is unclear, it appeared to center around Georgenea regularly dropping her daughters off at Sarah's house without contributing anything to the household. Defendant also called Sarah's 10-year-old daughter, D.M., who testified that her grandmother, Carla, came to her house every day and watched the children.

According to D.M., the children usually played in their own rooms, watched television in the living room, and occasionally played in the basement. However, D.M. testified C.M. was "barely in the basement at all" because "she always gets into stuff."

¶ 16 R. Mc. testified she was nine years old and she recalled talking to defense counsel a week before trial with C.M., D.M., and Sarah. According to R. Mc., she spent a lot of time at Sarah's house playing with D.M. R. Mc. testified she saw defendant at Sarah's house once and never saw him in the basement. R. Mc. testified she never saw C.M. in the basement because C.M. was not allowed down there.

¶ 17 The jury found defendant guilty on all five counts. The trial court denied defendant's motion for a new trial and sentenced him to an aggregate term of 42 years' imprisonment.

¶ 18 C. Postconviction Proceedings

¶ 19 In August 2016, defendant filed a petition for postconviction relief. In relevant part, the petition alleged trial counsel provided ineffective assistance for failing to (1) challenge the reliability of S.N.'s and B.N.'s statements during a section 115-10 pretrial hearing (725 ILCS 5/115-10 (West 2010)) and (2) investigate and present evidence that Georgenea lost custody of S.N. and B.N. to impeach her credibility as a State witness. Specifically, the petition alleged that had trial counsel investigated and presented this evidence, "it would have tarnished her reputation as a mother, her character as a person[,] and her credibil[it]y as a State witness based upon each reason [Georgenea] had lost custody of her two children which would have produced sufficient impeachment evidence to subject State witness testimony into effective adversarial testing as required under [the] [s]ixth [a]mendment."

¶ 20 In October 2016, the trial court summarily dismissed the postconviction petition, finding the petition was frivolous and patently without merit. The trial court rejected this claim, finding defendant failed to support the allegation with any evidence and, even if such evidence existed, there was no indication the information would be admissible. The court noted "[t]he credibility of a witness may not be impeached by inquiry into specific acts of misconduct which have not resulted in conviction of a crime."

¶ 21 In November 2016, defendant filed a motion to reconsider the dismissal of his postconviction petition. In December 2016, defendant filed another petition for postconviction relief, arguing trial counsel provided ineffective assistance by failing to call C.M. as a witness. The December 2016 postconviction petition alleged "it is not unreasonable to infer that [C.M.] would have testified for the defense version of facts at trial. However, without an ability to obtain an affidavit to ensure the above assertions, there is no actual proof."

¶ 22 In March 2017, the trial court denied the motion for reconsideration. The docket entry denying the motion for reconsideration read as follows:

> "The court, having carefully read defendant's motion for reconsideration, and reviewed the record of trial presented therein as additional support for [defendant's] postconviction petition, and having considered the order of the [Fourth] District Appellate Court *** and reviewed the petition's allegations of ineffective assistance of appellate counsel, does hereby find that the 'new' information presented in the motion does not provide any further support of the original petition sufficient to overcome the court's finding that the petition is frivolous and patently without merit."

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Defendant appeals the first-stage dismissal of his postconviction petition, asserting his petition stated an arguable claim of ineffective assistance of counsel where (1) trial counsel failed to investigate and present evidence impeaching a witness's credibility and failed to investigate and call another witness to corroborate his defense and (2) trial counsel failed to challenge the reliability of two witnesses' statements where the State failed to call the Child Advocacy Center forensic interviewer to testify about the circumstances of the interviews at the pretrial hearing.

¶ 26 A. Jurisdiction

¶ 27 As an initial matter, we address a jurisdictional argument raised by the State. The State argues this court lacks jurisdiction to consider one of defendant's claims on appeal. Namely, the State contends defendant raised his claim that trial counsel was ineffective for failing to investigate and call C.M. as a witness for the first time in his December 2016 postconviction petition. According to the State, the December postconviction petition, filed after the trial court summarily dismissed the original postconviction petition and after defendant filed a motion to reconsider, could not be construed as an amendment to the original petition. Further, the State argues the trial court made no reference to the December petition in its docket entry denying the motion to reconsider. For these reasons, the State contends the December petition was a successive postconviction petition that the trial court never ruled on, thus depriving this court of jurisdiction to consider the claim regarding C.M. on appeal.

¶ 28 Defendant argues the August 2016 postconviction petition and the motion to reconsider both contained defendant's complaint about the State's and defense counsel's failure

to present C.M.'s testimony at trial. Defendant points to the statement of facts in the August 2016 postconviction petition that stated C.M. was an available key material witness who was not called to testify. Defendant, however, does not point to a specific allegation of ineffective assistance for counsel's failure to investigate and present C.M.'s testimony. Additionally, the August 2016 postconviction petition and the motion to reconsider do not contain any allegations of the substance of C.M.'s testimony, nor is an affidavit addressing the substance of C.M.'s testimony attached to either pleading. We further note that although the December 2016 postconviction petition alleges "it is not unreasonable to infer that [C.M.] would have testified for the defense version of facts at trial," defendant did not attach an affidavit to that petition. Defendant did state, "without an ability to obtain an affidavit to ensure the above assertions, there is no actual proof." Defendant does not address the fact that the record shows he remained in a romantic relationship with C.M.'s mother—who testified in his defense at trial—and presumably could have obtained an affidavit from C.M.'s mother.

¶ 29 Based on the record before this court, it appears that defendant filed the December 2016 postconviction petition after this court issued the mandate in his direct appeal. Perhaps defendant did so based on the trial court's rejection of his August 2016 postconviction allegations of ineffective assistance of appellate counsel because, at the time the court ruled on the petition, the appeal was not yet final and defendant could not show the appeal was prejudiced by appellate counsel's allegedly deficient performance. Regardless, the December 2016 postconviction petition was filed after the trial court ruled on the August 2016 petition and after defendant filed his motion to reconsider. Under these circumstances, it appears the State is correct in asserting the December 2016 petition cannot be construed as an amendment to the original petition. See *People v. Mauro*, 362 Ill. App. 3d 440, 442-43, 840 N.E.2d 757, 761

(2005) ("A trial court has discretion to allow a defendant to amend a postconviction petition only before a final judgment is entered on the petition. [Citations.] *** An order dismissing a defendant's postconviction petition at the first stage under the Act constitutes a final judgment.").

¶ 30 However, we need not decide this dispute because we find defendant's original postconviction petition, even without the claim regarding C.M.'s testimony, was not frivolous or without merit and stated the gist of a constitutional claim. Accordingly, we turn to defendant's first contention of ineffective assistance of counsel.

¶ 31 B. First-Stage Summary Dismissal

¶ 32 The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 to 122-8 (West 2016)) provides a collateral means for a defendant to challenge a conviction or sentence for a violation of a federal or state constitutional right. *People v. Jones*, 211 Ill. 2d 140, 143, 809 N.E.2d 1233, 1236 (2004). At the first stage of postconviction proceedings, the trial court must determine, taking the allegations as true, whether the defendant's petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2016). A postconviction petition may be summarily dismissed as frivolous or patently without merit "only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 12, 912 N.E.2d 1204, 1209 (2009). At this stage of proceedings, the trial court acts in an administrative capacity and screens out postconviction petitions that lack legal substance or are obviously without merit. *People v. Tate*, 2012 IL 112214, ¶ 9, 980 N.E.2d 1100. The threshold for surviving first-stage proceedings is low because defendants with limited legal knowledge or training draft most postconviction petitions. *Id.* "To survive dismissal at this initial stage, the postconviction petition 'need only present the gist of a constitutional claim,' which is 'a low threshold' that requires the petition to

contain only a limited amount of detail." *People v. Harris*, 366 Ill. App. 3d 1161, 1166-67, 853 N.E.2d 912, 917 (2006) (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996)). We review *de novo* the summary dismissal of a postconviction petition. *Id.* at 1167.

¶ 33 Defendant's August 2016 postconviction petition asserted he received ineffective assistance of counsel where (1) trial counsel failed to investigate and present evidence impeaching Georgenea's credibility and (2) trial counsel failed to challenge the reliability of two witnesses' statements where the State failed to call the Child Advocacy Center forensic interviewer to testify about the circumstances of the interviews at the pretrial hearing.

¶ 34 A claim of ineffective assistance of counsel is governed by the familiar framework set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). "To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Domagala*, 2013 IL 113688, ¶ 36, 987 N.E.2d 767. The deficient-performance prong requires a defendant to show that counsel's performance was objectively unreasonable under prevailing professional norms. *People v. Veach*, 2017 IL 120649, ¶ 30, 89 N.E.3d 366. The prejudice prong requires a showing that but for counsel's deficient performance, the outcome of the proceeding would have been different. *Id.*

¶ 35 However, a petition alleging ineffective assistance may not be summarily dismissed at the first stage of postconviction proceedings if counsel's performance arguably fell below an objective standard of reasonableness and defendant was arguably prejudiced. *Tate*, 2012 IL 112214, ¶ 19. "This 'arguable' *Strickland* test demonstrates that first-stage postconviction petitions alleging ineffective assistance of counsel are judged by a lower pleading standard than are such petitions at the second stage of the proceeding." *Id.* ¶ 20.

¶ 36 We note that claims raised for the first time in a postconviction petition that could have been raised on direct appeal are subject to the usual procedural default rule. *Id.* ¶ 14. " 'But a claim based on what ought to have been done may depend on proof of matters which could not have been included in the record precisely because of the allegedly deficient representation.' " *Id.* (quoting *People v. Erickson*, 161 Ill. 2d 82, 88, 641 N.E.2d 455, 459 (1994). Accordingly, a procedural default does not preclude a claim of ineffective assistance based on what counsel ought to have done and proof of such a claim was not included in the record. *Id.*

¶ 37 Here, defendant argues trial counsel was aware Georgenea lost custody of her children and was ineffective for failing to investigate the circumstances and present evidence that could have been used to attack Georgenea's credibility as a State witness. This is a claim based on what counsel ought to have done and proof of the claim is not included in the record. The State contends defendant failed to attach the required evidence to support the claim that Georgenea had a motive to testify favorably for the prosecution. The State further contends that even if defense counsel could have impeached Georgenea concerning a recent motive to testify falsely, her prior statements would have been admissible and would have rehabilitated her trial testimony.

¶ 38 In this case, defendant's postconviction petition alleged Georgenea lost custody of her children shortly before defendant's trial. The petition further alleged that had trial counsel investigated and presented this evidence, "it would have tarnished her reputation as a mother, her character as a person[,] and her credibil[it]y as a State witness based upon each reason [Georgenea] had lost custody of her two children which would have produced sufficient impeachment evidence to subject State witness testimony into effective adversarial testing as

required under [the] [s]ixth [a]mendment." The trial court rejected this claim, finding defendant failed to support the allegation with any evidence and even if such evidence existed, there was no indication the information would be admissible. The court noted "[t]he credibility of a witness may not be impeached by inquiry into specific acts of misconduct which have not resulted in conviction of a crime."

¶ 39 On appeal, defendant asserts the postconviction petition alleged trial counsel was ineffective for failing to investigate and present evidence that Georgenea had an incentive to testify favorably for the State where she lost custody of S.N. and B.N. weeks before defendant's trial began. The trial court did not consider whether the evidence was admissible to show the witness's motivation to testify favorably for the State. Although the postconviction petition does not explicitly frame this claim in such terms, we conclude a lenient reading allows for this claim. The petition repeatedly pointed out this evidence could have affected Georgenea's credibility as a State witness based upon the reasons she lost custody of the complaining witnesses in this case. Liberally construed, the postconviction petition can be read to claim that this evidence would have been used not to undermine Georgenea's credibility generally but to show she had a motivation to testify favorably for the State. See *People v. Thomas*, 2014 IL App (2d) 121001, ¶ 48, 18 N.E.3d 577 ("Petitions filed *pro se* must be given a liberal construction and are to be viewed with a lenient eye, allowing borderline cases to proceed."). Reading this allegation in the postconviction petition with a lenient eye, it is at least *arguable* that defense counsel was ineffective for failing to investigate and present evidence of this witness's motivation to testify falsely.

¶ 40 The State argues the postconviction petition did not allege that the prosecution had been involved in the loss of custody through maintaining an abuse or neglect petition filed in

juvenile court and contained no evidence that Georgenea had a motive to testify favorably for the prosecution. Read liberally, the petition alleges Georgenea lost custody of her children shortly before trial and that evidence could have been used to show her motivation to testify favorably for the State. Although defendant did not allege an abuse or neglect petition gave the State leverage over Georgenea, a *pro se* petitioner is unlikely to know the precise legal theory underlying his claim. As such, the threshold for survival is low "and a *pro se* petitioner need allege only enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Id.* We conclude the allegation that trial counsel provided ineffective assistance by failing to investigate the circumstances under which Georgenea lost custody of her children and present evidence that could have shown a motive to testify falsely is at least *arguable*.

¶ 41 The State further argues that even if defense counsel could have impeached Georgenea concerning a motive to testify falsely, her prior consistent statements at the pretrial hearing would have been admissible and would have rehabilitated her trial testimony. Given that Georgenea's trial testimony would have been rehabilitated, the State asserts it is neither arguable that defense counsel provided ineffective assistance nor arguable that defendant was prejudiced. However, nothing in the record shows whether the child custody proceedings began before or after the pretrial hearing, so there is no way to determine whether the prior consistent statements would have been admissible to rehabilitate her trial testimony. See *People v. Cuadrado*, 214 Ill. 2d 79, 90, 824 N.E.2d 214, 221 (2005) (Prior consistent statements are admissible "when it is suggested that the witness had recently fabricated the testimony or had a motive to testify falsely, and the prior statement was made before the motive to fabricate arose."). Under these circumstances, it is at least *arguable* that counsel's alleged deficient performance prejudiced

defendant. Had Georgenea's testimony been impeached by showing a motive to testify falsely, it is arguable that might have cast doubt on B.N.'s and S.N.'s testimony, particularly in light of the numerous defense witnesses who testified they never saw defendant alone with any of the children or down in the basement.

¶ 42 In sum, we conclude defendant's *pro se* postconviction petition, read with a lenient eye, states at least an arguable claim that trail counsel's performance fell below an objective standard of reasonableness based on his failure to investigate a witness's possible motivation to testify favorably for the State. It is further arguable that counsel's alleged deficient performance prejudiced defendant. To survive dismissal at the first stage of postconviction proceedings, a petition need only state the "gist" of a constitutional claim, which is a low threshold. *Harris*, 366 Ill. App. 3d at 1166-67. A petition may only be summarily dismissed if the claims have no arguable basis in law or in fact. *Tate*, 2012 IL 112214, ¶ 20. Given this low bar, we conclude the trial court erred by dismissing defendant's arguable claim of ineffective assistance of counsel at the first stage of postconviction proceedings. Accordingly, we reverse and remand for further postconviction proceedings.

¶ 43 Because we have found defendant's postconviction petition stated an arguable claim of ineffective assistance of trial counsel based on counsel's failure to investigate and present impeachment evidence, we do not address defendant's other claims raised in his postconviction petition. Section 122-2.1 of the Postconviction Act (725 ILCS 5/122-2.1 (West 2016)) does not permit the summary dismissal of individual claims. See *People v. Rivera*, 198 Ill. 2d 364, 374, 763 N.E.2d 306, 311-12 (2001). Therefore, the entire petition must be reinstated because at least one of the issues stated the gist of a constitutional claim.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 46 Reversed and remanded.