

NOTICE
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2019 IL App (5th) 160065-U

NO. 5-16-0065

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 08-CF-1477
)	
RAYMOND D. HARRIS,)	Honorable
)	John Baricevic,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the defendant was unable to state the gist of a constitutional claim of ineffective assistance of counsel, the trial court’s order summarily dismissing the *pro se* postconviction petition was correct.
- ¶ 2 Raymond D. Harris appeals the trial court’s summary dismissal of his *pro se* postconviction petition. In his underlying criminal case, defendant was convicted of first-degree murder on an accountability theory, and the trial court sentenced him to 30 years in prison. On direct appeal, defendant argued that he was deprived of his right to a fair trial under the sixth amendment when the only evidence linking him to the crime was his own admission that he and two others went to the victim’s home to confront the

victim while armed, and the prosecutor argued accountability as an alternative theory in the State's closing argument. This court affirmed his conviction in *People v. Harris*, 2015 IL App (5th) 110151-U. Defendant filed a postconviction petition alleging ineffective assistance of his trial and appellate counsel. The trial court dismissed defendant's petition on November 30, 2015, because it was unverified and failed to present the gist of a constitutional violation because it "does not suggest how [trial counsel's alleged deficiencies] *** changed the outcome of the trial." For the reasons stated in this order, we affirm.

¶ 3 BACKGROUND

¶ 4 Amarian Williams was shot to death on his mother's front porch on the morning of October 6, 2008. His mother, Beverly Williams, found him. She provided a statement to the local police. That morning, Ms. Williams took her younger children to school. She returned home and went to bed after asking Amarian to wake her at noon. Ms. Williams awoke after hearing the front door opening and closing. She then heard three gunshots. She left her bed, searched for Amarian in the living room, and then found him slumped over and unresponsive on the front porch. Ms. Williams told police that she saw a single vehicle speeding away from the front of her house.

¶ 5 On November 25, 2008, defendant was brought in for questioning in the murder of Amarian Williams. The officers located defendant hiding in a closet. Defendant was limping and informed the officers that he had been shot a few days earlier. The officers then transported defendant to St. Louis University Hospital for care.

¶ 6 The next day, defendant gave a video-recorded interview to police from his hospital room. He admitted that he went to the Williams home on the date of the shooting with the intent of confronting Amarian because he had “fucked with [defendant’s] little brother.” He went to the Williams house with Douglas Griggs (defendant’s younger brother) and Jaron Jamison. He and Griggs both had guns with them that day. In addition to wanting to confront Amarian about his treatment of defendant’s younger brother, Griggs, the trio believed that Amarian had a shotgun belonging to Jamison that they hoped to retrieve.

¶ 7 During defendant’s hospital bed interview, one of the officers asked him if Griggs or Jamison shot Amarian. Defendant emphatically stated that Griggs and Jamison did not shoot Amarian. When the officers noted that he was then the only possible suspect, defendant responded: “I ain’t gonna say on camera that I shot anybody.” He continued stating that he did not want to get anyone in trouble. Defendant admitted that a few days after the shooting, he threw his 9-millimeter Ruger gun in the Mississippi River from the Eads Bridge.

¶ 8 The State charged defendant with first-degree murder on December 9, 2008. The criminal complaint contained the allegation that defendant caused Amarian Williams’ death by shooting him in the head. The State did not allege an accountability theory—that defendant was responsible for the actions of Griggs and/or Jamison.

¶ 9 Defendant waived his right to a jury trial, and his bench trial took place in October 2010. The parties stipulated that Beverly Williams would testify in a manner consistent

with her police statement, and so the State read her statement into evidence. The State also introduced defendant's recorded interview.

¶ 10 Detective Kenneth Berry and Detective Andre Hanson, both East St. Louis detectives, testified about the circumstances surrounding defendant's arrest. The East St. Louis detectives could not locate defendant in the weeks following the murder, until they received an anonymous tip about his location. Defendant denied his identity when initially questioned.

¶ 11 Detective Berry testified about the circumstances surrounding defendant's video-recorded statement. Three officers were present in defendant's hospital room. Before the interview began, one of the officers asked defendant if he was under the influence of any medication. Defendant responded that he was taking antibiotics. Detective Berry stated that defendant was hooked up to an intravenous line. Detective Berry testified that he believed that defendant was coherent and did not appear to be impaired by any medication.

¶ 12 Ronald Locke, a forensic scientist specializing in firearms and tool mark identification, testified about a bullet recovered from the exterior door frame of the Williams house, and about a bullet and two fragments recovered from the body of Amarian Williams during the autopsy. Locke testified that he could not determine if the bullets were fired from any specific gun, but was able to determine that both bullets were fired from a 9-millimeter, .38-caliber gun.

¶ 13 The State argued in its closing argument that defendant essentially confessed to being the shooter by process of elimination—by denying that either Griggs or Jamison

was the shooter. The fact that defendant threw his gun into the Mississippi River also demonstrated his guilt. Finally, the State argued that based upon these facts, “even if this Court didn’t believe that he was the one that pulled the trigger, I would submit to the Court that under a theory of accountability,” defendant should be held accountable for the possible actions of Griggs or Jamison.

¶ 14 In contrast, defense counsel argued that defendant’s statements about who shot Amarian Williams were vague and therefore did not amount to a confession. Defense counsel did not respond to the State’s accountability theory.

¶ 15 The trial court stated that defendant was aware that he was the focus of the police investigation when he gave his statement to police. The court found that defendant absolved Griggs and Jamison from responsibility for the murder without directly indicating that he was responsible. The court concluded that defendant’s statements did not constitute a conclusive admission or a conclusive denial. However, the court found that there was clear evidence of concerted action on the part of defendant, Griggs, and Jamison, and emphasized the fact that two of the three men were armed, and that they went to the Williams house to confront Amarian Williams. The trial court characterized this concerted action as involving a “common purpose”—to kill Amarian Williams. Reviewing the statement of Beverly Williams, the court noted that she had only heard the door open and close, followed by gunshots, meaning that there was no argument or struggle. Furthermore, the fact that Ms. Williams saw one vehicle fleeing the scene supported the court’s determination that the three men acted with a common purpose. While the court concluded that the evidence presented during the trial could not establish

beyond a reasonable doubt that defendant was the shooter, the court found that there was sufficient evidence to prove that defendant was guilty of murder under a theory of accountability.

¶ 16 Defendant filed a motion seeking a new trial and argued that the evidence was insufficient to support his conviction either as the shooter or based on the accountability theory. At the hearing on this motion, defense counsel argued that the elements of guilt by accountability were not established: (1) that the defendant had the intent to facilitate the commission of the offense before or during the crime and (2) that the defendant knowingly solicited, aided, or agreed to the commission of the offense. *People v. Taylor*, 164 Ill. 2d 131, 140, 646 N.E.2d 567, 571 (1995). More specifically, defense counsel argued that the evidence did not establish that defendant and the other two men went to Amarian Williams' house with "felonious intent." The trial court denied the motion.

¶ 17 Defendant was sentenced to 30 years in prison. Defendant filed a motion to reduce his sentence. The trial court denied this motion.

¶ 18 Defendant filed his direct appeal in this court. His only argument was that he was denied his sixth amendment right to a fair trial because he was not charged with murder on an accountability theory and that the State did not raise the theory until closing argument. In our order, we affirmed defendant's conviction. *Harris*, 2015 IL App (5th) 110151-U, ¶ 41. We disagreed with defendant's argument that he had no ability to counter the accountability theory. We noted that the State introduced its accountability theory before defense counsel gave her closing argument. Thus, defense counsel had an opportunity to address the elements of accountability in her closing argument. *Id.* ¶ 28. In

addition, we did not find that defense counsel was unfairly surprised by the common purpose/accountability arguments. *Id.* ¶ 36. Defendant’s videotaped interview and Ms. Williams’ statement were known to defense counsel, and both contained numerous “common purpose” or accountability details. *Id.* No evidence supported any other shooter other than defendant, Griggs, or Jamison. *Id.* ¶ 35. Defendant was emphatic that Griggs and Jamison were not the shooter, leaving defendant as the only possible shooter. *Id.* Amarian Williams was shot with a 9-millimeter gun, and defendant acknowledged that he had a 9-mm gun when the three went to confront Amarian at his house. *Id.* Furthermore, defendant informed the police officers that he threw his 9-millimeter gun into the Mississippi River after the shooting, which is nonsensical if the weapon had not been used in the murder. *Id.* Evidence at trial supported the common purpose theory: the three men planned the confrontation, drove one vehicle to Amarian Williams’ house, and fled the scene together. *Id.* ¶ 36.

¶ 19 On November 20, 2015, defendant filed a *pro se* postconviction petition. He alleged that his trial counsel was constitutionally ineffective for violating his speedy-trial right by agreeing to State-attributable continuances as well as taking nonconsensual continuances; failing to advise him of the possibility of a plea deal and for failing to pursue plea negotiations; failing to conduct a thorough and timely pretrial investigation; failing to prepare, complete, or execute an adequate defense strategy; failing to object to the State’s introduction of an accountability theory during closing argument; and failing to challenge the accountability statute as unconstitutional on vagueness or other grounds.

Defendant also claims that appellate counsel was constitutionally ineffective for failing to seek reversal on these stated grounds.

¶ 20 The trial court summarily dismissed defendant’s postconviction petition, stating that the petition was not properly verified and failed to present the gist of a constitutional violation: “The Petition makes allegations of ineffective assistance on 3 separate theories but does not suggest how these would have changed the outcome of the trial.”

¶ 21 From the order dismissing his postconviction petition, defendant timely appeals. We have jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 651(a) and article VI, section 6, of the Illinois Constitution. Ill. S. Ct. R. 651(a) (eff. Dec. 1, 1984); Ill. Const. 1970, art. VI, § 6.

¶ 22 **LAW AND ANALYSIS**

¶ 23 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)) provides a three-stage process by which a criminally convicted individual can challenge his conviction by arguing that his constitutional rights were substantially denied. *People v. Beaman*, 229 Ill. 2d 56, 71, 890 N.E.2d 500, 509 (2008); *People v. Johnson*, 2018 IL App (5th) 140486, ¶ 21, 99 N.E.3d 1. Only the first stage of the postconviction process is involved in this appeal.

¶ 24 At the first stage of postconviction proceedings, the trial court “reviews the petition to determine whether it is frivolous and patently without merit.” *Johnson*, 2018 IL App (5th) 140486, ¶ 21. A petition that is frivolous or is patently without merit has been defined as one arguing an “indisputably meritless legal theory or a fanciful factual allegation.” *People v. Hodges*, 234 Ill. 2d 1, 16, 912 N.E.2d 1204, 1212

(2009). The trial court independently reviews the petition without any input from the State. *People v. Tate*, 2012 IL 112214, ¶¶ 9-10, 980 N.E.2d 1100; *Johnson*, 2018 IL App (5th) 140486, ¶ 21; *People v. York*, 2016 IL App (5th) 130579, ¶ 15, 65 N.E.3d 1029. The trial court must interpret all well-pleaded facts in the defendant's petition as true and must not engage in any fact-finding. *People v. Coleman*, 183 Ill. 2d 366, 380, 701 N.E.2d 1063, 1071-72 (1998). To advance to the second stage of the postconviction process, the petition must state the gist of a constitutional claim. *Johnson*, 2018 IL App (5th) 140486, ¶ 21; *York*, 2016 IL App (5th) 130579, ¶ 15. The court will summarily dismiss the petition if it concludes that the petition does not meet this standard. 725 ILCS 5/122-2.1(a) (West 2014); *Johnson*, 2018 IL App (5th) 140486, ¶ 21. The court should only dismiss the postconviction petition if the petition contains no arguable basis in law or fact. *Hodges*, 234 Ill. 2d at 16.

¶ 25 We also note postconviction proceedings are considered collateral to the conviction. *People v. Allen*, 2015 IL 113135, ¶ 20, 32 N.E.3d 615. Any issues that were raised and decided on direct appeal are barred from being considered in a postconviction petition by the doctrine of *res judicata*. *Id.* Further, if the defendant could have raised the issues on direct appeal but did not do so, the issues are considered waived. *Id.*

¶ 26 In order to succeed on an ineffective-assistance-of-counsel claim, a defendant must be able to show that his attorney's representation was both objectively unreasonable and that this unreasonable representation caused prejudice—that there is a reasonable probability that without counsel's errors, the outcome of the case would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The *Strickland*

standard was adopted by the supreme court in *People v. Albanese*, 104 Ill. 2d 504, 525-27, 473 N.E.2d 1246, 1255-56 (1984). Review of a defense counsel's performance is deferential:

“Judicial scrutiny of counsel’s performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. [Citation.] A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’ [Citation.]” *Strickland*, 466 U.S. at 689.

¶ 27 Because a defendant’s ineffective assistance claim will fail if either prong of the *Strickland* test is not met, on appeal, a court of review does not need to determine if counsel’s performance was deficient before determining if the defendant was prejudiced. *People v. Perry*, 224 Ill. 2d 312, 342, 864 N.E.2d 196, 215 (2007). Therefore, if the defendant was not prejudiced, we would not need to determine if counsel’s performance was deficient.

¶ 28 The Illinois Supreme Court has concluded that the above-stated *Strickland* test should apply at the second stage of the postconviction process when the defendant must make “ ‘a substantial showing of a constitutional violation.’ ” *Tate*, 2012 IL 112214, ¶ 19 (quoting *Hodges*, 234 Ill. 2d at 11 n.3). At the first stage of the postconviction petition process, the court must view ineffective assistance allegations with a lower standard of pleading. *Id.* ¶¶ 19-20; *People v. Burns*, 2015 IL App (1st) 121928, ¶ 30, 47 N.E.3d 266.

“ ‘At the first stage of postconviction proceedings under the Act, 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.’ ” (Emphases in original.) *Tate*, 2012 IL 112214, ¶ 19 (quoting *Hodges*, 234 Ill. 2d at 17).

¶ 29 We review a trial court’s summary dismissal of a first-stage postconviction petition on a *de novo* basis. *Id.* ¶ 10.

¶ 30 The Verification Requirement

¶ 31 The trial court’s first basis for summary dismissal was that defendant’s *pro se* petition failed to include a verification as required by section 122-1(b) of the Act. 725 ILCS 5/122-1(b) (West 2014). While it is true that the last page of defendant’s lengthy petition contained no verification, we find that the trial court erred in concluding that the petition was unverified.

¶ 32 Defendant filed a separate “Verification of Certification” pleading and his own “Affidavit,” contemporaneous with his petition and exhibits. In this pleading, defendant certified and stated that he had read his application; had knowledge of its contents; and certified under penalties included in the Code of Civil Procedure “that the statements set forth in the foregoing motion and this affidavit are true and correct except as to matters therein stated to be on information and belief, and as to such matters I certify that I believe the same to be true.” Both the “Verification of Certification” and his affidavit are notarized.

¶ 33 Section 122-1(b) of the Act, the controlling procedural section, states: “The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place a petition (together with a copy thereof) verified by affidavit.” 725 ILCS 5/122-1(b) (West 2014). Certainly, defendant’s “Verification of Certification” met the verification requirement of this section.

¶ 34 Furthermore, the Illinois Supreme Court has stated that a verification affidavit is “like all pleading verifications, [and] confirms that the allegations are brought truthfully and in good faith.” *People v. Collins*, 202 Ill. 2d 59, 67, 782 N.E.2d 195, 199 (2002).

¶ 35 The Illinois Supreme Court has also held that the trial court “may not dismiss a petition at the first stage of proceedings solely on the basis that it lacked a verification affidavit.” *People v. Hammerson*, 2014 IL 115638, ¶ 11, 4 N.E.3d 58. The court reasoned that at the first stage of postconviction proceedings, the court must consider “the petition’s substantive virtue rather than its procedural compliance.” *Id.* The supreme court also found that its holding was consistent with the legislature’s intent in passing the Act (725 ILCS 5/122-1 *et seq.* (West 2014)). “The purpose of the Act is to provide incarcerated individuals with a means of asserting that their convictions were the result of a substantial denial of their constitutional rights.” *Hammerson*, 2014 IL 115638, ¶ 12 (citing 725 ILCS 5/122-1(a) (West 2010)). The State may file a motion to dismiss the petition at the second stage of proceedings if there is a deficiency in compliance with the verification affidavit requirement. *Id.* ¶ 11.

¶ 36 We conclude that the trial court’s dismissal of defendant’s *pro se* postconviction petition on the basis that the petition was unverified was erroneous.

¶ 37

Gist of a Constitutional Claim

¶ 38 Despite our conclusion that the trial court was incorrect for dismissing defendant's petition for lack of verification, we conclude that summary dismissal was appropriate for the following reasons.

¶ 39 The court's order of dismissal was based upon defendant's failure to provide specific factual allegations supporting any of his theories. Defendant correctly states the law that the trial court must view the allegations of his petition to determine if it was arguable that counsel's performance fell below an objective standard of reasonableness and, secondly, that it is arguable that the defendant was prejudiced in that the outcome would have been different. *Tate*, 2012 IL 112214, ¶ 19 (quoting *Hodges*, 234 Ill. 2d at 17). To the extent that the trial court used the incorrect standard in evaluating defendant's allegations, our review is *de novo*. *Id.* ¶ 10.

¶ 40 We note that although this is a first-stage petition, defendant must still plead sufficient facts from which a valid constitutional claim can be found. *People v. Hernandez*, 298 Ill. App. 3d 36, 39-40, 697 N.E.2d 1213, 1215 (1998). Although the detail does not need to be extensive, detailed allegations are still mandated. *People v. Delton*, 227 Ill. 2d 247, 254, 882 N.E.2d 516, 520 (2008). The language of the Act "requires some factual documentation which supports the allegations to be attached to the petition or the absence of such documentation to be explained." *Id.* Furthermore, an evidentiary hearing is not a matter of right. *People v. Gaines*, 105 Ill. 2d 79, 91-92, 473 N.E.2d 868, 875 (1984). A petitioner must still establish an arguable violation of his

constitutional rights, and those claims must be accurately reflected in the record or by accompanying affidavits. *Id.*

¶ 41 We initially look to the prejudice prong of the *Strickland* test because if the defendant cannot establish that he was prejudiced by the alleged ineffective assistance of counsel, then we would not need to determine if counsel's performance was deficient. *Perry*, 224 Ill. 2d at 342.

¶ 42 In this case, we find that the State's case against defendant was particularly strong. Three men went to Amarian Williams' house. His mother, Beverly Williams, provided a statement that she heard the front door open and close and then heard gunshots. She found her son dead on the front porch. Ms. Williams saw one car speeding away from her house. From the autopsy, a 9-millimeter bullet and fragments were removed from Amarian's body. When defendant was arrested, he was interviewed. During this interview, he acknowledged that he, Griggs, and Jamison went to Amarian's house with the plan to confront Amarian about recent interactions with Griggs and to retrieve Jamison's gun. Defendant admitted that he had a 9-millimeter gun with him when they went to Amarian's house. He denied that Griggs shot Amarian, denied that Jamison shot Amarian, and would not say whether he shot Amarian. Defendant admitted throwing his gun into the Mississippi River from the Ead's Bridge shortly after the shooting. Defendant was arrested after being discovered hiding in a closet. Although the trial judge could not say whether defendant was the shooter, he found defendant guilty of murder on the theory of accountability, finding that the three men were acting with a common purpose.

¶ 43 We do not find that defendant was prejudiced by any alleged deficiencies of trial or appellate counsel because the evidence in this case was substantial in proving defendant's guilt of murder by accountability.

¶ 44 Although we conclude that defendant was not prejudiced by the alleged ineffective assistance of counsel, we briefly review the specific ineffective assistance allegations raised by defendant.

¶ 45 *Violation of Speedy-Trial Right*

¶ 46 Defense counsel took a number of continuances in this case because she was having difficulty in obtaining all of defendant's medical records from St. Louis University Hospital. She had attempted to obtain the records by subpoena, but had not gotten all of the needed records. Defense counsel stated that she needed the medical records and planned to use them to file a motion to suppress defendant's videotaped statements and to hire an expert on defendant's behalf.

¶ 47 Defendant was asked each time if he agreed to the continuance, and he always answered affirmatively.

¶ 48 Based on defense counsel's statements on the record about her defense plan, we find that her continuance requests were strategic in nature. *People v. Bowman*, 138 Ill. 2d 131, 141, 561 N.E.2d 633, 638 (1990). If trial strategy is at the core of defense counsel's decisions, those decisions will not support a claim of ineffective assistance of counsel unless the strategy is so defective that it does not serve to test the State's case in a meaningful way. *People v. Patterson*, 217 Ill. 2d 407, 441, 841 N.E.2d 889, 909 (2005) (citing *People v. Guest*, 166 Ill. 2d 381, 394, 655 N.E.2d 873, 879 (1995)).

¶ 49 Defendant does not provide any additional facts by way of his petition and/or his affidavit that could call the trial strategy presumption into question. *Delton*, 227 Ill. 2d at 254. We conclude that the record and defendant’s allegations do not support a finding that defense counsel’s performance was arguably below the objective standard of reasonableness. *Tate*, 2012 IL 112214, ¶ 19 (quoting *Hodges*, 234 Ill. 2d at 17).

¶ 50 We also find that this speedy-trial issue could have been brought in defendant’s direct appeal, and is therefore waived. *Allen*, 2015 IL 113135, ¶ 20.

¶ 51 *Plea Deal and/or Plea Negotiations*

¶ 52 Defendant next argues that a word used by an assistant state’s attorney at a March 2009 continuance hearing meant that the State was willing to offer him a plea bargain. The full statement is as follows: “Judge, we were going to check the date. Two weeks from today would be April 2nd in the morning, if the Court is available. We would contemplate either a plea on that date or setting the matter for trial.” Defendant offers no facts outlining a plea deal and alleges no statements from defense counsel about any plea deal being contemplated or offered. The context of the statement at issue appears to be procedural and generic—that the case was procedurally ready for a plea or trial.

¶ 53 We find that defendant’s failure to provide factual details about a plea deal or plea negotiations is insufficient even at this first stage of the postconviction process. *Delton*, 227 Ill. 2d at 254. We also find that this is an issue that could have been raised on direct appeal, and is therefore waived. *Allen*, 2015 IL 113135, ¶ 20.

¶ 54

Thorough and Timely Pretrial Investigation

¶ 55 Defendant generally argues that his defense counsel failed to conduct a thorough and timely pretrial investigation, but broad conclusory allegations of ineffective assistance are not allowed. *Delton*, 227 Ill. 2d at 258 (citing *People v. Blair*, 215 Ill. 2d 427, 453, 831 N.E.2d 604, 620 (2005)). Providing a “limited amount of detail” does not excuse defendant from providing any factual detail of how his defense attorney failed to thoroughly investigate this case. *Delton*, 227 Ill. 2d at 254-55. In addition, defendant could have raised this issue on direct appeal, and therefore, the issue is waived. *Allen*, 2015 IL 113135, ¶ 20.

¶ 56

Adequate Defense Strategy

¶ 57 Defendant claims that defense counsel did not have an adequate defense strategy, but provides no factual detail about this allegation in his petition or in his affidavit. Although he filed the petition on a *pro se* basis, defendant’s claim fails because he is not excused from providing some specific facts and allegations. *Delton*, 227 Ill. 2d at 254-55.

¶ 58 *No Objection to Accountability Theory in Closing and No Constitutional Challenge*

¶ 59 We consider these two separate, but related, arguments together. The only issue defendant raised on direct appeal involved the accountability theory. *Harris*, 2015 IL App (5th) 110151-U. These specific accountability claims could have been raised on direct appeal, and are thus waived. *Allen*, 2015 IL 113135, ¶ 20.

¶ 60 *Appellate Counsel Ineffectiveness for Not Raising Same Issue*

¶ 61 Defendant next argues that appellate counsel provided ineffective assistance for not raising all of the above-referenced issues. As we have already determined that the claims directed to trial counsel are meritless, this ineffective assistance of appellate counsel claim also fails.

¶ 62 **CONCLUSION**

¶ 63 For the reasons stated in this order, we affirm the trial court's dismissal of defendant's postconviction petition and conclude that his petition was frivolous and patently without merit.

¶ 64 Affirmed.