2026 IL App (1st) 241775-U

No. 1-24-1775

Filed September 9, 2026

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MATTHEW TYLER, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 13 CR 6582 Honorable Thomas J. Hennelly, Judge, presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Quish and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's *pro se* postconviction petition made an arguable claim of ineffective assistance of trial counsel for failure to present the testimony of two alibi witnesses.

¶ 2 Matthew Tyler appeals the circuit court's summary dismissal of his *pro se* postconviction petition. For the following reasons, we reverse and remand for further proceedings.[1]

¶ 3 A jury found Tyler guilty of attempted murder for shooting Lareese Smith at approximately 12:45 a.m. on June 23, 2012, near the intersection of East 113th Street and South Forest Avenue in

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

Chicago. Tyler was sentenced to a term of 55-years' imprisonment, inclusive of a mandatory 25-year enhancement upon the jury's finding that, in committing attempted murder, he personally discharged a firearm that proximately caused great bodily harm.

¶ 4 We affirmed Tyler's conviction on direct appeal. *People v. Tyler*, 2023 IL App (1st) 181821-U. Subsequently, Tyler filed a *pro se* postconviction petition. He claimed his trial counsel was ineffective for failing to move to suppress witness identifications following his arrest. Tyler asserted his arrest was unlawful due either to a prolonged traffic stop or the use of an investigative alert. He also claimed his trial counsel should have sought to suppress identifications due to prejudicial lineup procedures, and his appellate counsel was ineffective for failing to raise these issues in his direct appeal. Tyler next claimed that his 55-year prison term violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), as he was 22 years of age at the time of the offense and the term amounts to a *de facto* life sentence. Lastly, Tyler claimed his trial counsel was ineffective for failing to investigate and call two witnesses who would have testified to his alibi.

¶ 5 Regarding his final claim, Tyler attested that he attended a wake and funeral for Derrick Wilkerson on the evening of June 22, 2012, and remained with mourners into the early morning hours of June 23. He further attested that he informed his trial counsel of this and provided the names and contact information of two individuals who were willing to corroborate the alibi.

¶ 6 Tyler also attached affidavits from Janice and Jimmie Carradine, Wilkerson's mother and brother. Janice attested that her son's funeral took place on the evening of June 22, 2012, at a church located at West 67th Street and South Hermitage Avenue. The wake began at 7 p.m. and the funeral followed. Afterward, Tyler accompanied the family to their home on South Greenwood Avenue, where mourners held a repast. Tyler helped with serving food and cleaning. He left after

2 a.m. Janice was willing to testify and told Tyler's mother so. Despite leaving phone messages, Tyler's trial counsel never contacted Janice. Jimmie's affidavit is consistent with Janice's. He was also willing to testify but was never contacted.

¶ 7 Tyler also attached an affidavit from his mother, Loren Brown. Brown attested that she informed Tyler's trial counsel the Carradines could testify to an alibi and gave him their names and telephone numbers.

¶ 8 The trial court summarily dismissed Tyler's petition in an oral ruling. Regarding the ineffective assistance claim for failure to investigate and present alibi witnesses, the court stated:

> "That allegation along with everything else that he has filed should have been alleged in a posttrial motion or an appeal. It was not done so. He now wants a second chance at this. All of those requests for relief are forfeited because they could have been brought after [trial or] on appeal and for whatever reason he did not do so and he is not allowed to do that at this juncture."

¶ 9 Tyer filed a timely notice of appeal. Before us, he argues his petition made arguable claims that his trial counsel was ineffective for failing to investigate and present the Carradines' testimony and that his sentence violates the proportionate penalties clause.

¶ 10 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2024)) provides a mechanism for an imprisoned person to challenge their conviction based on a substantial denial of constitutional rights that occurred in their trial proceedings. *People v. McCoy*, 2026 IL 131565, ¶ 48. A petition filed under the Act is not a substitute for an appeal but is a collateral action to review issues that were not and could not have been adjudicated on direct appeal. *People v. Robinson,* 2020 IL 123849, ¶ 42; *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). Issues that were

raised and decided on direct appeal are barred by *res judicata* and issues that could have been raised, but were not, are forfeited. *People v. Blair*, 215 Ill. 2d 427, 447 (2005).

¶ 11 The Act contemplates up to three stages. *People v. Hommerson*, 2014 IL 115638, ¶ 7. At the initial stage, the circuit court reviews a petition independently. *Id*. If the court determines the petition is frivolous or patently without merit, the court must dismiss the petition by written order within 90 days of its filing. *Id*.; 725 ILCS 5/122-2.1(a)(2) (West 2024). A petition is frivolous or patently without merit if it has no arguable basis in law or fact, that is, the claims are "based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). If, however, the petition makes an arguable claim of a constitutional deprivation, the court dockets the petition for further proceedings and appoints counsel if the petitioner is indigent. *Hommerson*, 2014 IL 115638, ¶¶ 7-8. At the second stage, counsel may amend the petition to present the petitioner's claims in proper legal form. *People v. Lesley*, 2018 IL 122100, ¶ 32; 725 ILCS 5/122-4 (West 2024).

¶ 12 A *pro se* petitioner is not required to cite legal authority or present formal legal arguments. 725 ILCS 5/122-2 (West 2024). However, the petitioner must allege sufficient facts to state the " 'gist' " of a constitutional claim. *Hodges*, 234 Ill. 2d at 9. The gist standard is a low threshold. *Id*. "[A] *pro se* defendant [need only] allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Id*. The petitioner must also attach affidavits, records, or other evidence to demonstrate their allegations are capable of objective or independent corroboration or state why supporting evidence is not attached. *People v. Allen*, 2015 IL 113135, ¶ 24; 725 ILCS 5/122-2 (West 2024).

¶ 13 The trial court must accept as true and liberally construe allegations unless contradicted by the record. *People v. Johnson*, 2021 IL 125738, ¶ 25. We review the circuit court's summary dismissal of a petition at the first stage *de novo*. *People v. Williams*, 2024 IL 127304, ¶ 17.

¶ 14 A petition claiming ineffective assistance of trial counsel may not be summarily dismissed if counsel's performance was arguably deficient and the petitioner was arguably prejudiced. *Hodges*, 234 Ill. 2d at 17. An attorney's performance was deficient if it was objectively unreasonable under prevailing professional norms. *People v. Domagala*, 2013 IL 113688, ¶ 36. And a petitioner was prejudiced if there is a reasonable probability that the result of the proceeding would have been different. *Id*. At this stage, we do not consider whether counsel's action or inaction may have been the product of sound trial strategy. *People v. Tate*, 2012 IL 112214, ¶ 22.

¶ 15 Contrary to the trial court's finding, Tyler did not forfeit his ineffective assistance claim regarding alibi witnesses. In *Tate*, our supreme court drew a distinction between ineffective assistance claims "based on what the record discloses counsel did, in fact, do" and claims based on what counsel should have done. *Id*. ¶ 14. The former are subject to default, but the latter are not since such claims generally " '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 (1994)).

¶ 16 Here, the Carradines were not called to testify. So, because of trial counsel's alleged error, the content of their affidavits could not have been included in the record. Consequently, forfeiture does not preclude Tyler's claim that his trial counsel was ineffective for failing to call them. *Id*. ¶ 15; *People v. Veach*, 2017 IL 120649, ¶ 47 ("Procedural default does not, however, preclude a defendant from raising an issue on collateral review that depended upon facts not found in the record.").

¶ 17 The State argues Tyler's claim is self-defeating since he alleges that he informed his trial counsel about the Carradines and the nature of their potential testimony. With counsel so informed, the State posits, it was reasonable to forego further investigation. We reject this contention. The State's argument implicitly suggests trial counsel made a strategic decision to not pursue an alibi defense. As noted, considerations of trial strategy are inappropriate at this stage. *Tate*, 2012 IL 112214, ¶ 22. In addition, the State's argument would defeat any ineffective assistance claim based on failure to call a witness. To prevail on such a claim, it is necessary to show that counsel was informed about a witness' potential testimony. Counsel cannot be ineffective for failing to call a witness they had no reason to know existed. *People v. Blankley*, 319 Ill. App. 3d 996, 1005 (2001) ("defense counsel's representation is not deemed deficient because he failed to call unnamed and unknown witnesses on defendant's behalf.").

¶ 18 Ultimately, since the allegation that the Carradines' potential testimony was disclosed to trial counsel is unrebutted by the record, we find Tyler's petition establishes that trial counsel's failure to investigate and call the Carradines at trial was arguably unreasonable.

¶ 19 Further, taking Tyler's petition and the Carradines' affidavits as true, as we must, we find he was arguably prejudiced by trial counsel's failure to present their testimony. Taking an affidavit as true means a juror, hearing from the witness, would have believed their testimony. *People v. Wilson*, 2022 IL App (1st) 192048, ¶ 75. If jurors believed the Carradines' testimonies that Tyler was at their home until after 2 a.m. on June 23, 2012, then the jurors would necessarily reject that he was at a different location at 12:45 a.m. shooting Lareese Smith. Therefore, there is a reasonable probability that Tyler would have been acquitted, but for his counsel's failure to present the Carradines' testimonies.

¶ 20 The State's contentions that Tyler was not arguably prejudiced rely on the inconsistent, inculpatory evidence presented at trial. But merely inconsistent trial evidence is insufficient to positively rebut a postconviction petition's allegations. *Robinson*, 2020 IL 123849, ¶ 60. Rather, allegations are positively rebutted when "it is affirmatively demonstrated by the record that a trier of fact could never accept their veracity." *Id*. Such is not the case here.

¶ 21 Our determination that Tyler's petition and its supporting documents made an arguable ineffective assistance claim alone requires that we remand this matter for further proceedings. "If a single claim in a multiple-claim postconviction petition survives the summary dismissal stage of proceedings under the [Act], then the entire petition must be docketed for second-stage proceedings regardless of the merits of the remaining claims in the petition." *People v. Romero*, 2015 IL App (1st) 140205, ¶ 27. Thus, we need not consider Tyler's contentions regarding his proportionate penalties claim.

¶ 22 Based on the foregoing, we reverse the circuit court's summary dismissal of Tyler's petition and remand for further proceedings under the Act.

¶ 23 Reversed and remanded.