

¶ 3

BACKGROUND

¶ 4 Petitioner, Noel DeJesus, was convicted of the murder of Giovanni Parker, attempt murder of Louis Allison and Curtis Parker, aggravated battery, and aggravated discharge of a firearm from a shooting on February 21, 2005. He was subsequently sentenced to 68 years' incarceration to be served consecutively. A lengthy discussion of the facts surrounding the shooting can be found in *People v. DeJesus*, 2015 IL App (1st) 130178-U.

¶ 5 Petitioner appealed his conviction and argued: (1) his confession violated the fourth amendment as he was detained without probable cause; (2) his confession should have been suppressed as he was not given proper *Miranda* warnings; (3) his right to confrontation was denied where defense counsel's objections to various questions during cross-examination of the State's witnesses were sustained during the pre-trial motion litigation; (4) the trial court's refusal of defendant's modified jury instruction regarding prior inconsistent statements was error; (5) the court improperly allowed evidence that petitioner's fingerprints were found on the TEC-9 pistol at his house which was not used in the murder; (6) the court erred by curtailing testimony that petitioner's brother was "partially retarded" as it was relevant to the defense that petitioner falsely testified to protect his brother; (7) the prosecutor improperly questioned him as to why he failed to recant his confession at various stages of the proceedings; (8) the trial court improperly limited defense counsel's closing argument; and (9) the trial court made improper comments regarding defense counsel. *People v. DeJesus*, No. 1- 08-1452 (Unpublished Order Under Rule 23) (March 25, 2011).

¶ 6 We reversed and remanded petitioner's case to the trial court for an attenuation hearing involving petitioner's confession, finding that the trial court improperly denied petitioner's motion to suppress, but rejected petitioner's other claims. On remand, the trial court held an

attenuation hearing and found petitioner's confession was attenuated from his illegal arrest, as an intervening statement broke the causal connection between petitioner's arrest and his confession to the murder. Petitioner again appealed and we affirmed the lower court's attenuation finding. *People v. DeJesus*, 2015 IL App (1st) 130178, ¶ 84.

¶ 7 On July 20, 2017, petitioner filed a *pro se* post-conviction petition in which he alleged, without any specificity, the following 53 constitutional violations: (1) he was convicted based on evidence seized without a warrant; (2) his confession violated *Miranda* as he was denied his right to counsel; (3) his confession was involuntary; (4) he was detained without probable cause; (5) the line-up was suggestive; (6) he was in a line-up without benefit of counsel; (7) the consent to search petitioner's house was invalid; (8) his request for counsel was denied; (9) the evidence used to convict him was the product of an unconstitutional search and seizure; (10) the warrantless search of his home was without an "objectively reasonable basis for a belief that safety was endangered"; (11) the warrantless search of his home was made without good faith; (12) the prosecution was vindictive; (13) the State failed to disclose exculpatory evidence; (14) the State failed to provide the defense with evidence of material impeachment; (15) confidential material and pertinent records to the defense were withheld; (16) defense counsel had a conflict of interest; (17) defense counsel was ineffective for failing to investigate; (18) appellate counsel was ineffective; (19) trial counsel was ineffective for performing deficiently which was prejudicial; (20) ineffective assistance of counsel at sentencing; (21) trial counsel "utterly failed to defend against the charges" resulting in the "equivalent of a guilty plea"; (22) the prosecution misled the defense about evidence it intended to introduce regarding the theory of petitioner's guilt; (23) the State used perjured testimony; (24) the prosecutor engaged in misconduct which infected his trial with unfairness; (25) the prosecutors used misstatements of material fact to

obtain a conviction; (26) the prosecutor violated *Batson*; (27) the trial court denied a jury bias hearing; (28) the prosecutor discriminated in the use of peremptory challenges; (29) peremptory challenges were denied to the defense; (30) a defense challenge for cause was improperly denied; (31) the jury was unable to follow court's admonition to disregard evidence unfavorable to petitioner; (32) a *Crawford* violation of an inability to cross-examine; (33) petitioner was precluded from cross-examining; (34) cumulative error; (35) his credibility was unfairly impaired; (36) exculpatory DNA required a new trial; (37) his conviction was obtained due to unconstitutional duress; (38) insufficient evidence; (39) conviction based on false evidence; (40) informant testimony was introduced without cross-examination; (41) his conviction was based on less than proof beyond a reasonable doubt; (42) errors made by the State resulted in denying petitioner a fair trial; (43) third person evidence was excluded; (44) the State failed to establish witness unavailability but was used to obtain his conviction; (45) his conviction was based on facts different than those in the charges; (46) his sentence was in excess of maximum and was based on findings made by judge, not the jury; (47) his sentence was increased on facts found by judge, not jury; (48) his sentence was disproportionate to others for same conduct; (49) his sentence was enhanced on a statute not in existence at the time of the crime; (50) a minimum sentence was mandatory; (51) he received multiple punishments for the same act; (52) his sentence was enhanced by a prior conviction proved with non-judicial records; and (53) the consent to search his house was invalid.

¶ 8 In a written order dated September 20, 2017, the circuit court summarily dismissed petitioner's *pro se* post-conviction petition. The court found that petitioner's claims that evidence was seized during a warrantless search, his confession was involuntary and was obtained without a valid right to counsel, and he was detained without probable cause, were

barred by *res judicata* as they were raised on direct appeal. The court found petitioner's claims that the line-up was suggestive and that he was denied his right to counsel during his line-up, to be "meritless" as petitioner failed to offer "any specifics" as to how the line-up was suggestive, was "unsupported, conclusory" and "insufficient." The trial court also found the claim that a cohabitant gave consent to search but petitioner objected to be "rebutted by the testimony at trial" where Detective Cardo testified petitioner agreed to and signed the consent to search. The claim that petitioner asked for counsel during questioning was waived, as this claim was never made during the suppression hearing, trial, direct appeal, or appeal from the attenuation hearing, and alternatively meritless as Detective Gillespie rebutted that assertion when he testified at the suppression hearing that he informed petitioner of his right to counsel, and petitioner acknowledged that right.

¶ 9 The court further found that petitioner failed to provide evidence or argument regarding the vindictive prosecution claim, and as it was based "entirely on his own self-serving speculation." With respect to his *Brady* claim, the court found this claim to be "meritless" as petitioner "failed to attach or even identify any details regarding what evidence the State failed to disclose or how such evidence would have been favorable." This claim too was "conclusory" and "unsupported."

¶ 10 The trial court also found petitioner's ineffective counsel claims, conflict of interest, failure to conduct a reasonable pre-trial investigation, performed deficiently, was ineffective at sentencing and was the functional equivalent of a guilty plea, to be "meritless" and also found that every claim was "contained in single sentences, which provide no information to support the conclusion that counsel was deficient or the [petitioner] was prejudiced in any way by counsel's alleged deficiency." In sum, petitioner's *pro se* post-conviction petition was dismissed as the

claims were procedurally barred based on *res judicata* or were frivolous and patently without merit. It is from this dismissal that petitioner now appeals.

¶ 11

ANALYSIS

¶ 12 On appeal, petitioner argues that the circuit court erred when it dismissed his petition because he presented arguable claims that he received ineffective assistance from both his trial and appellate counsel. Specifically, petitioner claims that trial counsel was ineffective for failing to object to the State’s questioning of him at trial, questions which he claims, “improperly shifted the burden of proof,” and violated his right to silence. Petitioner also claims he made an arguable claim of ineffective appellate counsel for failure to raise these ineffective trial counsel claims on direct appeal.

¶ 13 The State responds that the circuit court properly dismissed petitioner's petition because petitioner did not sufficiently allege how his constitutional rights were violated and did not present an arguable claim of ineffective assistance of trial or appellate counsel.

¶ 14 The Act provides a process whereby a prisoner can file a petition asserting that his conviction was the result of a substantial denial of his constitutional rights. 725 ILCS 5/122-1 (West 2018); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). A postconviction proceeding is not a substitute for a direct appeal, but instead, is a collateral attack upon the conviction that allows only limited review of constitutional claims that could not be raised on direct appeal. *People v. Harris*, 224 Ill. 2d 115, 124 (2007). We review the circuit court's summary dismissal of Petitioner's postconviction petition de novo. *Coleman*, 183 Ill. 2d at 388-89. Under this standard, the reviewing court makes its own independent assessment of the allegations and is “ ‘free to

substitute its own judgment for that of the circuit court to formulate the legally correct answer.’ ” *People v. Edwards*, 197 Ill. 2d 239, 247 (2001) (quoting *Coleman*, 183 Ill. 2d at 388).

¶ 15 A postconviction petition may be summarily dismissed as frivolous or patently without merit if it has “no arguable basis either in law or in fact.” *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). A petition lacks such an arguable basis when it is based on fanciful factual allegations or an indisputably meritless legal theory, such as a theory that is completely contradicted by the record. *Id.* At the summary dismissal stage, all well-pled allegations in the petition must be taken as true unless they are contradicted by the record. *Coleman*, 183 Ill. 2d at 381-82.

¶ 16 In this case, petitioner alleges that he received ineffective assistance from both his trial and appellate counsel. Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Graham*, 206 Ill. 2d 465, 476 (2003). To support a claim of ineffective assistance of trial counsel, petitioner must demonstrate that (1) counsel's representation was deficient, and (2) as a result, he suffered prejudice that deprived him of a fair trial. *Strickland*, 466 U.S. at 687. To establish prejudice, petitioner must show that there is a reasonable probability that, but for counsel's deficient performance, the result of the trial would have been different. *Graham*, 206 Ill. 2d at 476. The same standard also applies to claims of ineffective assistance of appellate counsel. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). When raising a claim of ineffective assistance of appellate counsel, a petitioner must show that appellate counsel's performance was deficient, and but for counsel's errors, there is a reasonable probability that the appeal would have been successful. *Id.*

¶ 17 At the first stage of postconviction proceedings, allegations of ineffective assistance of counsel are judged by a lower pleading standard, and a petition raising such claims may not be summarily dismissed if it is arguable that counsel's performance fell below an objective standard

of reasonableness, and it is arguable that Petitioner was prejudiced. *People v. Tate*, 2012 IL 112214, ¶¶ 19-20.

¶ 18 In his *pro se* postconviction petition, petitioner raised 53 issues in total, including the following issues relating to the effectiveness of his trial and appellate counsel:

“#16 Counsel’s Conflict of Interest

Ground: [Petitioner’s] counsel had a conflict of interest which materially compromised the defense....

Due Process: 5th Amendment: *Mickens v. Taylor* 535 U.S. 162 (2002)

Right to Counsel: 6th Amendment

#17 Ineffective Assistance of Counsel: Failure to Investigate

Ground: [Petitioner’s] counsel was ineffective in failing to conduct a reasonable pre-trial investigation....

Right to Counsel 6th Amendment: *Wiggins v. Smith* 539 U.S. 510 (2003)

#18 Ineffective Assistance of Counsel: Appellate

Ground: [Petitioner’s] Appellate Counsel was Ineffective...

Right to Counsel 6th Amendment: *Smith v. Robbins* 528 U.S. 259 (2000)

#19 Ineffective Assistance of Counsel

Ground: [Petitioner’s] trial counsel was ineffective because lawyer performed deficiently and the deficiency was prejudicial to the outcome....

Right to Counsel 6th Amendment: *Strickland v. Washington* 466 U.S. 668 (1984).

#20 Ineffective Assistance of Counsel

Ground: [Petitioner’s] counsel was ineffective at sentencing...

Right to Counsel 6th Amendment: *Williams v. Taylor* 529 U.S. 362 (2000)

#21 IAC: “Cronic Standard”

Ground: [Petitioner’s] counsel so utterly failed to defend against the charges that the trial was the functional equivalent of a guilty pleas, rendering counsel’s representation presumptively inadequate...

RTC:6

DP: 5 US. v Cronic 466 U.S. 648”

¶ 19 The Act dictates that petitioner's postconviction petition must “clearly set forth the respects in which petitioner's constitutional rights were violated.” 725 ILCS 5/122-2 (West 2016). “Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.” 725 ILCS 5/122-3 (West 2016). While petitioner’s *pro se* post-conviction petition alleged ineffective assistance of both trial and appellate counsel, petitioner never made any specific claims as to how either trial or appellate counsel was ineffective. The Act is clear: a post-conviction petition must “clearly set forth the respects in which [the Petitioner’s] constitutional rights were violated.” 725 ILCS 5/122-2. While *pro se* petitions are not expected to set forth a complete and detailed recitation, it must set forth some facts which can be corroborated and are objective in nature or contain some explanation as to why those facts are absent. *Hodges*, 234 Ill. 2d at 10, quoting *People v. Delton*, 227 Ill. 2d 247, 254-55 (2008). Not only did petitioner fail to comply with the procedural requirements of the Act, his one-line assertions failed to establish an arguable claim of ineffective assistance of trial or appellate counsel sufficient to withstand first stage analysis.

¶ 20 As petitioner failed to clearly set forth how his constitutional rights were violated with respect to his ineffective assistance of counsel claims, we cannot say that the circuit court erred in summarily dismissing the petition. We therefore affirm the judgment of the circuit court.

1-17-3015

¶ 21

CONCLUSION

¶ 22 Considering the foregoing, we affirm the circuit court's dismissal of petitioner's *pro se* postconviction petition.

¶ 23 Affirmed.