



SUPREME COURT OF ILLINOIS

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January 31, 2019

In re: People State of Illinois, respondent, v. Darren Denson, petitioner.
Leave to appeal, Appellate Court, Second District.
124245

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 03/07/2019.

Very truly yours,

Carolyn Taft Gusbell

Clerk of the Supreme Court

No. 2-15-1206
Summary Order filed May 14, 2018

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee, RA)	
)	
v.)	No. 05-CF-1324
)	
DARREN DENSON,)	Honorable
)	James C. Hallock,
Defendant-Appellant. PA)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

SUMMARY ORDER

¶ 1 Following a second jury trial, defendant, Darren Denson, was convicted of one count of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2002)), one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2002)), and one count of home invasion (720 ILCS 5/12-11(a)(1) (West 2002)). The trial court sentenced defendant to life imprisonment on the murder conviction and consecutive sentences of 30 years on the others. Defendant appealed, and this court, as well as our supreme court, affirmed defendant's convictions and sentences. See *People v. Denson*, 2014 IL 116231; *People v. Denson*, 2013 IL App (2d) 110652. Thereafter, defendant petitioned for

postconviction relief. The trial court summarily dismissed the petition. Defendant timely appealed, and the trial court appointed the Office of the State Appellate Defender.

¶ 2 Pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), the appellate defender moves to withdraw as counsel. In her motion, counsel states that she read the record and found no issue of arguable merit. Counsel further states that she advised defendant of her opinion. Counsel supports her motion with a memorandum of law providing a statement of facts, a list of potential issues, and arguments why those issues lack arguable merit. We advised defendant that he had 30 days to respond to the motion. Defendant has responded and filed a motion to stay proceedings in this court until he obtains recorded statements that State witnesses gave the police.

¶ 3 The potential issues counsel raises include whether (1) the trial court complied with the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)); (2) the defense attorneys were ineffective for failing to (a) adequately impeach a State witness at the first trial, (b) move to suppress a pretrial identification of defendant as one of the perpetrators, and (c) introduce tape-recorded conversations between two State witnesses; (3) the State's opening statement during the first trial denied defendant a fair trial; (4) the State committed a discovery violation when it did not provide defense counsel with a copy of statements defendant allegedly made to the police; (5) phone records established that defendant was innocent; (6) the State's comments at the hearing on a posttrial motion revealed that the State was biased and deliberately misled the jury in order to obtain the convictions; and (7) the witnesses' conflicting statements rendered their testimony unreliable. We agree with counsel that none of these issues have arguable merit.

¶ 4 First, the trial court complied with the Act, as defendant's petition was dismissed within 90 days after it was filed and docketed. 725 ILCS 5/122-2.1(a)(2) (West 2014). Specifically, defendant's petition was filed and docketed on August 19, 2015. On November 17, 2015, 90 days later (see *People v. Brooks*, 221 Ill. 2d 381, 390-91 (2006)), the trial court dismissed the petition, finding it "frivolous and patently without merit in that [defendant] has failed to make a substantial showing that his constitutional rights were violated." The fact that the court mentioned that defendant's petition did not make a substantial showing of a constitutional violation, a determination made at the second stage of postconviction proceedings, is, although an incorrect statement of the law at this point in the proceedings, of no consequence here. See *People v. Edwards*, 197 Ill. 2d 239, 246-47 (2001).

¶ 5 Second, none of the attorneys were ineffective for the reasons cited. To state a claim that counsel was ineffective, a defendant must prove that it is arguable that (1) the attorney's performance fell below an objective standard of reasonableness and (2) the defendant was prejudiced. *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). Defendant argues that one of his attorneys was ineffective for failing to adequately impeach the victim's girlfriend at the first trial, which resulted in a mistrial. Such a claim is not cognizable under the Act, as the first trial did not result in defendant's conviction. *People v. Cathey*, 2012 IL 111746, ¶ 17. The contention that counsel was ineffective for failing to move to suppress a codefendant's pretrial identification of defendant is forfeited, as such a claim could have been raised on direct appeal. See *People v. Flores*, 153 Ill. 2d 264, 274 (1992). Forfeiture aside, nothing suggested that the pretrial identification procedure was so unduly suggestive that it resulted in an unreliable identification -- (see *People v. Brooks*, 187 Ill. 2d 91, 130-31 (1999); see also *People v. Jones*, 2012 IL App (1st) 100527, ¶ 24). Even if such a motion had been successful, several other witnesses identified

defendant, including another person who participated in the events leading to the victim's death. As a result, defendant was not prejudiced by counsel's failure to move to suppress such evidence. With regard to the claim that an attorney was ineffective for failing to introduce the recorded conversation between two State witnesses, defendant failed to attach to his petition any evidentiary support for this claim or explain its absence, and thus the court properly dismissed it. *People v. Collins*, 202 Ill. 2d 59, 66 (2002). Even if defendant had attached the necessary support, deciding what evidence to present is a matter of trial strategy that is generally immune from ineffective-assistance claims. *People v. Munson*, 206 Ill. 2d 104, 139-40 (2002). Aside from that, other witnesses not only contradicted what was allegedly contained on the tape, but they implicated defendant in the murder. Thus, defendant was not prejudiced by his attorney's failure to present such evidence.

¶ 6 Third, the claim that the State made improper remarks during its opening statement in the first trial is not cognizable under the Act. *Cathey*, 2012 IL 111746, ¶ 17.

¶ 7 Fourth, the State did not commit a discovery violation by failing to tender to defense counsel a copy of two inculpatory statements defendant made to the police. Not only were the statements not memorialized in writing, but defendant's attorneys indicated during the proceedings that they were well aware of these statements. See *People v. Rogers*, 197 Ill. 2d 216, 222 (2001) (dismissal of postconviction petition proper when record contradicts the defendant's allegations).

¶ 8 Fifth, any claim that phone records established defendant's actual innocence is without merit, as such records, which were introduced at trial, were not newly discovered. See *People v. Sparks*, 393 Ill. App. 3d 878, 885 (2009).

¶ 9 Sixth, the State never asserted at the hearing on a posttrial motion that some State witnesses changed their testimony, and thus any claim that the State was biased against defendant and misled the jury for this reason is unfounded. *Rogers*, 197 Ill. 2d at 222.

¶ 10 Seventh, any alleged contradictions among the various State witnesses' testimony concerned minor details and not key facts (see *People v. Mackins*, 222 Ill. App. 3d 1063, 1066-67 (1991)) or went to the weight and credibility of their statements, thus falling well short of establishing that the State knowingly used perjured testimony to obtain the convictions (see *People v. Tyner*, 40 Ill. 2d 1, 3 (1968)). That aside, the evidence was clear that defendant was culpable because, at a minimum, he drove to the victim's apartment when the victim was killed, knowing of the plan to rob the victim or interrogate him for information about where the money was hidden. See *People v. Dennis*, 181 Ill. 2d 87, 108 (1998). Thus, any inconsistencies concerning who was in the victim's apartment when the murder occurred are immaterial. See *People v. Olinger*, 176 Ill. 2d 326, 345 (1997).

¶ 11 As noted, defendant has responded and asked this court to stay the proceedings here until he can obtain recordings of statements State witnesses made to the police. He fails to advance anything of merit in his response, and as to his motion, we deny it, as we are concerned here only with whether the petition, as it stood in the trial court, with the evidence attached to it, was sufficient. Defendant could not introduce new evidence on appeal.

¶ 12 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that this appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Kane County.

¶ 13 Affirmed.



STATE OF ILLINOIS
APPELLATE COURT
SECOND DISTRICT
55 SYMPHONY WAY
ELGIN, IL 60120

CLERK OF THE COURT
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June 4, 2018

Darren Denson
Reg. No. 00464331
Waupun Correctional Institution
P.O. Box 351
Waupun, WI 53963

RE: People v. Denson, Darren
General No.: 2-15-1206
County: Kane County
Trial Court No: 05CF1324

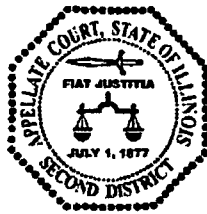
The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless otherwise ordered by this court or a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Honorable Robert D. McLaren
Honorable Kathryn E. Zenoff
Honorable Mary S. Schostok

Robert J. Mangan
Clerk of the Appellate Court

cc: David Joseph Robinson
Sharifa Shereen Rahmany
Thomas Armond Lilien



STATE OF ILLINOIS
APPELLATE COURT
SECOND DISTRICT
55 SYMPHONY WAY
ELGIN, IL 60120

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June 26, 2018

Darren Denson
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Waupun Correctional Institution
P.O. Box 351
Waupun, WI 53963

RE: People v. Denson, Darren
General No.: 2-15-1206
County: Kane County
Trial Court No: 05CF1324

The court has this day, June 26, 2018, entered the following order in the above entitled case:

The pro se appellant's motion to reconsider the Petition for Rehearing and motion to stay are denied.

Robert J. Mangan
Clerk of the Appellate Court

cc: David Joseph Robinson
Sharifa Shereen Rahmany
Thomas Armond Lilien

**Additional material
from this filing is
available in the
Clerk's Office.**