



SUPREME COURT OF ILLINOIS

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January 24, 2024

In re: People State of Illinois, respondent, v. Samuel Gayden, petitioner.
Leave to appeal, Appellate Court, First District.
130117

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 02/28/2024.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

Appendix [B]

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2023 IL App (1st) 221066-U

FIFTH DIVISION
September 29, 2023

No. 1-22-1066

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 18156
)	
SAMUEL GAYDEN,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Lyle and Navarro concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the defendant did not raise a claim of actual innocence in his *pro se* postconviction petition, he forfeited review of that claim on appeal.
- ¶ 2 A jury found Samuel Gayden guilty of two counts of first degree murder and one count of attempted first degree murder, and the trial court sentenced him to natural life in prison for the murders and 20 years for the attempted murder. Mr. Gayden filed a petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)), alleging that he received ineffective assistance of trial and appellate counsel, and the circuit court summarily

Appendix [A]

dismissed his petition. On appeal from that dismissal, Mr. Gayden's sole argument is that the court erred in dismissing his petition because he set forth an arguable claim of actual innocence based on the affidavit of a purported eyewitness. Because we find that Mr. Gayden did not, in fact, allege a claim of actual innocence in his petition and therefore cannot bring that claim on appeal, we affirm.

¶ 3

I. BACKGROUND

¶ 4

A. The Trial

¶ 5 Mr. Gayden was charged based on a shooting that occurred just after midnight on September 1, 2010, at State Garden Food & Liquors in Chicago. Two men, Marcus Marshall and Shawntelle Harris, were shot and killed. Mr. Gayden was charged with the first degree murders of Mr. Marshall and Mr. Harris, and with the attempted murder of a third man, Chauncey Williams. The shooting was recorded by the store's surveillance cameras.

¶ 6 We discussed the trial proceedings in detail in our order on direct appeal, *People v. Gayden*, 2020 IL App (1st) 162636, and summarize that evidence again here only as necessary for an understanding of the current appeal. At trial, Mr. Gayden—whose nickname is Duke—was identified as the shooter in open court by the surviving victim, Chauncey Williams, and the store manager, Akram Jabar. Mr. Jabar did not witness the shooting, because he threw himself on the floor as it began, but recognized Mr. Gayden as a regular customer from the surveillance videos. Mr. Gayden was also identified as the shooter from the surveillance footage by an investigating officer, Sergeant Jose Lopez, who had previously spoken with Mr. Gayden about six times. Brian Murdock, who identified himself as being present in the surveillance footage from that night, denied knowing Mr. Gayden at trial. Mr. Murdock also admitted in his testimony, however, that on September 11, 2010, he told an assistant state's attorney (ASA) that he was friends with Mr.

Gayden and identified Mr. Gayden on the video as the man he walked into the store with. He gave a written statement to that effect to an ASA on April 30, 2011. The statement was published to the jury, and in it Mr. Murdock identified Mr. Gayden from the surveillance videos as the shooter.

¶ 7 The forensic evidence introduced by the State included a gun recovered from the apartment where Mr. Gayden lived. The bullets matched those recovered from the scene of the shooting. Mr. Gayden could not be excluded from the DNA profile lifted from the gun. The State also introduced two letters sent to Atia Johnson, purportedly by Mr. Gayden, in which he appeared to be asking for someone to find Lolita Garnett to testify on his behalf that he was not the shooter and for someone to get Chauncey Williams “out of the way A.S.A.P.” Mr. Gayden could also not be excluded from the DNA profile that was collected from one of the letter’s envelopes. Evidence was also presented concerning three telephone calls Mr. Gayden made to Ms. Johnson, in which he again mentioned Chauncey Williams and finding Lolita Garnett to testify that he was not the shooter and asked her about two letters he had previously sent.

¶ 8 The jury found Mr. Gayden guilty of the first degree murders of Mr. Marshall and Mr. Harris, and of the attempted first degree murder of Chauncey Williams. The trial court sentenced Mr. Gayden to natural life in prison without the possibility of parole for the two murder convictions and 20 years for the attempted murder.

¶ 9 On June 26, 2020, we affirmed Mr. Gayden’s convictions on direct appeal. *Gayden*, 2020 IL App (1st) 162636.

¶ 10 B. Postconviction Proceedings

¶ 11 On March 20, 2022, Mr. Gayden filed his postconviction petition, alleging several specific instances of ineffective assistance of trial counsel, including a failure “to investigate and present to the Court witnesses and alibi witnesses for [his] defense,” and ineffective assistance of appellate

counsel for “failing to effectively investigate, litigate, and preserve meritorious issues on appeal.” In the 25-page memorandum filed in support of his postconviction petition, Mr. Gayden provided details supporting these allegations of ineffective assistance. Relevant here, he alleged that his trial counsel failed to interview Andrew Williams and call him to testify. According to Mr. Gayden:

“Andrew Williams *** was willing to come to court and testify on [Mr. Gayden]’s behalf. Andrew would have testified that he is acquainted with the [Mr. Gayden], and that he (Andrew) was at State Garden Food & Liquors (crime scene) on September 1, 2010, at approximately 12:40 a.m. Andrew would have further averred that [Mr. Gayden] was not at the scene of the crime, and that [Mr. Gayden] did not commit this particular offense. In his affidavit Andrew attests that he saw another man shoot at the victims, not [Mr. Gayden].”

¶ 12 Mr. Gayden attached Andrew Williams’s affidavit to his petition as an exhibit. In it, Andrew stated that he was at the liquor store at 57th and State Streets on September 1, 2010, when three men asked him to buy them some liquor because they did not have identification. Andrew said that after he bought the liquor, as he was about to leave the store, “another unidentified individual” entered the liquor store with a gun, and Andrew “could recognize him instantly from the neighborhood.” Andrew stated that the man looked at him, then at the “three boys [he] was buying liquor for[,] then started shooting at them.” Andrew stated that when the shooting was over, the shooter “took off running toward 57 and Wabash and hopped in a four door gold car that looked like a Ford T[a]urus.” Andrew then said:

“Seconds later I lef[t] the scene because there was blood splatter everywhere including my clothin[g] and I think have a warr[a]nt plus I didn’t want the shooter to come ba[ck] and try to kill me because I coul[d] identify him from the neighborhood. I just don’t [k]no[w]

his name but I'm [unreadable] sure that it was not duke becau[se] I been knowing duke for years fro[m] 51 street so I now [sic] it wasn't duke that *** shot those boys that night I never saw him (duke) anywhere around 57th street that night but I can identify the shooter if I ever saw his face again because he could have kill[ed] me."

¶ 13 On May 9, 2022, Mr. Gayden supplemented his petition with additional documentation including his indictment, the transcript from the hearing on his motion to suppress his arrest, an affidavit from Ms. Johnson in which she states that Mr. Gayden was with her on the day of the murder and that "everybody knows that [Mr. Gayden] didn't do the crime, but whole neighborhood knows who done the crime, but they scared to say anything about it," and a letter to Mr. Gayden from the Attorney Registration and Disciplinary Commission in response to his complaints about his pre-trial attorney, finding "no further action [wa]s warranted by the Commission."

¶ 14 On June 8, 2022, the circuit court dismissed Mr. Gayden's petition in a detailed 36-page written order, carefully addressing each of Mr. Gayden's ineffective assistance of counsel claims. The circuit court explained at length the law of ineffective assistance of counsel. And, in rejecting each of Mr. Gayden's 10 arguments, some of which included multiple sub-issues, the court provided both legal and factual support for rejecting each claim that Mr. Gayden's trial and appellate counsels had not rendered him effective assistance.

¶ 15 This appeal followed.

¶ 16 **II. JURISDICTION**

¶ 17 The circuit court dismissed Mr. Gayden's petition on June 8, 2022, and Mr. Gayden timely filed his notice of appeal from that order on July 6, 2022. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 606 (eff. July 1, 2017) and Rule 651(a) (eff. July 1, 2017), governing appeals from final

judgments in postconviction proceedings.

¶ 18

III. ANALYSIS

¶ 19 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2020)) allows a criminal defendant to challenge his or her conviction by establishing that “in the proceedings which resulted in [the] conviction there was a substantial denial of his or her rights under the Constitution of the United States or the State of Illinois or both.” *Id.* § 122-1(a)(1). Postconviction proceedings occur in three stages. *People v Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the circuit court determines, without input from the State, whether a petition is frivolous or patently without merit. *Id.*; 725 ILCS 5/122-2.1(a)(2) (West 2020). If the defendant moves to the second stage, the court appoints counsel to represent the defendant and, if necessary, to file an amended petition; at this stage, the State must either move to dismiss or answer the petition. *Gaultney*, 174 Ill. 2d at 418; 725 ILCS 5/122-4, 122-5 (West 2020). If the defendant then makes a substantial showing of a constitutional violation, he or she proceeds to the third stage, an evidentiary hearing on the merits. *People v. Silagy*, 116 Ill. 2d 357, 365 (1987); 725 ILCS 5/122-6 (West 2020)).

¶ 20 At the first stage, where Mr. Gayden’s petition was dismissed, a defendant only needs to show the “gist” of a constitutional claim. *Gaultney*, 174 Ill. 2d at 418. Section 122-2 of the Act provides that the petition “shall *** clearly set forth the respects in which petitioner’s constitutional rights were violated.” 725 ILCS 5/122-2 (West 2020). “With regard to this requirement, a defendant at the first stage need only present a limited amount of detail in the petition,” and a *pro se* defendant need only “allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act.” *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). As our supreme court explained, “in our past decisions, when we have spoken of a ‘gist,’ we meant only that the section 122-2 pleading requirements are met, even if the petition lacks formal legal

arguments or citations to legal authority.” *Id.* We review the summary dismissal of a petition *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010).

¶ 21 On appeal, Mr. Gayden argues that the circuit court erred in summarily dismissing his *pro se* postconviction petition at the first stage because he set forth the gist of a claim of actual innocence because he “attached Andrew Williams’ affidavit to the petition and argued that the affidavit provides evidence of [Mr.] Gayden’s innocence where Andrew identified another person as the offender.” The State argues that Mr. Gayden forfeited his actual innocence claim for review on appeal by not raising it in his petition and, alternatively, that he failed to show the gist of an actual innocence claim.

¶ 22 Section 122-3 of the Act provides that “[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.” 725 ILCS 5/122-3 (West 2020). And our supreme court made clear in *People v. Jones*, 213 Ill. 2d 498, 508 (2004), that appellate courts are “not free, as [the supreme] court is under its supervisory authority, to excuse, in the context of postconviction proceedings, an appellate [forfeiture] caused by the failure of a defendant to include issues in his or her postconviction petition.” Accordingly, we have no authority to overlook a defendant’s forfeiture when he raises a claim not made in his postconviction petition for the first time on appeal. *People v. Williams*, 2015 IL App (1st) 131359, ¶ 14.

¶ 23 Mr. Gayden argues that he has not forfeited a claim of actual innocence. He acknowledges that he did not “use the specific words ‘actual innocence’ in his petition,” but nonetheless contends that because he included all the facts to support an actual innocence claim in his petition, including Andrew Williams’s affidavit, he set forth sufficient facts to state the gist of an actual innocence claim, and the circuit court thus erred in dismissing his petition.

¶ 24 We agree with the State that Mr. Gayden did not raise a claim of actual innocence in his

petition. It is true that *pro se* petitions “must be given a liberal construction and are to be viewed with a lenient eye, allowing borderline cases to pass.” *People v. Mars*, 2012 IL App (2d) 110695, ¶ 32. However, “[t]he proper inquiry on appeal is ‘whether the allegations *in the petition*, liberally construed and taken as true, are sufficient to invoke relief under the Act.’ ” (Emphasis in original.) *Williams*, 2015 IL App (1st) 131359, ¶ 24 (quoting *People v. Cathey*, 2012 IL 111746, ¶ 21). “[A]ny claims assessed by a reviewing court must be presented in the petition filed in the circuit court.” (Internal quotation marks omitted.) *Id.*

¶ 25 Here, Mr. Gayden did not set forth a claim of actual innocence, even considering the limited amount of detail required at the first stage. *Hodges*, 234 Ill. 2d at 9. Instead, his entire lengthy petition is based solely on claims of ineffective assistance of trial and appellate counsel. Although he attached Andrew Williams’s affidavit to the petition, Mr. Gayden expressly relied on the affidavit to argue that his trial counsel was ineffective for failing to interview and call Andrew to testify at trial. This in no way can be read as a claim of actual innocence.

¶ 26 Indeed, in denying Mr. Gayden’s ineffective assistance of counsel argument based on Andrew Williams’s affidavit, the circuit court relied on the absence of any evidence that Mr. Gayden’s trial counsel knew of Andrew Williams. The circuit court’s analysis was completely correct based on Mr. Gayden’s ineffective assistance of counsel claim since a lawyer cannot be ineffective for failing to call a witness of whom they have no knowledge. See *People v. Brown*, 2017 IL App (3d) 140921 (“Defense counsel’s performance may be deficient where she fails to call *known* witnesses whose testimony may exonerate the defendant.” (Emphasis added.)); *People v. Morgan*, 2015 IL App (1st) 131938 (“Counsel cannot be deemed ineffective for failing to investigate witnesses that she did not know existed.”). An actual innocence claim would require a showing that Andrew Williams’s affidavit was newly discovered evidence and thus that trial

counsel did *not* know about it. *Coleman*, 2013 IL 113307, ¶ 96. It is a different claim and requires a different analysis. We simply cannot consider a claim that was not presented in Mr. Gayden's petition. 725 ILCS 5/122-3 (West 2020).

¶ 27 This case is different than *People v. Thomas*, 2014 IL App (2d) 121001, relied on by Mr. Gayden. In *Thomas*, the defendant made the same claim on appeal that he made in his petition—ineffective assistance of appellate counsel for failing to argue on direct appeal that another individual's confession should have been admitted at trial. *Id.* ¶¶ 2-3, 62-63. The differences between the arguments in the petition and on appeal concerned factual allegations about who that individual made the confession to and whether the trial judge or trial counsel was at fault for the improper exclusion of the confession. However, the claim was the same—appellate counsel was ineffective for failing to pursue a claim that another person's confession should have been admitted. Here, Mr. Gayden is not arguing the same claim on appeal that was in his petition, framed in a different way; he is arguing an entirely different claim.

¶ 28 Because Mr. Gayden's claim on appeal that he was actually innocent was not raised in his postconviction petition, he has forfeited review of it on appeal. 725 ILCS 5/122-3 (West 2020); *Jones*, 213 Ill. 2d at 508.

¶ 29 VI. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 31 Affirmed.