2025 IL App (4th) 240149-U

NO. 4-24-0149

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 2, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
DERRICK D. HAYES,	)	No. 17CF635
Defendant-Appellant.	)	
	)	Honorable
	)	Raylene DeWitte Grischow,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err by summarily dismissing defendant's *pro se* postconviction petition at the first stage of postconviction proceedings.

¶ 2 Defendant, Derrick D. Hayes, appeals the summary dismissal of his *pro se* postconviction petition at the first stage of postconviction proceedings. Defendant argues the trial court erred by dismissing his petition because it set forth the gist of a claim that "his constitutional rights were violated when new charges were filed almost two years after the filing of the original charges[,] and the new charges were based on the same acts as the original charges." He further argues appellate counsel was ineffective for failing to raise this issue on direct appeal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 30, 2017, a vehicle stopped at a traffic light at the corner of 1st Street and Ash Street in Springfield, Illinois. Attendees of a barbeque at the house of Sanatra Sullivan heard sounds like fireworks, and witnesses saw a man leaning out the window of the vehicle with a gun in hand. A bullet struck and killed Sheena Malone.

¶ 5 On July 12, 2017, a grand jury indicted defendant with one count of felony murder (720 ILCS 5/9-1(a)(3) (West 2016)) (count I), two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2016)) (counts II and III), and one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2016)) (count IV).

¶ 6 On March 14, 2019, the State filed a motion to add two additional first degree murder charges under alternative theories. After a hearing, and over defendant's objection, the trial court allowed the State to add two counts of first degree murder, one under the intentional murder theory (720 ILCS 5/9-1(a)(1) (West 2016)) (count V) and the other under the knowing murder theory (720 ILCS 5/9-1(a)(2) (West 2016)) (count VI). The State subsequently presented the charges to a grand jury, which returned true bills of indictment on the two additional charges in April 2019.

¶ 7 In November 2020, defendant filed a motion to dismiss count I, arguing counts II and III were "inherent in the murder itself, and had no *** intent separate and apart from the murder." The trial court conducted a hearing on the matter in January 2021 and, by agreement of the parties, granted defendant's motion to dismiss.

¶ 8 On February 1, 2021, defendant filed a motion to dismiss counts V and VI, arguing that, because count I was void, the "additional charges filed 21 months later were untimely filed" and "violated the compulsory joinder and speedy trial statute." The State, in

response, asserted just one offense for murder exists in Illinois, despite the variety of ways in which it may be charged, and count I sufficiently apprised defendant " 'of the precise offense charged with sufficient specificity to prepare his defense' " by alleging he committed murder when he caused the death of Malone. See *People v. Maxwell*, 148 Ill. 2d 116, 136, 592 N.E.2d 960, 970 (1992). After a hearing, the trial court denied defendant's motion to dismiss, noting defendant "was sufficiently apprised of the precise offense he was being charged with."

¶ 9 Following a jury trial, defendant was found guilty of first degree murder, including a finding he personally discharged a firearm that caused death to another person, aggravated unlawful use of a weapon, and aggravated discharge of a firearm.

¶ 10 On direct appeal, defendant unsuccessfully argued his trial counsel rendered ineffective assistance and the trial court erred in denying his requested jury instruction for second degree murder. *People v. Hayes*, 2022 IL App (4th) 210409, ¶ 2, 217 N.E.3d 327.

¶ 11 Defendant then filed a *pro se* postconviction petition, asserting the trial court erred when it denied his motion to dismiss counts V and VI pursuant to "the [compulsory] join[d]er speedy trial rule" and appellate counsel was ineffective for failing to raise this issue on direct appeal. The court subsequently entered a written order summarily dismissing defendant's *pro se* petition. In doing so, the court explained that first degree murder, "whether alleged under [sections] 5-9/1(a)(1), (a)(2) or (a)(3) [of the Criminal Code of 2012 (720 ILCS 5/9-1(a)(1)-(3) (West 2016))], are different ways of charging the crime of murder." The court further noted the "language in both the 2017 and 2019 indictments *** have substantially similar language, which allowed [defendant] to prepare a defense." Therefore, because "the crimes alleged all have the same elements, and are subject to the same defenses," the court concluded defendant suffered no prejudice as the "original indictment provided [defendant] notice of the material allegations in

the subsequent indictment."

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues the trial court erred by summarily dismissing his petition at the first stage of postconviction proceedings. Specifically, defendant claims his petition stated the gist of a claim that appellate counsel was ineffective for not arguing on direct appeal that the court "erred by rejecting his pre-trial compulsory-joinder, speedy-trial claim," where the additional charges were "based on the same acts as the original charges" and filed nearly two years later.

¶ 15 "The Post-Conviction Hearing Act [(Act)] provides a three-stage procedural mechanism for a criminal defendant to challenge his or her conviction or sentence for violations of federal or state constitutional rights." *People v. Knapp*, 2020 IL 124992, ¶ 43, 181 N.E.3d 875; 725 ILCS 5/122-1 *et seq*. (West 2022)). At the first stage of postconviction proceedings, the trial court may summarily dismiss a petition upon a determination it is frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10, 912 N.E.2d 1204, 1208-09 (2009) A *pro se* petition for postconviction relief is frivolous or patently without merit only when "the petition has no arguable basis either in law or in fact or when the petition relies on an indisputably meritless legal theory or a fanciful factual allegation." (Internal quotation marks omitted.) *Knapp*, 2020 IL 124992, ¶ 45. "For purposes of summary dismissal, a meritless legal theory is one completely contradicted by the record, while fanciful factual allegations may be fantastic or delusional." (Internal quotation marks omitted.) *Knapp*, 2020 IL 124992, ¶ 45. "The summary dismissal of a postconviction petition is reviewed *de novo*." *People v. Tate*, 2012 IL 112214, ¶ 10, 980 N.E.2d 1100.

¶ 16 A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Veach*, 2017 IL 120649, ¶ 29, 89 N.E.3d 366. To prevail, "a defendant must demonstrate that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109 (quoting *Strickland*, 466 U.S. at 694). "Claims of ineffective assistance of appellate counsel are subject to the same *Strickland* analysis." *People v. Ransom*, 2024 IL App (4th) 230506, ¶ 50, 241 N.E.3d 552. "Unless the underlying issue has merit, a defendant cannot be considered to have suffered prejudice from appellate counsel's failure to brief that issue." *People v. Makiel*, 358 Ill. App. 3d 102, 113, 830 N.E.2d 731, 743 (2005). At the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance of counsel "should not be summarily dismissed if (1) it is arguable that counsel's performance fell below an objective standard of reasonableness and (2) it is arguable that the petitioner was prejudiced." *Knapp*, 2020 IL 124992, ¶ 46.

¶ 17 Under section 103-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a) (West 2022)), "[e]very person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant." "The 120-day speedy-trial period begins to run automatically if a defendant remains in custody pending trial." *People v. Phipps*, 238 Ill. 2d 54, 66, 933 N.E.2d 1186, 1193 (2010). "This 120-day speedy trial period is tolled whenever the defendant causes a period of delay or otherwise agrees to a delay." *People v. Dryer*, 2021 IL App (2d) 190187, ¶ 16, 173 N.E.3d 261. "If a defendant is not tried within the requisite period, such

defendant 'shall be discharged from custody or released from the obligations of his bail or recognizance.' " *People v. McBride*, 2022 IL App (4th) 220301, ¶ 38, 224 N.E.3d 255 (quoting 725 ILCS 5/103-5(d) (West 2020)).

¶ 18 The speedy-trial analysis "becomes more complicated when the defendant is charged with multiple, but factually related, offenses at different times." *People v. Williams*, 204 Ill. 2d 191, 198, 788 N.E.2d 1126, 1131 (2003). In those cases, "the speedy-trial guarantee is tempered by compulsory joinder principles." *Williams*, 204 Ill. 2d at 198. The "*Williams* rule" was developed for such circumstances:

> " 'Where new and additional charges arise from the same facts as did the original charges and the State had knowledge of these facts at the commencement of the prosecution, the time within which trial is to begin on the new and additional charges is subject to the same statutory limitation that is applied to the original charges. Continuances obtained in connection with the trial of the original charges cannot be attributed to defendants with respect to the new and additional charges because these new and additional charges were not before the court when those continuances were obtained.' " *Phipps*, 238 Ill. 2d at 66 (quoting *People v. Williams*, 94 Ill. App. 3d 241, 248-49, 418 N.E.2d 840, 846 (1981)).

¶ 19 The purpose of the *Williams* rule was to prevent "trial by ambush," wherein the State might "lull [a] defendant into acquiescing to pretrial delays on pending charges, while it prepared for a trial on more serious, not-yet-pending charges." (Internal quotation marks

omitted.) *Phipps*, 238 Ill. 2d at 67. "The question for a speedy-trial analysis is whether defendant had adequate notice of the subsequent charges to allow him to prepare and present a defense." *People v. Mays*, 2012 IL App (4th) 090840, ¶ 45, 980 N.E.2d 166. "If the original charging instrument gives a defendant adequate notice of the subsequent charges, the ability to prepare for trial on those charges is not hindered in any way." *Phipps*, 238 Ill. 2d at 67.

¶ 20 Here, defendant claims the felony murder (count I) and additional murder charges (counts V and VI) are subject to compulsory joinder. The State disagrees, claiming counts V and VI simply allege other theories of first degree murder, the crime charged in the original indictment. The State argues the new charges merely informed defendant of other theories of first degree murder the State believed the evidence would support.

¶ 21 "Illinois law is settled, and courts in this state have repeatedly affirmed only one offense of murder exists even though it may be committed in numerous ways." *People v. Whitlock*, 2018 IL App (1st) 152978, ¶ 41, 123 N.E.3d 615; see *People v. Smith*, 233 Ill. 2d 1, 16, 906 N.E.2d 529, 537 (2009) ("While our statute describes three 'types' of murder, first degree murder is a single offense."); *Maxwell*, 148 Ill. 2d at 137 ("Illinois law recognizes only a single offense of murder, which may be committed in a variety of ways."). As the supreme court has explained, "the different theories embodied in the first degree murder statute [citation] are merely different ways to commit the same crime." (Internal quotation marks omitted.) *Smith*, 233 Ill. 2d at 16. "Just as the method of committing murder is not integral to the offense and therefore need not be specified in the charging instrument [citation] ***, the precise statutory theory of the offense of murder is not a matter that must be specifically alleged." *Maxwell*, 148 Ill. 2d at 137.

¶ 22 After reviewing the indictments in this case, defendant was sufficiently apprised the State would attempt to prove he committed murder when he caused the death of Malone.

Counts V and VI were not "new and additional." The original 2017 indictment apprised defendant the State intended to seek a first degree murder charge against him for discharging a firearm at attendees of a barbeque and striking Malone, which resulted in her death. The 2019 indictments gave defendant notice the State would proceed under the knowing and intentional theories of murder in addition to the felony murder theory in the death of Malone. We also note defendant was originally charged with aggravated discharge of a firearm based on his firing a gun at several people who were attending a barbeque. This too gave defendant notice of what he would have to defend against. See *Mays*, 2012 IL App (4th) 090840, ¶ 49 ("[T]he critical point in a speedy-trial analysis is whether the original charges gave defendant adequate notice to prepare a defense to the subsequent charges."). There is nothing in the newer charges which changed either the facts or defendant's possible theories of defense. He knew at all times he was going to be defending against a charge of first degree murder premised on his firing a loaded firearm at someone.

¶ 23 Ultimately, the record shows defendant suffered no prejudice due to the new indictments because all the indictments gave defendant notice of the conduct he would need to defend against. The fact that count I was later dismissed after the additional charges were filed is of no consequence. The original indictments put defendant on notice the State intended to hold him accountable for the death of Malone and he should prepare his defense related to his conduct in shooting her. Moreover, defendant was originally indicted in July 2017 and then reindicted in April 2019. Defendant filed his motion seeking dismissal on speedy trial grounds 22 months later in February 2021 and went to trial later that same month. Given the almost two-year gap between the reindictment and trial, defendant cannot complain the reindictment resulted in a "trial by ambush." *Phipps*, 238 Ill. 2d at 67. Accordingly, defendant's statutory right to a speedy trial and

compulsory joinder were not violated by the addition of counts V and VI as those charges were not "new and additional" for speedy trial and compulsory joinder purposes. See *Phipps*, 238 Ill. 2d at 67; *Mays*, 2012 IL App (4th) 090840, ¶ 45.

¶ 24 Absent error, there can be no valid ineffective assistance of counsel claim. See *People v. Hood*, 2016 IL 118581, ¶ 18, 67 N.E.3d 213. Because the issue upon which defendant relies for his ineffectiveness of appellate counsel claim has no merit, defendant suffered no prejudice from appellate counsel's failure to brief the issue. *Makiel*, 358 Ill. App. 3d at 113. Thus, defendant failed to state the gist of a claim that his appellate counsel was ineffective, and the trial court did not err in summarily dismissing his postconviction petition. See *Knapp*, 2020 IL 124992, ¶ 46.

¶ 25 III. CONCLUSION

¶ 26 For all these reasons, we affirm the trial court's judgment.

¶ 27 Affirmed.