NOTICE
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2011 IL App (4th) 100156-U

Filed 9/16/11

NO. 4-10-0156

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES HOWARD, Defendant-Appellant.	)	Appeal from Circuit Court of McLean County No. 95CF178 Honorable Robert L. Freitag, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not err by dismissing the defendant's postconviction petition.

¶ 2 In February 1995, the State charged defendant, Charles Howard, in pertinent part, with armed robbery (720 ILCS 5/18-2(a) (West 1994)), and a warrant was issued for his arrest.

¶ 3 In April 1995, a Michigan trial court convicted defendant, in a separate case, of robbery pursuant to a guilty plea. That court later sentenced defendant to 10 to 20 years in prison.

¶ 4 In August 1995, a McLean County, Illinois, assistant State's Attorney sent a detainer form to the warden at Saginaw correctional facility in Michigan, where defendant was incarcerated, indicating his (1) acceptance of temporary custody of defendant and (2) intent to proceed to trial on the McLean County charges. A McLean County jury later convicted

defendant of armed robbery. In February 1996, the trial court sentenced defendant to a term of natural life in prison.

¶ 5 Defendant appealed, arguing, in pertinent part, that (1) the McLean County proceedings violated his right to a speedy trial, and (2) his counsel had failed to adequately represent him on that issue. In June 1997, this court affirmed. *People v. Howard*, No. 4-96-0575 (June 30, 1997) (unpublished order under Supreme Court Rule 23).

¶ 6 In December 2009, defendant *pro se* filed a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 2008)), asserting that newly discovered evidence would show that his speedy-trial rights had been violated. In February 2010, the trial court summarily dismissed defendant's petition, finding that his claims failed to meet the "gist-of-a-constitutional-claim" standard and were frivolous and patently without merit.

¶ 7 Defendant appeals, arguing that the trial court erred by dismissing his postconviction petition. We disagree and affirm.

¶ 8 I. BACKGROUND

¶ 9 In February 1995, the State charged defendant with armed robbery (count I) and unlawful use of a firearm by a felon (count II) (720 ILCS 5/18-2(a), 24-1.1(a) (West 1994)). In March 1995, a grand jury indicted defendant on those same charges. At that time, defendant was in custody in Michigan on an unrelated charge. In April 1995, a Michigan court convicted defendant of robbery and later sentenced him to 10 to 20 years in prison.

¶ 10 In August 1995, a McLean County assistant State's Attorney sent a detainer form to the warden at Saginaw correctional facility in Michigan, where defendant was incarcerated. The form provided that the State's Attorney's office (1) had accepted the warden's July 26, 1995,

offer to provide temporary custody of defendant and (2) intended to proceed to trial within the time limits set forth in article III(a) of the Agreement on Detainers (730 ILCS 5/3-8-9, art. III(a) (West 1994))–which requires that a defendant be "brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court *** written notice of *** his request for a final disposition."

¶ 11 On August 11, 1995, the assistant State's Attorney sent defendant a letter, along with a copy of the indictment, warrant, and form. The letter informed defendant that a hearing had been scheduled for September 15, 1995. (Defendant later testified that he received the documents on August 13, 1995.)

¶ 12 The record also included a "Contact Information Sheet" from Saginaw, dated September 13, 1995, indicating that a representative of the McLean County State's Attorney's office had called to inform Saginaw authorities that defendant's September 1995 hearing would be reset for October 1995. Defendant subsequently arrived in Illinois on October 21, 1995. Shortly thereafter, the State dismissed count II, and defendant's trial commenced on January 10, 1996. (The State also filed a notice of intent to prosecute defendant as a habitual offender on the ground that his current Illinois armed-robbery conviction was his third Class X felony (720 ILCS 5/33B-1 (West 1996)).)

¶ 13 On the day of trial, defendant filed a motion to dismiss on the ground that he had not been brought to trial within 120 days from the date that he was taken into custody, as provided in section 103-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a) (West 1994)). Following a hearing, the trial court denied defendant's motion.

¶ 14 The jury later convicted defendant of armed robbery. In February 1996, the trial

court sentenced defendant to a term of natural life in prison.

¶ 15 Defendant appealed, arguing, in pertinent part, that (1) the proceedings violated his right to a speedy trial because, in light of the requirements of article III(a) of the Agreement on Detainers (730 ILCS 5/3-8-9, art. III(a) (West 1994)), he had not been brought to trial within 120 days from the date that he was taken into custody, as provided in section 103-5(a) of the Code of Criminal Procedure (725 ILCS 5/103-5(a) (West 1994)), and (2) his counsel had failed to adequately represent him on that issue. In June 1997, this court affirmed, rejecting defendant's claims and concluding that the record showed no evidence that defendant fulfilled the requirements of article III and, in any event, the date the State's Attorney executed a detainer was within the 180-day speedy-trial period. *Howard*, No. 4-96-0575 (June 30, 1997) (unpublished order under Supreme Court Rule 23) (also rejecting defendant's ineffective-assistance-of-counsel claim for lack of prejudice).

¶ 16 In December 2009, defendant *pro se* filed a petition for postconviction relief, claiming, in pertinent part, that he had newly discovered evidence. Defendant attached to his petition, among other related items, a copy of (1) a June 12, 1995, Agreement on Detainers notice form, advising defendant of the charges in McLean County and (2) a form entitled "Prosecutor's Acceptance of Temporary Custody," indicating that the prison in Michigan had offered temporary custody of defendant on July 26, 1995, per defendant's request. As part of his accompanying memorandum, defendant stated that on July 13, 2009, he filed a Freedom of Information Act (FOIA) request with the Michigan Department of Corrections, seeking any evidence of his 1995 request of disposition. His request was denied. Defendant posited that the denial of his request did not mean that such information did not exist, but instead that he was

merely denied access to such information. Although defendant did not receive any new documents from his FOIA request, he urged the court to infer that proof existed–somewhere–that showed that he initiated a request for resolution of his McLean County case sometime before June 1995.

¶ 17 In February 2010, the trial court summarily dismissed defendant's petition, finding that his claims failed to state the gist of a constitutional claim and were frivolous and patently without merit. In a lengthy written order, the court explained that (1) the issues raised were barred by the doctrine of *res judicata* and (2) the information defendant attached to his petition was not newly discovered evidence.

¶ 18 This appeal followed.

¶ 19 II. DEFENDANT'S CLAIM THAT THE TRIAL COURT ERRED BY DISMISSING HIS POSTCONVICTION PETITION

¶ 20 Defendant argues that the trial court erred by dismissing his postconviction petition. We disagree.

¶ 21 A. The First Stage of Postconviction Proceedings and the Standard of Review

¶ 22 In the first stage of a postconviction proceeding, the allegations of the postconviction petition, liberally construed and taken to be true, need only state the "gist" of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001). The "gist" means the essence, the main point or part (Merriam-Webster's Collegiate Dictionary 492 (10th ed. 2000)), as opposed to a factually complete statement of the claim (*Edwards*, 197 Ill. 2d at 244, 757 N.E.2d at 445). By requiring only the gist of a constitutional claim in that first stage, the supreme court intends to set " 'a low threshold.' " *Edwards*, 197 Ill. 2d at 244, 757 N.E.2d at

445 quoting *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996)). Only a limited amount of detail is required in the petition, and the petition need not make any legal arguments or cite any legal authority. *Edwards*, 197 Ill. 2d at 244, 757 N.E.2d at 445.

¶ 23 In light of this standard, a trial court should not summarily dismiss a petition as "frivolous" or "patently without merit" (725 ILCS 5/122-2.1(a)(2) (West 2008)) merely because some factual details are missing or because the petition omits some facts necessary to support a constitutional claim. Instead, a petition is frivolous or patently without merit only if it lacks an arguable basis in law or fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204,1209 (2009). A petition lacks an arguable basis in law or fact if it is based on an indisputably meritless legal theory or fanciful factual allegation. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1211. "An example of an indisputably meritless legal theory is one which is completely contradicted by the record. [Citation.] Fanciful factual allegations include those which are fantastic or delusional." *Hodges*, 234 Ill. 2d at 16-17, 912 N.E.2d at 1212. We review *de novo* the trial court's first-stage dismissal of a defendant's postconviction petition. *Edwards*, 197 Ill. 2d at 247, 757 N.E.2d at 447.

¶ 24 B. Defendant's Postcoviction Petition in This Case

¶ 25 Having reviewed the record in this case, we conclude that defendant's postconviction petition failed to state the gist of a constitutional claim because it is both independently meritless and fanciful.

¶ 26 First, defendant's argument is barred by the doctrine of *res judicata*. *People v. Scott*, 194 Ill. 2d 268, 273-74, 742 N.E.2d 287, 291-92 (2000) (issues available to a postconviction petitioner are limited to constitutional matters that could not have been previously

litigated). Here, defendant moved to dismiss the charges against him based on speedy-trial issues at trial and later appealed the trial court's denial of that motion on direct appeal, citing the Agreement on Detainers Act. Defendant has not attached to his petition any evidence that could not have been presented in his earlier court filings. Moreover, to the extent that defendant contends that somehow the denial of his FOIA request implies that some "new" documents exist and is therefore evidence of newly discovered evidence, we reject such a contention.

¶ 27 Additionally, we note that although we agree with the trial court that defendant's postconviction petition is barred by the doctrine of *res judicata*, the State also makes a strong argument that defendant failed to allege a constitutional claim. The Supreme Court of Illinois has long held that statutory irregularities may not be the foundation for postconviction relief. See *People v. French*, 46 Ill. 2d 104, 107, 262 N.E.2d 901, 903 (1970) (holding that allegations of statutory irregularities under the 120-day rule "do not raise issues of constitutional magnitude to be considered under the Post-Conviction Hearing Act"). Like the 120-day rule, the Interstate Detainer Act's 180-day speedy trial period is intended to effectuate defendants' constitutional rights, it is not the equivalent thereof.

¶ 28 The constitutional right to speedy trial is "a more vague concept than other procedural rights." *Barker v. Wingo*, 407 U.S. 514, 521-22, 92 S. Ct. 2182, 2187-88 (1972). Indeed, "[i]t is *** impossible to determine with precision when the right has been denied," rather, it depends on the circumstances of the case. *Barker*, 407 U.S. at 522, 92 S. Ct. at 2188. Thus, a violation of the 180-day speedy-trial period under the Interstate Detainer Act does not *per se* violate a defendant's constitutional right to a speedy trial. *Barker*, 407 U.S. at 522, 92 S. Ct. at 2188 ("We find no constitutional basis for holding that the speedy trial right can be

quantified into a specified number of days or months").

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 31 Affirmed.