

2019 IL App (1st) 170672-U

No. 1-17-0672

September 30, 2019

First Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 13635
)	
ANTWON COATS,)	Honorable
)	Allen F. Murphy,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Griffin and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's second-stage dismissal of defendant's post-conviction petition is affirmed where counsel, who represented defendant both at trial and on direct appeal, did not render ineffective assistance when he did not object to the court's response to a question from the jury as coercive.

¶ 2 Defendant Antwon Coats appeals from an order of the circuit court of Cook County granting the State's motion to dismiss his post-conviction petition. Defendant contends the court erred in dismissing his petition because he made a substantial showing that his counsel, who

represented him both at trial and on direct appeal, rendered ineffective assistance when he failed to object to the trial court's "coercive" response to a question from the jury asking what would happen if two jurors disagreed with the majority. We affirm.

¶ 3

BACKGROUND

¶ 4 Following a jury trial, defendant was convicted of first degree murder for fatally shooting Marissa Moore. At trial, Daniel Logan testified that on the night of November 13, 2006, he, defendant, Moore, and Justin Horn drank for several hours in Logan's basement in South Chicago Heights. In the early morning hours of November 14, Logan asked everyone to leave because he was tired. Moments later, Logan heard gunshots. He went outside and observed defendant standing over Moore's body in the alley. Logan returned to his house, closed the door, and did not answer when the police came to speak with him. Logan spoke with the police several weeks later. Logan's neighbor, Anthony Burnham, testified that shortly after 2:30 a.m., he heard two gunshots. Burnham looked out his window and observed a large, heavy-set man standing over a woman's body in the alley. Burnham observed a second man walking to Logan's home. Burnham called the police, who arrived at the scene and found Moore lying in the alley, dead from a gunshot wound. Medical examiner Adrienne Segovia testified that gunpowder and a muzzle imprint on Moore's neck indicated that the gun had been held against her neck when it was fired.

¶ 5 Defendant was arrested on June 2, 2007. Detectives Daniel Vaci and Jesse Kozinski of the South Chicago Heights Police Department, interviewed defendant for two days, which was videotaped. The detectives both testified that they repeatedly told defendant that he could help himself by telling them the truth about what happened. Defendant eventually told the detectives

that he shot Moore from a distance of 20 feet. Defendant's videotaped interrogation, which comprised several hours, was published to the jury.

¶ 6 Defendant testified that he, Moore, and Logan were drinking in Logan's basement. When Logan left his house to buy cigarettes, he left his 9-millimeter gun on the table and asked defendant to watch it. Logan took his .45-caliber gun with him. Defendant denied possessing any weapons himself. While Logan was gone, defendant fell asleep. When Logan returned, the gun he left on the table was missing, and he asked defendant and Moore where it was. Both defendant and Moore denied that they had it. Logan and Moore began arguing about the gun. Moore entered the bathroom and asked defendant to join her. When defendant entered the bathroom, Moore handed him Logan's gun. Logan entered the bathroom and defendant handed him his gun. Logan stated that he knew Moore had taken it, and Logan and Moore threatened to kill each other. Moore and Logan went outside and continued arguing while defendant remained in the basement. About five minutes later, defendant heard two gunshots. Logan reentered his basement and told defendant to leave. Defendant exited the house and saw Moore lying in the alley. Defendant looked down at her body, said "[d]amn," and kept walking. Defendant explained that he confessed to the detectives that he shot Moore because they told him they had enough evidence to charge him with first degree murder, and if he admitted to the shooting, he would receive a lesser charge. Defendant testified that he did not shoot Moore. In rebuttal, the State presented a certified copy of defendant's prior conviction for delivery of a controlled substance for impeachment purposes.

¶ 7 Following closing arguments, the trial court issued the jury instructions. The instruction directed the jurors to choose a foreperson, and described the verdict forms for the first degree

murder offense and stated “[y]our agreement on a verdict must be unanimous.” The instruction directing the jurors to determine whether defendant personally discharged a firearm that proximately caused death also stated “[y]our agreement on your verdict as to the allegation must also be unanimous.” The record does not indicate what time the jury began deliberations.

¶ 8 During deliberations, the jury sent several notes to the court asking various questions. In the first note at 5 p.m., the jurors asked if they could take a break and “get some air,” which the court allowed. At 5:35 p.m., the jury sent the note at issue in this case. The jury asked “[c]an you explain what happens if two (2) of us disagree with the majority? Then what happens next? Can someone tell that to us?” At 5:45 p.m., the trial court sent a note in response which stated “[y]our verdict must be unanimous. You have all the evidence. Please continue to deliberate.”

¶ 9 At 6:45 p.m., a juror sent the court a note asking “[i]f we cannot come to an agreement tonight, and we have to come back for tomorrow, can an alternate take my place for tomorrow?” The court sent a note to the individual juror stating “[p]lease continue to deliberate. Alternating jurors can be used only under emergency situations.” At 7:55 p.m., the jurors sent a note stating “[w]e have decided. Whats next?” The court sent a note in response directing the jurors to sign the verdict forms that reflect their decision and knock on the door when finished. Defense counsel and the State confirmed they were consulted for each of the notes and approved the responses given by the court.

¶ 10 The jury found defendant guilty of first degree murder. The jury also found the State proved that defendant personally discharged a firearm that proximately caused death to another person. After the verdicts were read, the jury was polled and each juror confirmed that was his or her verdict. The trial court sentenced defendant to 40 years’ imprisonment for the murder, and an

additional 25-year term for personally discharging the firearm that caused Moore's death, for an aggregate sentence of 65 years' imprisonment.

¶ 11 On direct appeal, defendant argued the trial court erred when it admitted his confession into evidence because the police lied to him about the evidence against him and suggested that prosecutors would charge him with a crime other than first degree murder if he confessed. This court held that in light of the totality of the circumstances in this case, the trial court correctly found that defendant's confession was voluntary, and we affirmed his conviction. *People v. Coats*, No. 1-09-3092 (2011) (unpublished order under Supreme Court Rule 23).

¶ 12 On March 18, 2013, defendant mailed the instant *pro se* petition for relief filed under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). Defendant argued, *inter alia*, that he was denied his right to a fair trial because the trial court coerced the jury into returning a verdict after the jury indicated that it was deadlocked. Defendant specifically referenced the jury's note asking the court what happens if two jurors disagree with the majority. Defendant claimed the court's response that "[y]our verdict must be unanimous" was an incomplete prejudicial statement of the law that unduly pressured the minority to join the majority. He argued that the response conveyed to the jurors that they must reach a verdict and did not leave open the option of returning no verdict if they were unable to reach a consensus. Defendant asserted that the trial court should have issued a *Prim* instruction to the jury. See *People v. Prim*, 53 Ill. 2d 62 (1972). In addition, defendant alleged he was denied effective assistance of counsel because trial counsel failed to object to the court's instruction and move for a mistrial, and appellate counsel failed to raise the issue on appeal under the plain error doctrine.

¶ 13 The trial court assigned counsel to represent defendant and advanced his petition to second-stage proceedings under the Act. Counsel determined that defendant had adequately set forth the allegations in his *pro se* petition, and therefore, did not file an amended or supplemental petition. The State filed a motion to dismiss defendant's petition arguing that the court's response to the jury's question did not coerce the jury into reaching a verdict where the jury never indicated that it was deadlocked. The State argued that the court properly advised the jury to continue deliberating, and therefore, there was no basis for defense counsel to object or move for a mistrial.

¶ 14 The circuit court found that the jury was properly advised to continue with its deliberations and that "[t]here was no coercion at all." Accordingly, the court granted the State's motion and dismissed defendant's post-conviction petition.

¶ 15 ANALYSIS

¶ 16 On appeal, defendant contends that the court erred in dismissing his petition because he made a substantial showing that his counsel, who represented him both at trial and on direct appeal, rendered ineffective assistance when he failed to object to the trial court's "coercive" response to the jury's question asking what would happen if two jurors disagreed with the majority. Defendant argues that when the jury informed the court that it was split, the court should have issued a *Prim* instruction. Defendant claims the court issued an incomplete response informing the jurors that the only option was for all of them to agree, leaving the dissenting jurors with no choice but to yield to the majority. Defendant argues the court's response was coercive because it demanded that the jury reach a verdict. Defendant asserts he was prejudiced by counsel's failure to object to the response because, had the jurors been given a *Prim*

instruction instead of the coercive response, the dissenting jurors could have caused a mistrial or a not guilty verdict.

¶ 17 The State responds that the court's dismissal of defendant's petition was proper because counsel's failure to object to the response did not constitute ineffective assistance where the response was not coercive. The State argues that the jury's note did not suggest it was deadlocked, but instead, posed a hypothetical question asking what would happen if they disagreed. Consequently, it was within the court's discretion to not issue a *Prim* instruction, which was not required at that time. The State argues that the court used neutral language and merely answered the jury's question by reminding it of the instruction already given that the verdict must be unanimous, and advised them to continue deliberating. The State asserts the record shows the jury was not coerced where, after receiving the response, it sent more notes to the court, continued to deliberate for more than two hours before reaching a verdict, and no jurors expressed disagreement with the verdict when polled.

¶ 18 We review the circuit court's dismissal of a post-conviction petition without an evidentiary hearing *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). A post-conviction 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). To obtain post-conviction relief, defendant must demonstrate he suffered a substantial deprivation of a constitutional right in the proceeding that produced his conviction or sentence. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). During second-stage proceedings, the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional

violation, and if no such showing is made, the petition is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). The burden of making a substantial showing is on defendant. *Pendleton*, 223 Ill. 2d at 473. At this stage, all well-pleaded facts that are not positively rebutted by the trial record are taken as true. *Id.*

¶ 19 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth by the United States Supreme Court 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, defendant 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, defendant must show 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.

¶ 20 To succeed on a claim of ineffective assistance of appellate counsel, defendant must show counsel's failure to raise the issue on direct appeal was objectively unreasonable, and he was prejudiced by this decision. *People v. Harris*, 206 Ill. 2d 293, 326 (2002). In other words, defendant must establish that but for counsel's error, there is a reasonable probability that his appeal would have been successful. *People v. Petrenko*, 237 Ill. 2d 490, 497 (2010). Generally, counsel's decision not to raise an issue on appeal is given substantial deference. *Harris*, 206 Ill. 2d at 326. Unless the underlying issue is meritorious, defendant was not prejudiced by counsel's failure to raise it on appeal. *People v. Barrow*, 195 Ill. 2d 506, 523 (2001).

¶ 21 When responding to a jury's note, the trial court may not "hasten" a verdict by giving an instruction that has the effect of coercing the jurors to surrender their views. *People v. Boyd*, 366

Ill. App. 3d 84, 99 (2006). The court, however, has a duty to provide guidance to a jury that is not hopelessly deadlocked. *Id.* A court's instruction to continue deliberating should be simple, neutral and not coercive, and should not imply that the majority's view is the correct one. *People v. Love*, 377 Ill. App. 3d 306, 316 (2007).

¶ 22 The test to determine whether the trial court's response to the jury's note was improper is "whether, under the totality of the circumstances, the language used by the court actually interfered with the jury's deliberations and coerced a guilty verdict." *People v. McCoy*, 405 Ill. App. 3d 269, 275 (2010). Because coercion is "a highly subjective concept," the reviewing court must ascertain whether the challenged comments imposed such pressure on the minority jurors that it caused them to defer to the majority's conclusion for the purpose of reaching an expedited verdict. *People v. Fields*, 285 Ill. App. 3d 1020, 1029 (1996). The determination of how to best respond to a jury's note rests within the sound discretion of the trial court, and on review, we will not disturb the court's decision absent an abuse of that discretion. *McCoy*, 405 Ill. App. 3d at 275.

¶ 23 When considering the totality of the circumstances in this case, the record shows the trial court's response to the jury's question was not coercive. At 5:35 p.m., the jury sent a note to the court asking "[c]an you explain what happens if two (2) of us disagree with the majority? Then what happens next? Can someone tell that to us?" With the approval of both parties, the court responded "[y]our verdict must be unanimous. You have all the evidence. Please continue to deliberate." The jurors continued with their deliberations. About half an hour later, the jurors ordered dinner. At 6:45 p.m., one of the jurors asked the court if she could make a call to notify someone whom she was going to give a ride to that she would be late. When the juror gave a

note with the contact information to the deputy, she stated “[t]ell her I will be late not sure how long I’ll be.” Also at 6:45 p.m., another juror sent a note asking “[i]f we cannot come to an agreement tonight, and we have to come back for tomorrow, can an alternate take my place for tomorrow?” The court replied “[p]lease continue to deliberate. Alternating jurors can be used only under emergency situations.” The jury continued with its deliberations. At 7:55 p.m., after deliberating for more than two hours after receiving the challenged response from the court, the jurors sent a note stating they had reached a verdict.

¶ 24 We find no indication in the record that the jury was hastened to reach a verdict or coerced to surrender their views. The court’s response was simple and neutral, and in no way implied the majority’s view was the correct one. The language used by the court did not interfere with the jury’s deliberations, nor did it impose any pressure to reach an expedited verdict. In addition, we find the court’s statement that “[y]our verdict must be unanimous” was not coercive. Instead, the court merely answered the jury’s question by restating the portion of the jury instruction that had already been issued. Accordingly, because the trial court’s response was not coercive, trial counsel’s failure to object to the response did not constitute ineffective assistance.

¶ 25 Moreover, we reject defendant’s argument that the court should have issued a *Prim* instruction because the record shows the instruction was not warranted in this case. The purpose of the *Prim* instruction is to provide guidance to a jury that indicates it is unable to reach a unanimous verdict, *i.e.*, it is deadlocked. *People v. Chapman*, 194 Ill. 2d 186, 222 (2000). “The *Prim* instruction informs the jury of the requirement that the verdict be unanimous; that the jury has a duty to deliberate; that jurors must impartially consider the evidence; and that jurors should

not hesitate to reexamine their views and change their opinions if they believe them to be erroneous, provided the change is not solely because of the opinion of fellow jurors or for the mere purpose of returning a verdict.” *Id.* (citing *Prim*, 53 Ill. 2d at 75-76). It is within the trial court’s discretion to decide whether a *Prim* instruction should be given, and if so, when it should be issued. *Id.* The mere failure to issue a *Prim* instruction is not reversible error. *Boyd*, 366 Ill. App. 3d at 99.

¶ 26 Here, the jury’s note did not indicate it was deadlocked. Instead, the note merely asked what would happen *if* two jurors disagreed with the majority. The jury did not send any further notes indicating disagreement or that it had reached an impasse. Because the jury never indicated it was deadlocked, there was no reason for the court to issue a *Prim* instruction, or for defense counsel to request the instruction. Consequently, counsel’s failure to object to the court’s response and request a *Prim* instruction did not constitute ineffective assistance. It therefore follows that because the court’s response to the jury was proper, counsel’s failure to raise the issue on direct appeal was not ineffective assistance. *Barrow*, 195 Ill. 2d at 523.

¶ 27 CONCLUSION

¶ 28 Accordingly, defendant’s allegation of ineffective assistance of counsel was without merit, and the circuit court’s judgment granting the State’s motion to dismiss defendant’s post-conviction petition was proper.

¶ 29 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.