

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
COUNTY OF DU PAGE

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
VS)	No.
)	
)	
DEFENDANT.)	

ORDER

This matter is before the Court for the Defendant's Post-Conviction Petition.

The Court hereby finds:

1. On the Defendant filed his Post-Conviction Petition.
2. A Post-Conviction Petition is not a means to relitigate guilt or innocence. People v. Vail, 46 Ill.2d 589 (1970).
3. The Petition must have affidavits or supporting documents attached or state why same are not attached. People v. Collins, 202 Ill.2d 59 (1st Dist. 2002).
4. At the First Stage, the trial court examines the petition without input from the State, only to determine if it alleges a constitutional deprivation, unrebutted by the record, rendering the petition neither frivolous or patently without merit. People v. Phyfiher, 361 Ill.App.3d 881 (1st Dist. 2005).
5. Broad conclusory allegations are never enough even under the low threshold of the first stage. People v. Roman, 2016 IL App (1st) 141740, 67 N.E.3d 987, (Dec. 16, 2016), appeal denied, No. 121799, 2017 WL 1192381 (Ill. Mar. 29, 2017)
6. The circuit court may not consider timeliness when determining whether to dismiss an initial postconviction petition during first stage proceedings under the Post-Conviction Hearing Act. People v. Bocclair, 202 Ill.2d 89 (2002),
7. To avoid summary dismissal, defendant need only present the gist of a constitutional claim. People v. Edwards, 197 Ill.2d 239 (2001).

8. A frivolous pleading is one which lacks an arguable basis either in law or in fact; one which is based on an indisputably meritless legal theory or fanciful factual allegation. People v. Hodges, 234 Ill2d 1, 912 N.E.2d 1204 (2009).
8. Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to Section 725 ILCS 5/122-2.1.
9. Pursuant to Section 725 ILCS 5/122-2.1, if the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision. Such order of dismissal is a final judgment and shall be served upon the petitioner by certified mail within 10 days of its entry.
10. To establish a claim of ineffective assistance of counsel, the defendant must show both:
 - (A) Counsel's representation fell below an objective standard of reasonableness, and;
 - (B) That counsel's performance gives rise to a reasonable probability that if counsel had performed adequately, the result would have been different.

11. _____

12. _____

The Circuit Clerk is directed to send copies of this Order to the Defendant by certified mail within 10 days of its entry.

Date:

 Judge Robert A. Miller