

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).

2026 IL App (4th) 251381-U

NO. 4-25-1381

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 3, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
PAUL BARTH,	)	No. 22CF256
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer Hartmann Bauknecht,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Grischow and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's summary dismissal of defendant's postconviction petition where defendant failed to allege the gist of a constitutional claim.

¶ 2 Defendant, Paul Barth, was charged with seven counts of child pornography (720 ILCS 5/11-20.1(a)(1)(vii), (a)(2), (a)(6) (West 2018)). He agreed to plead guilty to four counts in exchange for the dismissal of the other three counts. Initially, the State offered defendant a sentence of 35 years in prison, but before the plea agreement was finalized, defendant decided he wanted to enter an open plea. Following a sentencing hearing, the trial court sentenced defendant to 55 years in prison. Defendant filed a postconviction petition alleging that he was denied effective assistance of counsel. The court summarily dismissed the petition. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 28, 2022, defendant was charged by information with seven counts of child pornography (720 ILCS 5/11-20.1(a)(1)(vii), (a)(2), (a)(6) (West 2018)).

¶ 5 On November 15, 2023, defendant and the State advised the trial court that they had reached a plea agreement. Defendant agreed to plead guilty to counts I, II, V, and VI of the information in exchange for the State dismissing the other three counts and the court imposing a prison sentence of 35 years. The parties asked to postpone the sentencing until after the holidays, and the court agreed. A factual basis was presented and accepted, and defendant pleaded guilty to counts I, II, V, and VI. Counts III, IV and VII were dismissed, and the matter was continued to January 17, 2024, for imposition of the agreed sentence.

¶ 6 On January 17, 2024, defendant informed the trial court that he no longer wanted to accept the sentencing agreement of 35 years but wanted to proceed with an open plea. The court advised defendant that he faced a sentence of 20 to 90 years in prison. Defendant said he understood. The court ordered a presentence investigation report (PSI) to be prepared.

¶ 7 On March 20, 2024, a sentencing hearing was held. Defendant had two PSIs prepared: one in 2022 and one in 2024. They revealed the following information. Defendant reported being a “full-time caretaker for his children” since 2013. Defendant had two sons who were on the autism spectrum and lived with him. They were 17 and 25 years of age in 2024. Defendant had two daughters, a 22-year-old with cerebral palsy, who lived with defendant part-time when she was not attending college, and E.H., a 21-year-old who lived on her own and was married with children in 2024. Defendant stated that his oldest daughter required “constant care and supervision.”

¶ 8 Defendant served in the United States Army from 1996 to 1999, when he was medically discharged. He received a disability pension from the United States Department of

Veterans Affairs and also received money from his mother. Defendant reported that he takes medication for anxiety, depression, and high blood pressure. Defendant's criminal history included a Class 4 felony for misuse of a credit card and a Class A misdemeanor for theft in 2010.

¶ 9 According to a section of the PSI called "circumstances of offense," when officers executed a search warrant on defendant's residence in October 2022, they found an external hard drive on a nightstand next to defendant's bed containing "a total of 5,402 files consisting of a variety of underage subjects engaged in a variety of sex acts, at times alone, at times with each other, and sometimes with adults." A detective also found photographs that appeared to be taken from a camera hidden in a bathroom. The detective recognized one of the girls in one photo, M.R., and knew she recently turned 18 years old. He noted "[a] video with a timestamp from 07-04-18 showed her fully nude in the shower." Further examination revealed a video that appeared to be defendant's daughter, E.H., undressing when she was approximately 15 years old. That video "appeared to have been captured by a second hidden camera." A second hard drive from defendant's bedroom was examined, and "officers located 30,604 photos or videos containing child pornography," including M.R. and E.H.

¶ 10 According to the PSI, when confronted with the evidence police found, defendant admitted the devices belonged to him and contained child pornography. He initially denied having any images of his children but later admitted "there were images of his daughter and one of her friends." He said that he hid a camera in his daughter's bedroom and a bathroom in his home. He admitted to using the images of E.H. and M.R. "for sexual purposes."

¶ 11 E.H. provided a victim impact statement. Defendant provided six letters from community members and his oldest daughter, expressing their support for him. The State recommended that defendant receive a 55-year prison sentence, arguing that several aggravating

factors applied. Defense counsel argued for the minimum sentence of 20 years, asserting that several mitigating factors applied in that defendant (1) was remorseful, (2) served his country in the Army, (3) had only one prior felony conviction, (4) was assessed to be a low-to-medium risk to reoffend, (5) pleaded guilty, (6) cooperated with police, and (7) had disabled children who would be harmed by a long prison sentence.

¶ 12 Defendant provided a statement in allocution. The trial court then discussed the aggravating and mitigating factors. The court found in mitigation that defendant cares for his handicapped daughter, served his country in the Army, and provided character letters in his favor. Nevertheless, the court found that “the aggravating factors clearly, strongly outweigh the mitigating factors.” The court sentenced defendant to 20 years in prison each on counts I and V and 7½ years each on counts II and VI, to run consecutively, for a total prison sentence of 55 years. Defendant filed a motion to reconsider his sentence, which the court heard and denied on May 29, 2024.

¶ 13 On May 29, 2024, defendant filed a notice of appeal. In his appeal, defendant argued that (1) the trial court imposed an improper double enhancement in sentencing and (2) his defense counsel did not comply with Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024). *People v. Barth*, 2025 IL App (4th) 240817-U, ¶ 2. On March 21, 2025, this court issued a decision rejecting defendant’s claims and affirming his convictions. *Barth*, 2025 IL App (4th) 240817-U, ¶¶ 2, 69.

¶ 14 On September 29, 2025, defendant filed a postconviction petition, alleging that his appellate counsel was ineffective for failing to argue on appeal that his trial counsel was ineffective for (1) giving him “erroneous advice to withdraw his negotiated plea and enter an open/blind plea for a better deal,” (2) “failing to recognize the erroneous advice to withdraw negotiated plea was

time barred,” and (3) “failing to inform the State and court of the procedural due process violation as a result of his erroneous advice, thereby not honoring the ‘benefit of the bargain.’ ” Attached to the petition were two identical affidavits from defendant, in which he stated that his trial counsel did not communicate with him from November 25, 2023, to January 17, 2024, and from January 17, 2024, to March 20, 2024, “to discuss the mitigating factors (or) discuss strategy to obtain a better deal than the negotiated plea deal of 35 years.” He claimed that his trial counsel was not only “ineffective at a critical stage of the sentence proceedings, trial counsel was absolutely non-existent [sic] -after- advising [him] to withdraw the negotiated plea deal.” Defendant also attached visitation logs from the Livingston County jail to support his contention that counsel did not visit him from January 17, 2024, to March 20, 2024.

¶ 15 On November 18, 2025, the trial court entered an order summarily dismissing defendant’s postconviction petition. In doing so, the court stated, in part:

“Defendant’s post-conviction petition falls far short of stating the gist of a constitutional claim. He misinterprets and misapplies Illinois Supreme Court Rules, conflates and confuses his legal arguments, and blindly assumes the State is still willing to offer 35 years. Simply put, defendant took a gamble and lost. He does not seek to withdraw his plea of guilty, nor does he seek a new sentencing hearing. He just wants the 35 years he turned down because what he got was worse. There is no basis in the law or facts for a ‘do over.’ ”

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)) provides a means by which a defendant may challenge his conviction or sentence for violations of

his federal and state constitutional rights. *People v. Jones*, 211 Ill. 2d 140, 143 (2004). An action for postconviction relief is a collateral proceeding, not an appeal from the earlier judgment. *People v. McNeal*, 194 Ill. 2d 135, 140 (2000). To be entitled to postconviction relief, the defendant must demonstrate a substantial deprivation of his federal or state constitutional rights in the proceedings that produced the conviction or sentence being challenged. *McNeal*, 194 Ill. 2d at 140.

¶ 19 At the first stage of postconviction proceedings, the trial court is required to review the petition within 90 days of its filing to determine if it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2024). “At this stage, the Act does not permit any further pleadings from the defendant or any motions or responsive pleadings from the State.” *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). Rather, the court considers the petition independently, without any input from either side. *Gaultney*, 174 Ill. 2d at 418.

¶ 20 “To survive first-stage dismissal, a *pro se* petitioner need only present the ‘gist’ of a constitutional claim, which is a ‘low threshold’ requiring only a limited amount of detail in the petition.” *Jones*, 211 Ill. 2d at 144 (quoting *Gaultney*, 174 Ill. 2d at 418). However, under section 122-2 of the Act, the petition must “clearly set forth the respects in which [the] petitioner’s constitutional rights were violated.” 725 ILCS 5/122-2 (West 2024).

¶ 21 The petition must be supported by “affidavits, records, or other evidence supporting its allegations” or “shall state why the same are not attached.” 725 ILCS 5/122-2 (West 2024). Such affidavits must contain facts, not merely conclusory allegations. *People v. Hayes*, 279 Ill. App. 3d 575, 580 (1996). We review *de novo* the sufficiency of a postconviction petition. *People v. Robinson*, 2020 IL 123849, ¶ 39.

¶ 22 Claims of ineffective assistance of appellate counsel are governed by the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Golden*, 229 Ill.

2d 277, 283 (2008). Specifically, a petitioner must show that appellate counsel’s performance fell below an objective standard of reasonableness and that this substandard performance caused prejudice. *Golden*, 229 Ill. 2d at 283. To show prejudice, the defendant must establish that there is a reasonable probability that, but for appellate counsel’s errors, the appeal would have been successful. *Golden*, 229 Ill. 2d at 283. To survive summary dismissal of an ineffective assistance of counsel claim, the defendant must show (1) “it is arguable that counsel’s performance fell below an objective standard of reasonableness” and (2) “it is arguable that the defendant was prejudiced.” (Emphases and internal quotation marks omitted.) *People v. Lewis*, 2017 IL App (1st) 150070, ¶ 16.

¶ 23 The *Strickland* standard applies to claims that counsel was ineffective during the guilty-plea process. *People v. Brown*, 2017 IL 121681, ¶ 26. To establish prejudice in the plea-bargain context,

“a defendant must show a reasonable probability (1) that, but for his counsel’s deficient advice, he would have accepted the plea offer, (2) that the plea would have been entered without the prosecution cancelling it, (3) that the trial court would have accepted the bargain, assuming that it had discretion under state law to accept or reject it, and (4) that the end result of the criminal process would have been more favorable by reason of a plea.” (Internal quotation marks omitted.) *People v. Walker*, 2018 IL App (1st) 160509, ¶ 31.

If a defendant does not show that he would have accepted the State’s plea offer but for counsel’s deficient performance, then he or she cannot demonstrate prejudice, and there is no need to address the additional factors. *People v. Hale*, 2013 IL 113140, ¶ 21.

¶ 24 Here, defendant asserted in his postconviction petition that his trial counsel gave

him “erroneous advice” not to accept the State’s plea agreement. However, this is a conclusory allegation without any facts to support it. Defendant failed to assert what trial counsel said, when he said it, and where he said it. Without facts supporting that counsel’s advice was “erroneous,” defendant’s contention is a mere conclusion that cannot support his postconviction petition claim of ineffective assistance. See *Hayes*, 279 Ill. App. 3d at 580; see also *Lewis*, 2017 IL App (1st) 150070, ¶ 16 (“Broad conclusory allegations of ineffective assistance of counsel are not sufficient to avoid a summary dismissal.”).

¶ 25 Defendant further claimed that counsel was ineffective for failing to meet with him before the sentencing hearing and cited visitor logs showing that counsel did not visit him in jail for several months. Again, this is a conclusory claim that counsel was ineffective without factual support, justifying summary dismissal. See *Lewis*, 2017 IL App (1st) 150070, ¶ 16. Defendant never alleged that counsel should have done something differently in connection with the sentencing hearing. He also never asserted what mitigating evidence he had that counsel did not present at the sentencing hearing. The record shows that even though counsel did not visit defendant in jail, he presented mitigating evidence at the sentencing hearing, some of which the trial court accepted as mitigation in sentencing defendant. Thus, defendant failed to allege that his counsel’s failure to meet with him arguably amounted to deficient performance. Because defendant’s allegations fail to state the gist of a claim under the first prong of *Strickland*, the court properly summarily dismissed this claim.

¶ 26 Defendant also argues that his appellate counsel was ineffective for failing to argue on direct appeal that his trial counsel was ineffective. However, as explained above, defendant failed to establish that his trial counsel was ineffective in any concrete respect. Thus, appellate counsel would have no reason to raise this argument on appeal. Additionally, defendant failed to

identify a basis in the original trial record that would have allowed appellate counsel to raise an arguably meritorious ineffective-assistance claim on direct appeal. Without some basis in the record of the original proceedings to raise such a claim, appellate counsel could not be deemed ineffective. Because defendant's allegations in his postconviction petition and supporting documents fail to state the gist of a claim under the first prong of *Strickland*, the trial court properly dismissed this claim.

¶ 27 Not only is defendant's petition devoid of proper facts to allege the gist of a claim of deficient performance of both appellate and trial counsel, defendant failed to adequately allege arguable prejudice under the *Strickland* standard. To establish prejudice in the context of plea negotiations, a defendant has to identify facts supporting that there was a reasonable probability that he would have taken the plea bargain but for counsel's advice. See *Walker*, 2018 IL App (1st) 160509, ¶ 31. Here, defendant never did so, which was fatal to the prejudice component of his ineffective assistance of counsel claim. See *Hale*, 2013 IL 113140, ¶ 21.

¶ 28 Relying on an unpublished case, defendant argues that he was not required to allege that he would have accepted the plea but for erroneous advice from counsel in order to survive summary dismissal of his postconviction petition. See *People v. Estrada*, 2021 IL App (1st) 170657-U, ¶ 31. However, the facts of that case make it distinguishable because the defendant in that case was allegedly offered a 10-year plea deal when he faced 12 to 60 years in prison. In such a circumstance, it could be presumed that the defendant would take the plea deal since he faced a longer prison term without it. See *Estrada*, 2021 IL App (1st) 170657-U, ¶ 31. Here, however, defendant did not necessarily face a longer cumulative prison sentence by rejecting the fully negotiated plea and opting instead for the trial court to determine an appropriate sentence upon pleading guilty to certain counts. While he could have received a sentence that was 55 years longer

than the negotiated plea, he also could have received a sentence that was 15 years shorter than the plea. Presumably, defendant opted to have the court determine the sentence because he saw value in the possibility that he could obtain less prison time than what the State offered. In such a situation, it cannot be presumed that defendant would have taken the plea deal but for counsel's advice. To establish the prejudice prong of his ineffective-assistance claim, a defendant has to show that "he would have accepted the State's plea offer had counsel's performance not been deficient." See *Hale*, 2013 IL 113140, ¶ 21. However, defendant never even made such an allegation in his postconviction petition.

¶ 29 Additionally, defendant was fully admonished by the trial court that if he chose not to accept the negotiated plea deal, he faced a sentence of 20 to 90 years. Defendant said he understood. When a defendant has been advised of the consequences of the plea and has affirmatively acknowledged an understanding of those consequences, "the defendant may not claim error on appeal merely because he or she is dissatisfied with the length of the sentence." *People v. Jones-Snow*, 2025 IL App (4th) 240934-U, ¶ 55. For these reasons, defendant failed to allege arguable prejudice, making his claims of ineffective assistance of appellate and trial counsel frivolous and patently without merit.

¶ 30 In his petition, defendant raised other claims that lack merit. He asserted that his appellate counsel was ineffective for "failing to recognize the erroneous advice to withdraw negotiated plea was time barred," citing Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) and Illinois Supreme Court Rule 605(c) (eff. Dec. 7, 2023)). However, neither of those rules apply. Rule 604(d) addresses appeals by defendants from a judgment entered on a plea of guilty. Defendant contends that pursuant to this rule, he had only 30 days to withdraw his guilty plea, but he did so after more than 60 days, making his withdrawal untimely. However, this rule does not

apply because, as defendant admits in his appellate brief, he did not withdraw his guilty plea. Instead, he chose not to accept the tentative negotiated guilty plea agreement with the State that had not yet been finalized. Thus, defendant's citation to and reliance on Rule 604(d) is frivolous and patently without merit.

¶ 31 Defendant fares no better with Rule 605(c), which requires the trial court to advise the defendant about certain rights "[i]n all cases in which a judgment is entered upon a negotiated plea of guilty." Ill. S. Ct. R. 605(c) (eff. Dec. 7, 2023). This rule does not apply because defendant did not enter into a "negotiated guilty plea." While that was the plan when the parties agreed to the 35-year sentence, defendant decided he did not want to accept the negotiated plea, so an open plea was entered instead. Thus, by its very terms, Rule 605(c) does not apply and can provide defendant no relief. Thus, defendant's contention that these rules somehow apply is frivolous and patently without merit.

¶ 32 Finally, defendant claims that his appellate counsel was ineffective for "failing to inform the State and court of the procedural due process violation as a result of his erroneous advice, thereby not honoring the 'benefit of the bargain.'" It is true that "[a] defendant's due-process rights may be violated where the defendant did not receive the 'benefit of the bargain' of his plea agreement with the State." *People v. Holt*, 372 Ill. App. 3d 650, 652 (2007) (quoting *People v. Whitfield*, 217 Ill. 2d 177, 186 (2005)). Here, however, defendant's contention that his due process rights were violated because he did not receive "the 'benefit of the bargain' " is contradicted by the record. The record shows that the State was willing to go through with the negotiated plea deal, but defendant decided not to do so. Therefore, this claim is frivolous and patently without merit.

¶ 33 As the trial court stated in this case in summarily dismissing defendant's

postconviction petition,

“defendant took a gamble and lost. He does not seek to withdraw his guilty plea, nor does he seek a new sentencing hearing. He just wants the 35 years he turned down because what he got was worse. There is no basis in the law or facts for a ‘do over.’ ”

We agree. Defendant failed to state the gist of a constitutional violation, so the court properly summarily dismissed his postconviction petition.

¶ 34

III. CONCLUSION

¶ 35

For the reasons stated, we affirm the trial court’s judgment.

¶ 36

Affirmed.