No. 125981

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. ANTHONY HATTER, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-17-0389 There on Appeal from the Circuit Court of Cook County, No. 13 CR 18258 The Honorable James Michael Obbish, Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE ACTION

Petitioner Anthony Hatter pled guilty to two counts of criminal sexual assault and was sentenced to an aggregate prison term of eight years. He appeals from the appellate court's judgment affirming the summary dismissal of his postconviction petition. A question is raised on the pleadings: whether petitioner's postconviction petition failed to allege the gist of a constitutional claim of ineffective assistance of counsel.

ISSUE PRESENTED

Whether the circuit court properly dismissed the postconviction petition at the first stage of review because petitioner failed to allege or substantiate his claim that he would have declined to plead guilty and instead would have proceeded to trial had counsel advised him differently.

STANDARD OF REVIEW

This Court reviews a circuit court's summary dismissal of a postconviction petition de novo. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). On September 30, 2020, this Court allowed petitioner's petition for leave to appeal. *People v. Hatter*, 154 N.E. 3d 817 (Table) (Ill. 2020).

STATEMENT OF FACTS

I. Guilty Plea and Sentencing

In September 2013, the People charged petitioner with nine counts of criminal sexual assault that resulted from three acts of sexual penetration he inflicted on F.T., the minor daughter of defendant's then-girlfriend. C13-22.[1] Specifically, the People charged that petitioner made contact between his penis and F.T.'s vagina (Counts 1, 2, and 7); made contact between his mouth and F.T.'s vagina (Counts 3, 4, and 8); and inserted his finger into F.T.'s vagina (Counts 5, 6, and 9). C14-22.

Each act of penetration was charged in three ways: (1) petitioner committed the act of penetration by use of force or the threat of force (Counts 1, 3, and 5); (2) petitioner committed the act knowing F.T. was unable to give consent (Counts 2, 4, and 6); and (3) petitioner committed the act while F.T. was under the age of 18 and petitioner was a "family member," that is, the live-in boyfriend of F.T.'s mother (Counts 7, 8, and 9). *Id.*; *see* 720 ILCS 5/11-1.20(a)(1), (2), (3).

In January 2014, pursuant to a negotiated plea, petitioner pleaded guilty to two counts of criminal sexual assault in exchange for two consecutive four-year sentences of imprisonment. R3; C20, 22. Under the agreement, the People dismissed the remaining six charges. R3, 11. Before

[1] The common law record is cited as "C__," the report of proceedings as "R__," the supplemental common law record as "Sup. C__," and petitioner's opening brief and appendix as "Pet. Br. __," and "A__," respectively.

sentencing, the court informed petitioner that he was pleading guilty to Counts 7 and 9, both setting forth that petitioner was F.T.'s "family member," and that each charge carried a possible sentence of 4 to 15 years of imprisonment plus a two-year term of mandatory supervised release (MSR). R4-5.[2] The court also informed petitioner that, if certain aggravating factors were shown, the sentence for each count could be extended to 30 years. R5.

In response to the court's admonitions, petitioner stated that he understood he was giving up the right to a jury or bench trial, to confront and cross-examine witnesses, to present evidence in his defense, to remain silent, and to hold the People to their burden of proof. R5-7. Petitioner confirmed that he was pleading guilty of his own free will, and that nobody threatened him or promised him anything other than as set forth in the agreement. R8.

The People presented the factual basis for the charges. If the case went to trial, F.T. would testify that on August 21, 2013, when she was thirteen years old, she was home with her two-year-old relative and petitioner, the live-in boyfriend of her mother, who also resided at that address. R8-9. That afternoon, F.T. took a nap with the two-year-old in a bedroom but awoke to someone touching her clothing. R9. She jumped out of bed and saw petitioner standing in the bedroom, claiming he had been looking for the television remote. *Id.* Petitioner asked if F.T.'s head hurt,

[2] This was incorrect, as the statute required an MSR term of three years to life. *See* 730 ILCS 5/5-8-1(d)(4).

and when she replied yes, petitioner gave her two blue pills which she thought may have been Advil. *Id.*

Eventually, F.T. laid down again and pretended to sleep. *Id.* Shortly thereafter, she felt petitioner pulling down her underwear and leggings. *Id.* Petitioner placed his head between her buttocks and began to lick, and then inserted his fingers inside her vagina. *Id.* F.T. would testify that it hurt, that she was extremely afraid, and that she continued to pretend to sleep. *Id.* Petitioner inserted his penis into F.T.'s vagina, and she would testify that this similarly hurt. *Id.* He eventually removed his penis, and F.T. felt wetness in that area. R10. Petitioner continued to lie with F.T., and, after a short period of time, he pulled up her underwear and leggings and left the bedroom. *Id.* Eventually, F.T.'s brother returned home, and F.T. cried out for him and then called 911. *Id.* Police arrived and took petitioner into custody. *Id.*

Petitioner agreed with the factual basis set forth by the prosecutor, including that he was F.T.'s "family member" at the time of the offense. R10-11. The court then found that petitioner understood the nature of the charges against him, the potential penalties, and his constitutional rights, as well as that his guilty plea was made freely and voluntarily. R11. The court found that a factual basis existed to support that plea, and in exchange, the People dismissed the remaining charges. *Id.*

The court sentenced petitioner to the agreed sentence of eight years. Petitioner neither moved to withdraw his guilty plea within 30 days nor pursued a direct appeal. *See People v. Hatter*, 2020 IL App (1st) 170389-U, ¶ 7.

In late 2015, petitioner discovered that the court had misinformed him of the required MSR term, which was "three years to life." R31. After plea counsel notified the court, it held a hearing with petitioner present. *See* R38-43. The court informed petitioner of the MSR term required by statute and offered that petitioner could "start all over again from the very beginning and your plea of guilty to these two charges would be vacated and then you would be able to go to trial, negotiate, or whatever." R41. Petitioner accepted the previous plea agreement with the amended MSR term, R42-43, and the court issued a corrected mittimus, C61.

II. Postconviction Petition

In September 2016, petitioner filed a pro se postconviction petition alleging that he received ineffective assistance of counsel during the original plea proceeding. In a single handwritten paragraph, petitioner argued that

> [d]ue process [was] violate[d] through the ineffective Assistance of counsel. I am convicted of crime [sic] sex assault on a family member. I did not assault a family member. My attorney lied to me and force[d] me/coherced [sic] me into pleading guilty. This is not what I was [a]ccused of doing. There was not any family member invol[v]ed at all. My lawyer stated I have to take 3 yrs. [t]o life, but the judge order 2 yrs. M.S.R.

Sup. C4. Petitioner noted that under 720 ILCS 5/11-0.1, a "family member" was defined to include, "if the victim is a child under 18 years of age, an accused who has resided in the household with the child continuously for at least 6" months. *Id.* According to petitioner, he "was there [unclear writing] 2 mos." *Id.* Petitioner attached a notarized affidavit to the petition verifying that its allegations were true and correct to the best of his knowledge. Sup. C9. He attached nothing else to support his claims.

In November 2016, the trial court dismissed the petition as frivolous and patently without merit. C80-88. The court liberally construed the petition to raise three claims: (1) petitioner's guilty plea was involuntary; (2) petitioner was actually innocent because he was not F.T.'s "family member"; and (3) plea counsel was ineffective for failing to advise petitioner of the proper MSR term. C80. The trial court rejected petitioner's ineffective assistance claim, finding that counsel did not perform deficiently and petitioner suffered no prejudice. C85-87.

Petitioner appealed, arguing that the trial court erred in summarily dismissing his petition. *People v. Hatter*, 2020 IL App (1st) 170389-U, ¶ 11. On appeal he refined his ineffective assistance claim and asserted that counsel did not investigate petitioner's plausible defense that he was not F.T.'s "family member" because he had lived at F.T.'s house for only two months. *Id.* Petitioner abandoned his actual innocence and involuntary plea claims. *Id.* In supplemental briefing, petitioner asked the appellate court to

take judicial notice of documentation from the Illinois Department of Corrections (IDOC), *see* Pet. Br. 13, that demonstrated he had been imprisoned for approximately five weeks in March and April of 2013, *see* A27.

The appellate court held that petitioner had failed to show that he was prejudiced by counsel's alleged failure to investigate petitioner's defense. *Hatter*, 2020 IL App (1st) 170389-U, ¶ 20. The court stressed that petitioner failed to state that he would not have "pleaded guilty to the [family member] counts absent counsel's deficient performance." *Id.* ¶ 18. Moreover, petitioner could not show prejudice where there was nothing to suggest that a "decision to reject the plea would have been rational under the circumstances." *Id.* ¶ 19 (citing *People v. Valdez*, 2016 IL 119860, ¶ 29). The court noted that petitioner had been charged with nine counts of criminal sexual assault, agreed to plead guilty to the two "family member" counts in exchange for the People's dismissal of the remaining counts, and that six of the seven dismissed counts "did not rely on petitioner's status as a 'family member.'" *Id.*; *see* C14-22. The court reasoned that petitioner made no "claim he would have succeeded on any of these other counts had he rejected the plea agreement and gone to trial on all counts," nor did he claim "he was innocent of those six counts, that he did not commit sexual penetration of F.T., or that he had a plausible defense to these counts." *Hatter*, 2020 IL App (1st) 170389-U, ¶ 19 (citing *People v. Hall*, 217 Ill. 2d 324, 335 (2005)).

The appellate court affirmed the first-stage dismissal of petitioner's postconviction petition, but remanded for the trial court to consider an alleged error in the court's imposition of certain fines and fees. *Id.* ¶ 24.

ARGUMENT

The Circuit Court Properly Dismissed the Postconviction Petition at the First Stage of Review Because Petitioner Failed to Adequately Allege that He Suffered Prejudice Due to Counsel's Alleged Deficiency.

Pursuant to the Post-Conviction Hearing Act (the Act), a petitioner may argue that plea proceedings resulted in a substantial denial of his constitutional rights. 725 ILCS 5/122-1(a)(1). At the first stage of proceedings, the court conducts an initial review, "consider[ing] solely the petition's substantive value," *People v. Allen*, 2015 IL 113135, ¶ 33, and taking all well-pleaded facts "that are not positively rebutted by the original trial record . . . as true," *People v. Coleman*, 183 Ill.2d 366, 385 (1998). "Section 122-2.1 of the Act directs the circuit court to dismiss the petition if . . . the court determines that the petition is frivolous or is patently without merit," *Coleman*, 183 Ill. 2d at 379 (citing 725 ILCS 5/122-2.1(a)(2)), in that it has no arguable basis in law or fact, *Hodges*, 234 Ill. 2d at 12. "A post-conviction petition is considered frivolous or patently without merit if the petition's allegations, taken as true, fail to present the gist of a meritorious constitutional claim." *People v. Collins*, 202 Ill. 2d 59, 66 (2002).

A petition must be supported by "affidavits, records, or other evidence," 725 ILCS 5/122-2, that "identify with reasonable certainty the sources,

character, and availability of the alleged evidence supporting the petition's allegations," *People v. Delton*, 227 Ill. 2d 247, 254 (2008) (citing *People v. Johnson*, 154 Ill. 2d 227 (1993)), so that the allegations contained in the petition are capable of objective or independent corroboration, *Hodges*, 234 Ill. 2d at 1. Although a postconviction petition "need only present a limited amount of detail," *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996), a petitioner is not excused for failing to "provid[e] any factual detail at all surrounding the alleged constitutional deprivation," *Delton*, 227 Ill. 2d at 255. Accordingly, "the failure to either attach the necessary 'affidavits, records, or other evidence' or explain their absence is 'fatal' to a post-conviction petition and by itself justifies the petition's summary dismissal." *Id.* at 255 (quoting *Collins*, 202 Ill. 2d at 66) (citation omitted).

To show ineffective assistance of counsel, a petitioner must show both that (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's errors, the result of the plea proceeding would have been different. *People v. Tate*, 2012 IL 112214, ¶ 18; *see Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *Hill v. Lockhart*, 474 U.S. 52, 57 (1985). At the first stage of postconviction review, "a petition alleging ineffective assistance may 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 defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17.

The petition at issue here is meritless for two reasons. First, it failed to adequately allege that petitioner was prejudiced because petitioner did not allege that he would have rejected the plea offer and proceed to trial or that doing so would have been rational under the circumstances. Second, the petition failed to substantiate petitioner's ineffective assistance claim as required under section 122-2 of the Act. Accordingly, this Court should affirm the appellate court's judgment.

A. Petitioner failed to allege that plea counsel's performance prejudiced him.

Petitioner's claim fails because he did not present allegations sufficient to show that he was arguably prejudiced by counsel's performance. *See People v. Wilson*, 2014 IL App (1st) 113570, ¶ 46.

To demonstrate prejudice in the context of a guilty plea, petitioner must show there was "a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." *People v. Pugh*, 157 Ill. 2d 1, 15 (1993) (citing *Hill*, 474 U.S. at 59). Thus, to survive first-stage review, petitioner must provide allegations sufficient to establish that he would have rejected the plea offer and "that a decision to reject the plea would have been rational under the circumstances.'" *People v. Valdez*, 2016 IL 119860, ¶ 29 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010)). "[T]he question of whether counsel's deficient representation caused the [petitioner] to plead guilty depends in large part on predicting whether the [petitioner] likely would have been

successful at trial." *Hall*, 217 Ill. 2d at 336. Thus, including "[a] bare allegation that [petitioner] would have pleaded not guilty and insisted on going to trial if counsel had not been deficient is not enough to establish prejudice." *Id.* at 335-36 (citing *People v. Rissley*, 2016 Ill. 2d 403, 459-60 (2003)). Instead, petitioner's claim "must be accompanied by either a claim of innocence or the articulation of a plausible defense that could have been raised at trial." *Id.*

As the appellate court found, petitioner did not present allegations sufficient to show that, but for counsel's errors, he would have rejected the plea offer and proceeded to trial. *Hatter*, 2020 IL App (1st) 170389-U, ¶ 18.

This failure to state, in either his petition or an affidavit, that he would have rejected the plea and proceeded to a trial is fatal to petitioner's argument that he suffered prejudice. To present an arguable claim of prejudice at the first stage of postconviction review, a petitioner must provide allegations sufficient to show that he would have proceeded to trial but for counsel's bad advice. *People v. McCoy*, 2014 IL App (2d) 100424-B, ¶ 18 (upholding first-stage dismissal on prejudice grounds in part because petitioner failed to state he would have pleaded not guilty and insisted on going to trial). Accordingly, on this basis alone, petitioner fails to show he was prejudiced by plea counsel's performance.

Nor does petitioner show that a "decision to reject the plea agreement would have been rational under the circumstances." *Hatter*, 2020 IL App

(1st) 170389-U, ¶ 18. Petitioner's only argument for postconviction relief is that he was not F.T.'s "family member" in August 2013. But petitioner was charged with nine counts of criminal sexual assault — all Class 1 felonies — alleging three sexual acts under three different theories. C14-22; *see* 720 ILCS 5/11-1.20(b). At the plea hearing, petitioner agreed that if the matter proceeded to trial, the People would present evidence that his penis, mouth, and hand made contact with F.T.'s vagina at a time when he knew she was a minor and appeared to be asleep. At a minimum, this factual basis demonstrated that petitioner committed these acts knowing that F.T. was unable to give consent. R9-11; *see People v. Lloyd*, 2013 IL 113510, ¶ 40 (noting that the People could successfully meet their burden under 720 ILCS 5/11-1.20(a)(2) by showing that the accused knew his victim was a minor and believed the victim to be asleep during the sexual assault). Neither his petition nor his brief before this Court rebut the underlying conduct supporting these charges. Thus, even assuming petitioner could have successfully defended himself on the three "family member" counts, he offers no plausible defense to the other charges that do not rest on that statutory status. To the contrary, the factual basis clearly demonstrates his guilt on an alternative theory: lack of consent.

Petitioner would not have received a more favorable sentence on the non-"family member" counts. Had petitioner elected to forgo his favorable plea agreement and proceed to trial, his sentencing exposure on the non-

"family member" counts would have been a minimum of 4 years and a maximum of 15 years per act. *See* 730 ILCS 5/5-4.5-30(a) (Class 1 felonies carry sentencing range of 4 to 15 years). A defendant must serve mandatory consecutive sentences for each conviction of criminal sexual assault, *see* 730 ILCS 5/5-8-4(d)(2); however, where the convictions are based on a continuous course of conduct, the defendant's maximum aggregate sentence is based on the maximum sentences for the two most serious felonies, 730 ILCS 5/5-8-4(f)(2). At best, then, had petitioner proceeded to trial, defended himself against the "family member" counts, and been convicted of those sexual assaults on an alternative theory, his minimum sentence would have been 12 years (three consecutive 4-year sentences). At worst, petitioner could have faced two consecutive 15-year terms of imprisonment. *See* 730 ILCS 5/5-8-4(f)(2). Since he was sentenced to just 8 years under the plea deal, it would have been irrational for petitioner to expose himself to an additional 4 to 22 years of imprisonment by proceeding to trial; accordingly, he cannot show prejudice. *See Valdez*, 2016 IL 119860, ¶ 29.

As further evidence that petitioner rationally believed the plea deal was the best outcome he could secure, he renewed the deal after learning the court had mistakenly sentenced him to a lower MSR term than required. The court gave petitioner the opportunity to "start all over again from the very beginning and your plea of guilty to these two charges would be vacated and then you would be able to go to trial, negotiate, or whatever." R41. Rather

than accept this offer to negotiate a new plea deal, petitioner once again accepted the same agreement, apart from an increased MSR term of three-years-to-life. These actions support the inference that petitioner believed the plea deal offered a better outcome than the risk of going to trial.

Relying on *People v. Hall*, 217 Ill. 2d 324 (2005), petitioner argues that this Court should limit its prejudice analysis to those counts included in the guilty plea and ignore the remaining counts for which petitioner has failed to articulate any plausible defense. Pet. Br. 14-16, 21-23. But petitioner's reliance on *Hall* is misplaced. Hall had hijacked a car while a child was in the backseat. 217 Ill. 2d at 329. He pleaded guilty to aggravated kidnapping in exchange for dismissal of eight additional counts, but did not admit guilt. *Id.* at 328. Hall later filed a postconviction petition alleging that he did not know the child was in the backseat and conveyed this information to his counsel, but counsel incorrectly advised him that his lack of knowledge was not a valid defense to aggravated kidnapping. *Id.* at 328. Hall claimed that, had he known this was a valid defense, he would not have pleaded guilty. *See id.* at 329-30, 336. This Court found that Hall had made a substantial showing that counsel's deficient advice prejudiced him. *Id.* at 336, 341. It found that Hall had established a defense to the aggravated kidnapping charge that was both plausible and complete, because knowledge was an element of the offense. *Id.* at 336.

Here, by contrast, petitioner offers a defense to only one of the three theories presented in support of the charged acts of sexual assault. *See* Sup. C4. He offers no defense to the underlying acts of penetration. Moreover, he has not disputed the People's factual basis — that he committed three acts of sexual assault against F.T. knowing that she was both a minor and appeared to be asleep (and therefore under circumstances where she was unable to give consent) — which would have been presented had the case proceeded to trial.

In sum, this Court's decision in *Hall* provides no support for petitioner's argument that he need only establish a plausible defense to the "family member" charges. Accordingly, petitioner has not shown that counsel's representation prejudiced him, for, even if he could have prevailed on the "family member" theory, petitioner still would have likely been found guilty of three charges of criminal sexual assault had he proceeded to trial.

B. Petitioner failed to properly support his petition as required by section 122-2 of the Act.

Petitioner's petition also fails because he did not provide the necessary evidence to corroborate his claim. *See* 725 ILCS 5/122-2; *Delton*, 227 Ill. 2d at 258 (affirming first-stage dismissal for failure to comply with section 122-2).[3] In the trial court, petitioner neither provided an affidavit stating that he

[3] Although the People did not raise this argument below, "[a]n appellee may raise any argument or basis supported by the record to show the correctness of the judgment," even if it had not been previously raised. *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010) (citing *People v. P.H.*, 145 Ill. 2d 209, 220 (1991)).

would have rejected the plea offer and proceeded to trial, nor any evidence to corroborate that he had a plausible defense.

Instead, petitioner supplemented the record on appeal with a one-page IDOC record indicating that he was incarcerated for approximately five weeks in March and April 2013. He argues that the trial court erred by failing to consider this evidence, Pet. Br. 8, 16-17, which he failed to place before it. Although a court may take judicial notice of matters that are capable of instant and unquestionable demonstration, *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003); *see Rodriguez v. Ill. Prisoner Rev. Bd.*, 376 Ill. App. 3d 429, 430 (5th Dist. 2007) (noting that a court may take judicial notice of IDOC information posted on the department's website), such notice does not immunize petitioner's failure to comply with section 122-2. That is especially so where, as here, petitioner failed to alert the trial court to the source of information to be judicially noticed.

This Court's decision in *Delton* is instructive. Delton argued that trial counsel was ineffective for failing to investigate allegations that arresting officers had harassed him for some time prior to his arrest. *Delton*, 227 Ill. 2d at 252. He alleged that, during pre-trial conversations, he and his wife told counsel about the police harassment. *Id.* at 251-52. This Court nevertheless held that Delton's petition was "devoid of any facts supporting his contentions," *id.* at 253, and did "not contain the affidavits, records, or other evidence that support his allegations . . . nor does the petition explain why

those documents are absent, a[s] required by section 122-2," *id.* at 258. For example, Delton failed to attach an affidavit from his wife, which the Court noted would not have been difficult for him to obtain. *Id.* at 257. Nor did he attach readily available copies of complaints he had filed against the arresting officers. *Id.* at 257-58. "Given that such information [wa]s within Delton's personal knowledge," the Court held that "it is neither unreasonable nor unjust to expect his petition to contain supporting documentation." *Id.* at 258.

Similarly, here, the petition only set forth a threadbare assertion that petitioner had lived at the same residence as F.T. for two months. And petitioner has offered no explanation as to why he could not attach evidence of his residency, or even an affidavit setting forth facts that were completely "within [petitioner]'s knowledge," *id.*, to his original petition. With nothing to independently corroborate petitioner's claim, the trial court correctly dismissed the petition, and the appellate court properly affirmed. *Id.* at 258-59; *see Collins*, 202 Ill. 2d at 62.

Unlike the petitions here and in *Delton*, the petition at issue in *Hall*, which raised a similar claim of ineffective assistance of plea counsel, was far more detailed and included evidence to support of the petitioner's claim. *Hall*, 217 Ill. 2d at 329. The petition and affidavit in *Hall* recounted petitioner's conversations with counsel, in which he explicitly stated that counsel had told him that petitioner "did not have a valid defense to

aggravated kidnapping based on his lack of awareness that the child was inside the car," *id.* at 328, and, importantly, averred that petitioner was induced to plead guilty based on counsel's erroneous representations, *id.* at 330. Further, the affidavit corroborated Hall's claim that he had no knowledge of the child's presence. *Id.* at 329. *Hall* thus describes the type of evidence that petitioner could have, but did not, submit to support his claim.

Moreover, as discussed, petitioner's attempt to remedy his failure to corroborate his claim through judicial notice of an IDOC record identified for the first time on appeal should fail. But, even if petitioner had included the IDOC record with his original petition, his claim would still have been meritless. The statute setting forth petitioner's status as "family member" states that an individual can be considered a "family member" to an unrelated minor if that individual has "resided in the household with the child continuously for at least 6 months." 720 ILCS 5/11-0.1. Notably, there is no sunsetting of that status. Petitioner's evidence that he was in prison for approximately five weeks in March and April of 2013 does not establish that he had never lived in the same household as F.T. for a continuous 6-month period before his incarceration. Rather, it establishes only that he did not live continuously with F.T. in the six-month period leading immediately up his August 2013 sexual assault. Thus, the IDOC record is insufficient to support petitioner's claim, and his petition, as supplemented on appeal, still fails to satisfy section 122-2.

And because petitioner failed to substantiate his claim, the appellate court properly affirmed the first-stage dismissal of his petition. *Collins*, 202 Ill. 2d at 66.

CONCLUSION

This Court should affirm the appellate court's judgment.

February 16, 2021

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is nineteen pages.

/s/ Alasdair Whitney
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 16, 2021, the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was electronically filed with the Clerk of the Supreme Court of Illinois and served upon the following by e-mail:

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Additionally, upon the brief's acceptance by the Court's electronic filing system, the undersigned will mail an original and thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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