No. 125981

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

JONATHAN KRIEGER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

ORAL ARGUMENT REQUESTED

E-FILED
11/24/2020 1:30 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Anthony Hatter appeals from a judgment summarily dismissing his *pro se* petition for post-conviction relief.

Hatter raises an issue concerning the sufficiency of the post-conviction pleadings.

ISSUE PRESENTED FOR REVIEW

Did Anthony Hatter's *pro se* petition present an arguable claim of ineffective assistance of counsel for not investigating and presenting a viable defense to the charges, and instead having Hatter plead guilty?

STATUTES INVOLVED

720 ILCS 5/11-1.20 (West 2012)

§ 11-1.20. Criminal Sexual Assault.

(a) A person commits criminal sexual assault if that person commits an act of sexual penetration and:

(1) uses force or threat of force;

(2) knows that the victim is unable to understand the nature of the act or is unable to give knowing consent;

(3) is a family member of the victim, and the victim is under 18 years of age; or

(4) is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age.

* * *

720 ILCS 5/11-0.1 (West 2012)

§ 11-0.1. Definitions. In this Article, unless the context clearly requires otherwise, the following terms are defined as indicated:

* * *

"Family member" means a parent, grandparent, child, aunt, uncle, great-aunt, or great-uncle, whether by whole blood, half-blood, or adoption, and includes a step-grandparent, step-parent, or step-child. "Family member" also means, 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.

* * *

STATEMENT OF FACTS

Anthony Hatter appeals the summary dismissal of his *pro se* post-conviction petition, which argued that plea counsel was ineffective for not investigating and presenting a viable defense to the charges to which Hatter pled guilty. The appellate court affirmed, finding Hatter had failed to make a showing he was prejudiced by counsel's performance.

Guilty plea

Hatter was charged with nine counts of criminal sexual assault, each of which named F.T. as a victim. (C. 14–22.) The counts alleged three acts of knowing sexual penetration of F.T.'s vagina (contact with Hatter's penis, contact with his mouth, and insertion of his finger) under three different theories (force or threat of force, inability of F.T. to consent, and F.T. being a family member under the age of 18). (C. 14–22.)

Hatter entered a negotiated guilty plea to two counts, both alleging Hatter was a family member of F.T, "to wit: [the] live-in boyfriend of [F.T.'s] mother." (R. 3; C. 20, 22.) In exchange for this plea, Hatter would receive consecutive four-year prison terms, and the State would nol-pros the remaining charges. (R. 3, 11.) After the plea deal was announced, the court read Hatter the two counts and asked if he understood them, which he said he did. (R. 4–5.) The court's reading of the counts, true to the language of the indictment, addressed the family-member element solely in terms of Hatter being "the live-in boyfriend of [F.T.'s] mother." (R. 4–5.)

According to the factual basis, Hatter was the boyfriend of F.T's mother and "lived with the victim and the mother at [a given] address."

(R. 8–10.) F.T. was 13 years old on August 21, 2013. (See R. 10.) The State averred that Hatter sexually assaulted F.T., in each of the ways set out in the counts, while she was trying to take a nap. (R. 8–9.) A short time later F.T. called 911 and Hatter was arrested at the home. (R. 10.) Hatter was over 17 years old at the time of the offense. (R. 10.)

Plea counsel stipulated that the facts in the factual basis would be shown by the trial testimony. (R. 10.) When asked if he agreed with the factual basis, Hatter asked, "I don't know what you are saying. Is that what happened? Is that what you are asking me?" (R. 10–11.) The court clarified that it was asking "a slightly different question," whether the prosecutors would present evidence reflecting the factual basis. (R. 11.) Hatter agreed. (R. 11.) The court accepted the guilty plea and imposed the agreed-upon sentence. (R. 13.) An amended mittimus was later issued, correcting the term of mandatory supervised release. (C. 61.)

Post-conviction proceedings

Hatter filed a post-conviction petition, containing one handwritten paragraph of argument which reads, as written:

> Due process violate through ineffective assistance of counsel. I am convicted of crime sex assalt on a family member. I did not assalt a family member. My attorney lied to me and force me/cohesed me into pleading guilty. This is not what I was accused of doing. There was not any family member involved at all. . . . [Quotes definition of "family member" by blood or adoption, 720 ILCS 5/11-0.1.] "Family member" also means, 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 mos. I only was there [word scratched out] [unclear writing] 2 mos.

(SC. 4; App. A-5.) Hatter attached a notarized affidavit verifying the truth and accuracy of the facts presented in his petition. (SC. 9.)

The court summarily dismissed Hatter's petition in a written order. (C. 67–75.) The court found the plea was voluntary, citing the court's admonitions on voluntariness. (C. 69–71.) It also found that a trial would show Hatter was a "family member" under the statute. (C. 72.) The court found the claims to be frivolous and patently without merit, and it dismissed the petition. (C. 75.)

On appeal, Hatter argued that his post-conviction petition set out an arguable claim that counsel was ineffective for failing to investigate and present the defense to the family-member element. In a supplemental brief, Hatter cited a prison record showing he had been in prison for more than a month during the six months preceding the alleged offense The appellate court allowed this brief to be filed *instanter*. Order, No. 1-17-0389 (Feb. 6, 2019) (Delort, P.J.).

The appellate court affirmed the dismissal of Hatter's petition, basely solely on a finding that Hatter had not shown prejudice from counsel's subpar performance. *People v. Hatter*, 2020 IL App (1st) 170389-U, ¶¶ 17–20. The court cited the lack of an averment that counsel's deficient performance led to the guilty plea. Order, ¶ 18. And it held that Hatter's plausible defense to the charges in the guilty plea was insufficient, since it did not provide a defense to the charges that were nol-prossed. The court noted that Hatter "does not claim he would have succeeded on any of these other counts had he rejected the plea agreement and gone to trial on all counts." Order, ¶ 19. The court found Hatter had not shown prejudice from counsel's performance, and thus had not shown arguable prejudice or arguable ineffective assistance of

counsel. Order, ¶ 20.

Hatter filed a petition for rehearing, asking the appellate court to address the prison record and the conflict between its decision and *People v. Hall*, 217 Ill. 2d 324 (2005), in which this Court found a substantial showing of prejudice based solely on a plausible defense to the count to which the defendant pled guilty. The court denied Hatter's petition without modifying its decision.

This Court granted leave to appeal on September 30, 2020.

ARGUMENT

Anthony Hatter's *pro* se post-conviction petition set out an arguable claim that plea counsel was ineffective for not investigating a plausible defense to the charges. The appellate court's decision to the contrary clashes with this Court's precedent and should be reversed.

Though this Court has spoken with a clear voice about the low threshold for *pro se* post-conviction petitions to survive summary dismissal, lower courts have not always listened. Anthony Hatter's case provides an example. Hatter's *pro se* petition presented a viable defense to the charges on which Hatter pled guilty, and argued that counsel was ineffective for not raising this defense. The circuit court nonetheless summarily dismissed the petition. And the appellate court affirmed, adding a novel requirement to the prejudice showing, that Hatter needed to set out a defense to charges that were dropped by the State.

This Court should vacate the summary dismissal of Hatter's petition. The appellate court's supererogatory prejudice requirement is contrary to *People v. Hall*, 217 Ill. 2d 335 (2005). But even if the appellate court were right, its holdings are premature. At the first stage of post-conviction proceedings, a petitioner "is not required to allege facts supporting all elements of a constitutional claim" and need only set out a legal basis that is not "indisputably meritless." *People v. Brown*, 236 Ill. 2d 175, 188 (2010); *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Hatter has satisfied these lesser showings. A full assessment of his claim comes later, after he has been granted his statutory right to appointed counsel. The case should be remanded for second-stage post-conviction proceedings.

A *de novo* standard applies to the arguments in this appeal. "Because the sufficiency of a postconviction petition is a purely legal question, *de novo* review is appropriate." *People v. Robinson*, 2020 IL 123849, ¶ 39. Defining the contours of ineffective-assistance claims similarly presents solely legal issues. See *People v. Clemons*, 2012 IL 107821, ¶ 8 (review of proper standard for constitutional claim raised "purely legal issues" and review was thus *de novo*).

A. Since Hatter's *pro se* petition makes an arguable showing of ineffective assistance of plea counsel, summary dismissal was inappropriate.

Under settled post-conviction law, Hatter's petition presented an arguable claim that counsel at his guilty plea provided ineffective assistance by failing to discover and raise a plausible defense to the charges. The circuit court thus erred in summarily dismissing Hatter's petition.

1. To survive summary dismissal, a post-conviction petition must meet only a low threshold—whether the petition, read liberally, alleges facts that could set out an arguable constitutional claim.

Hatter's claim must be viewed through the lenses of this Court's precedent on summary dismissals, which favors advancing arguable, even if not fully formed, post-conviction claims.

The Post-Conviction Hearing Act allows those convicted of crimes to seek relief for denials of their constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2016). A post-conviction petition can only be summarily dismissed if the circuit court determines the claims are frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2). Otherwise, the case proceeds to the second stage, where counsel can be appointed for indigent petitioners and the State

can file a motion to dismiss. See 725 ILCS 5/122-4; 725 ILCS 5/122-5. If a petition makes a substantial showing of a constitutional violation, an evidentiary hearing resolves any credibility conflicts. See 725 ILCS 5/122-6; *People v. Coleman*, 183 Ill. 2d 366, 396 (1998).

To survive summary dismissal, a post-conviction petition must pass the "low threshold" of having one non-frivolous argument. *People v. Hodges*, 234 Ill. 2d 1, 9–10 (2009). This is a "forgiving" standard. *People v. Allen*, 2015 IL 113135, ¶ 43. To trigger docketing of the petition, a claim must only have an arguable basis in fact and law. *People v. Boykins*, 2017 IL 121365, ¶ 9; *Hodges*, 234 Ill. 2d at 11–12. And the definition of *arguable* is broad. A factual claim is arguable unless it is "fanciful," in the realm of delusion or fantasy. *Hodges*, 234 Ill. 2d at 16–17. A defendant "need only present a limited amount of detail" and "is not required to allege facts supporting all elements of a constitutional claim." *People v. Ligon*, 239 Ill. 2d 94, 104 (2010); *People v. Brown*, 236 Ill. 2d 175, 188 (2010). A petition's legal theory lacks an arguable basis only if it is "indisputably meritless." *Hodges*, 234 Ill. 2d at 16.

The minimal showings required to advance to the second stage reflect the context of first-stage rulings. "[M]ost petitions are drafted at this stage by defendants with little legal knowledge or training." *Hodges*, 234 Ill. 2d at 9; accord *People v. Tate*, 2012 IL 112214, ¶ 9. *Pro se* defendants may not be able to distinguish between which facts are critical to a claim, and which are not. *People v. Edwards*, 197 Ill. 2d 239, 245 (2001). Petitions must thus be given "a liberal construction" and reviewed "with a lenient eye, allowing borderline cases to proceed." *Hodges*, 234 Ill. 2d at 21.

2. Hatter's petition sets out an arguable claim that plea counsel provided deficient performance by failing to investigate and raise a viable defense.

Hatter's post-conviction petition presented an arguable claim of ineffective assistance of counsel, and thus satisfied the low first-stage standard. Initially, Hatter has made a threshold showing on the performance prong of the ineffective-assistance test, that counsel provided objectively unreasonable performance. Here, counsel's arguably deficient performance was failing to discover and raise a viable defense to the charges.

Hatter pled guilty to two counts of criminal sexual assault, each predicated on proof that he committed an act of sexual penetration on F.T., that F.T. was under 18 years old, and that Hatter was "a family member of [F.T.]." See 720 ILCS 5/11-1.20(a)(3) (West 2012); (R. 3–11; C. 20, 22). A "family member" is defined in terms of relationship by blood, adoption, or continuous co-residency. 720 ILCS 5/11-0.1. Relevant here, a defendant is a family member of the victim if the defendant "has resided in the household with the child [victim] continuously for at least 6 months." *Id.* The State sought to prove the family-member element by showing Hatter lived with F.T. and her mother at the time of the crime. (R. 8–10.)

In his *pro se* petition, Hatter argued that counsel failed him by not presenting a defense to the family-member element. (SC. 4.) Hatter argued, "I did not assa[u]lt a family member," and averred, "[t]here was not any family member involved at all." (SC. 4, 9.) He contended "I only was there [word scratched out] [unclear writing] 2 mos." (SC. 4.) And Hatter alleged counsel had lied to him and coerced ("force[d]" or "cohesed") him into pleading

guilty. (SC. 4.)

Hatter's claim of deficient performance had an arguable basis in caselaw, which finds counsel ineffective for failing to find and raise viable defenses.

The Sixth Amendment right to effective assistance of counsel applies before trial and during plea negotiations. *Missouri v. Frye*, 566 U.S. 134, 140 (2012); see U.S. Const. amends. VI, XIV. To establish ineffective assistance of counsel, a defendant must show both deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687–88, 694 (1984); *People v. Hall*, 217 Ill. 2d 324, 335 (2005).

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. This duty "includes the obligation to independently investigate any possible defenses." *People v. Domagala*, 2013 IL 113688, ¶ 38. The duty to investigate "is imposed on counsel and not upon a defendant." *People v. Morgan*, 187 Ill. 2d 500, 544 (1999). When counsel does not discover and raise a viable defense, the defendant has a valid claim that counsel's performance was objectively unreasonable. See *Domagala*, 2013 IL 113688, ¶¶ 37–42 (in murder case, post-conviction petition made a substantial showing of unreasonable performance in not raising a viable claim there was an intervening cause of death).

The same law applies when the failure to discover or present a viable defense precedes a plea deal, rather than a trial. See *Hill v. Lockhart*, 474 U.S. 52, 58–59 (1985). In *People v. Hall*, this Court found the defendant had

set out a substantial showing of deficient performance when counsel misadvised the defendant about the mental state for the charge to which the defendant pled guilty. 217 Ill. 2d 324, 334–35 (2005); see also *People v. Armstrong*, 2016 IL App (2d) 140358, ¶¶ 22–25 (in case where defendant pled guilty to failure to register as a sex offender, counsel unreasonable for not discovering and raising defendant's lack of duty to register); *People v. Sifford*, 247 Ill. App. 3d 562, 563–66 (3d Dist. 1993) (plea counsel ineffective for failing to investigate and raise a meritorious statute-of-limitations defense).

Since Hatter's petition was dismissed at the first stage, he need only present an arguable showing of each prong of the ineffective-assistance test. See *People v. Tate*, 2012 IL 112214, ¶ 19; *People v. Cathey*, 2012 IL 111746, ¶ 23; *People v. Hodges*, 234 Ill. 2d 1, 17 (2009).

Hatter's petition and the record arguably show that counsel provided deficient performance. As noted, proof of the family-member element required showing F.T. was under 18 years old and that Hatter "ha[d] resided in the household with [her] continuously for at least 6 months." See 720 ILCS 5/11-0.1. Hatter's verified petition refuted this element. Hatter denied this element could be proven, and the only period of continuous co-residency mentioned, two months, falls far short of the requisite six months. (See SC. 4.) Given counsel's duty to investigate the charges, it was arguably deficient for counsel not to discover and raise this defense. See *Domagala*, 2013 IL 113688, ¶¶ 37–42*; Hall*, 217 Ill. 2d at 334–35; see also *People v. Sutherland*, 194 Ill. 2d 289, 297–99 (2000) (counsel provided deficient performance for not finding and presenting evidence to attack important

physical evidence used by State to link defendant to crime).

Nothing in the record rebuts Hatter's claim of subpar performance. The factual basis at the guilty plea included F.T.'s date of birth and indicated Hatter "lived at [a given] address" with F.T. and her mother, but it did not include the length of this co-residency. (R. 8–10.) The court's admonitions as to the nature of the charges similarly only referred to Hatter's status as "the live-in boyfriend of [F.T.'s] mother." (R. 4–5.) And no other part of the record touches on this issue. "All well-pleaded facts must be taken as true unless positively rebutted by the trial record." *People v. Brown*, 236 Ill. 2d 175, 189 (2010) (quotation marks omitted). Hatter's post-conviction allegations thus must be taken as true.

Though not strictly necessary for his claim, Hatter also presented evidence in the appellate court that definitively disproved the family-member element. The alleged offense took place on August 21, 2013. (C. 20, 22; R. 8–11.) A Department of Corrections record, however, shows that Hatter was in prison from March 11, 2013, until April 18, 2013. Ill. Dep't of Correc., Offender Custody History, Anthony Hatter (Jan. 16, 2019). This record shows at most a continuous co-residency of just over four months—a time insufficient to show F.T. was a family member of Hatter under the statute. Hatter attached a copy of the record to the supplemental brief and a copy is included in this brief's Appendix. App. A-27. "This court may take judicial notice of Department of Corrections records because they are public documents." *Cordrey v. Prisoner Review Board*, 2014 IL 117155, ¶ 12 n.3; see *People v. Steward*, 406 Ill. App. 3d 82, 93 (1st Dist. 2010) (taking judicial

notice of DOC records on post-conviction appeal). This record confirms what the *pro se* pleadings show, that Hatter's allegations of deficient performance are "capable of objective or independent corroboration." See *People v. Allen*, 2015 IL 113135, ¶ 24.

Hatter's claim of deficient performance was thus well grounded in both law and fact. The claim met the low threshold on the performance prong required for a petition to advance to second-stage proceedings.

3. Hatter's petition sets out an arguable claim that plea counsel's deficient performance was prejudicial.

And counsel's performance arguably prejudiced Hatter. Specifically, counsel's failure to discover and raise a defense to the family-member element arguably led Hatter to plead guilty, an ill-advised decision given the strength of the defense.

When counsel's unreasonable performance precedes a guilty plea, the prejudice showing is "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *People v. Brown*, 2017 IL 121681, ¶ 26, *quoting Hill v. Lockhart*, 474 U.S. 52, 59 (1985). A bare allegation does not suffice; the defendant must bring either a claim of innocence or articulate "a plausible defense that could have been raised at trial." *People v. Hall*, 217 Ill. 2d 324, 335–36 (2005); see *Brown*, 2017 IL 121681, ¶¶ 45–46 (affirming this standard when a claim raises unreasonable performance affecting a defendant's prospects at trial, rather than the consequences of the guilty plea).

For failure-to-investigate claims in the guilty plea context, the two prongs of the ineffective-assistance test thus overlap: a defendant shows

subpar performance by presenting a defense that a reasonable investigation would discover, and prejudice by alleging the same defense. See *Hall*, 217 Ill. 2d at 335–36. The showing of a plausible defense, neglected by counsel, thus establishes a valid ineffective-assistance claim. See *id.*; *People v. Armstrong*, 2016 IL App (2d) 140358, ¶¶ 22–23 (finding prejudice, and thus ineffective assistance of counsel, from failing to raise a viable defense); *People v. Sifford*, 247 Ill. App. 3d 562, 566 (3d Dist. 1993) (same).

As with the performance prong of the ineffective-assistance standard, Hatter need not fully show prejudice to survive summary dismissal. Rather, to advance, a first-stage petition must merely show "it is *arguable* that the defendant was prejudiced." *People v. Tate*, 2012 IL 112214, ¶ 19; accord *People v. Hodges*, 234 Ill. 2d 1, 17 (2009).

And Hatter's presentation of a plausible defense to the charges shows arguable prejudice. Hatter tied counsel's performance to the outcome of his case, alleging counsel had lied to him and coerced ("force[d]" or "cohesed") him into pleading guilty. (SC. 4.) His presentation of a plausible defense strengthens the arguable showing of prejudice. See *Hall*, 217 Ill. 2d at 335–36. As discussed above and never disputed in the appellate court, the lack of a continuous six-month co-residency between Hatter and F.T. would defeat the charges to which Hatter pled guilty. See *supra* pp. 10–13; (SC. 4); 720 ILCS 5/11-1.20(a)(3) (West 2012); 720 ILCS 5/11-0.1. Hatter has thus established arguable prejudice. See *Hall*, 217 Ill. 2d at 335–36; *Armstrong*, 2016 IL App (2d) 140358, ¶¶ 22–23.

Further, the record of the guilty plea reflects that Hatter had some

hesitancy in pleading guilty. *Cf. Hall*, 217 Ill. 2d at 328, 336 (in prejudice analysis, citing statement at plea that defendant was pleading guilty despite not in fact being guilty). When asked if he agreed with the factual basis, Hatter responded, "I don't know what you are saying. Is that what happened? Is that what you are asking me?" (R. 10–11.) Hatter acceded only when the court clarified the question was "a slightly different one," whether the State would present evidence consistent with the factual basis. (R. 11.)

Just as with the performance prong, Hatter has shown an arguable showing on prejudice.

4. Since Hatter's petition set out an arguable claim of ineffective assistance of counsel, the circuit court erred in summarily dismissing his petition.

In sum, Hatter has set out an arguable legal and factual basis for his claim that plea counsel provided ineffective assistance of counsel. Counsel failed to present a valid defense to the family-member element, an omission which was arguably objectively deficient. And Hatter was arguably prejudiced by the failure to raise this claim, as also shown by the plausible family-member defense. This showing is all that is necessary to survive summary dismissal and advance to second-stage proceedings. See *People v. Hodges*, 234 Ill. 2d 1, 17, 22 (2009). The circuit court's summary dismissal of Hatter's *pro se* petition was thus error. The case should be remanded for second-stage proceedings.

B. The appellate court's decision, affirming the summary dismissal of Hatter's petition, veered from established principles for reviewing post-conviction petitions.

Despite Hatter's arguable showing of ineffective assistance of counsel,

the circuit court dismissed his *pro se* petition, a judgment affirmed on appeal. (C. 67–75); *People v. Hatter*, 2020 IL App (1st) 170389-U, ¶¶ 17–20. The appellate court, though, applied a fundamentally flawed approach, one at odds with this Court's precedent that a first-stage post-conviction petitioner need not present full legal claims to advance.

The appellate court affirmed solely by finding Hatter had not shown prejudice. The court initially faulted Hatter for not specifically alleging that his guilty plea was the result of counsel's deficient performance. Order, ¶ 18. The court acknowledged Hatter's allegation that counsel coerced him into pleading guilty. Order, ¶ 19. But it found, "Even if we read [that averment] liberally as an assertion that he would not have pleaded guilty had counsel raised the 'family member' defense, this bare allegation is still insufficient to show prejudice." Order, ¶ 19. That was because Hatter's allegation of a defense did not address the six counts in the indictment that did not have the family-member element. Order, ¶ 19. Without defenses to all charges, Hatter could not show prejudice and thus (the court found) could not show arguable prejudice or arguable ineffective assistance of counsel. Order, ¶¶ 19–20.

The appellate court's mistaken approach is evident in its framing of the issue. Though the court eventually found no arguable prejudice, all of its preceding analysis was framed in terms of Hatter fully proving ineffective assistance of counsel. See Order, ¶ 17 (finding Hatter "has not established" prejudice); Order, ¶ 18 (Hatter "must show there is a reasonable probability" he would go to trial); Order, ¶ 19 ("defendant must convince the court that his decision to reject the plea would have been rational under the

circumstances"); Order, ¶ 20 (finding "the record does not demonstrate" prejudice). Again, a defendant must only make an arguable showing of prejudice at the first stage. *People v. Hodges*, 234 Ill. 2d 1, 17 (2009).

And the appellate court's approach more broadly disregards this Court's guidance on review of first-stage petitions. For starters, the appellate court's finding of insufficient pleading on prejudice was ill-suited to a first-stage determination. The court, as noted, found that Hatter had failed to expressly allege that he would have foregone a plea absent counsel's deficient performance. Order, ¶ 18. But Hatter alleged that his plea was the result of coercion by counsel, an averment that, read liberally, linked counsel's performance to the guilty plea—the supposed missing link in Hatter's averments. (SC. 4.) The appellate court seemed to acknowledge this liberal reading provisionally but, keen to move to its primary holding, gave it no weight. Order, ¶ 19.

Even without this linking averment, though, Hatter's claim was sufficient to survive summary dismissal. At the first stage, a post-conviction petitioner "is not required to set forth a constitutional claim in its entirety." *People v. Brown*, 236 Ill. 2d 175, 188 (2010). That is because "[i]n many cases, the *pro se* defendant will be unaware that certain facts, which in his mind are tangential or secondary, are, in fact, critical parts of a complete and valid constitutional claim." *People v. Edwards*, 197 Ill. 2d 239, 245 (2001).

In line with these principles, this Court has found *pro se* petitions should advance to the second stage even without a complete factual basis. In *People v. Brown*, the defendant claimed counsel was ineffective for not raising

the defendant's fitness to stand trial. 236 Ill. 2d 175, 182–83 (2010). The State argued that the pleadings were insufficient since Brown did not allege that he told his attorney he was taking psychotropic medication or aver that he would have been found unfit if counsel had raised fitness. *Id.* at 188. The Court found the State's argument "inconsistent with the standards applicable to first-stage postconviction proceedings," and remanded for second-stage proceedings. *Id.* at 189, 195–96.

In *People v. Hodges*, the Court similarly embraced a broad view of a first-stage petitions. 234 Ill. 2d 1, 21 (2009). The case involved the summary dismissal of a petition raising counsel's failure to call witnesses who would corroborate a claim of self-defense. *Hodges*, 234 Ill. 2d at 6–8. This Court found no arguable prejudice as to self-defense but that the witnesses' accounts would support a different defense, second degree murder based on unreasonable self-defense. *Id.* at 21. The State argued that Hodges should be held to the theory in the pleadings. *Id.* This Court rejected the State's "strict construction of defendant's petition" and remanded for second-stage proceedings. *Id.* at 21–23.

The appellate court's strict construction of Hatter's *pro se* petition cannot be squared with *Brown* or *Hodges*. Notably, one of the missing allegations in *Brown* was the same as the one the appellate court found missing in Hatter's case: that there was insufficient proof of prejudice from counsel's arguable incompetence. *Brown*, 236 Ill. 2d at 188–89. As in *Brown*, Hatter's pleadings were sufficient to have his petition advanced to the second stage. Hatter's petition, in fact, had greater detail on prejudice than the one

in *Brown*. Hatter laid out a plausible, indeed strong, defense to the charges, one of the objective ways reviewing courts assess claims of prejudice. See *People v. Hall*, 217 Ill. 2d 324, 335–36 (2005).

The same caselaw rebuts the appellate court's new "defense-to-all-counts" requirement for prejudice. As discussed below, this new requirement lacks any legal basis. See *infra* Argument C. But even if this extra showing were solidly grounded in precedent, the lack of averments as to this requirement would not be fatal at this stage.

Requiring Hatter to aver defenses to all the charges would be contrary to this Court's precedent that first-stage petitions need not set out full constitutional claims. See *Brown*, 236 Ill. 2d at 188–89; *Hodges*, 234 Ill. 2d at 21; see also, *e.g.*, *People v. Townsend*, 2020 IL App (1st) 171024, ¶¶ 14, 38–46 (allowing petition to proceed to second stage, though claim of ineffective assistance concerning jury waiver challenged representation of earlier attorney, not attorney who announced waiver decision); *People v. Thomas*, 2014 IL App (2d) 121001, ¶¶ 56–63 (remanding for second-stage proceeding, though petition argued that trial counsel erred in failing to bolster evidence, and counsel argued on appeal judicial error in excluding evidence). Hatter's petition sets out the gist of a claim of ineffective assistance, all that is required to survive summary dismissal. See *Brown*, 236 Ill. 2d at 189.

The appellate court also suggested, in passing, that Hatter's claim was insufficiently corroborated, calling the claim "bare" and "unsupported." Order, ¶ 19. But Hatter's verified petition, taken as true, was sufficient to show he had a plausible defense to the charges. See *Brown*, 236 Ill. 2d at 184

(at first stage, courts take pleadings as true unless positively rebutted by the record). And the appellate court did not say what is missing. It could not expect Hatter to present an affidavit from plea counsel; the "difficulty or impossibility of obtaining [counsel's] affidavit is self-apparent." *Hall*, 217 Ill. 2d at 333–34, *quoting People v. Williams*, 47 Ill. 2d 1, 4 (1970)). The appellate court also overlooked a prison record corroborating Hatter's account (See App. A-27.)

All and all, the appellate court's strict approach to post-conviction review is contrary to this Court's post-conviction precedent. The appellate court judgment should therefore be reversed.

C. The appellate court's novel holdings on prejudice should be rejected as contrary to *People v. Hall*.

The appellate court's holdings were also unmoored from precedent on ineffective assistance of counsel.

The finding that Hatter had not established prejudice hinged on the appellate court's belief that Hatter needed to present a plausible defense to every count, not just to those counts subject to the guilty plea. As discussed, six of the charges did not allege as an element that F.T. was a family member. *People v. Hatter*, 2020 IL App (1st) 170389-U, ¶ 19. Hatter, however, "never claimed 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." Order, ¶ 19. The court thus found that Hatter had not made a showing of prejudice. Order, ¶ 20.

In *People v. Hall*, this Court held that a claim of prejudice from deficient representation "must be accompanied by either a claim of innocence

or the articulation of a plausible defense that could have been raised at trial." 217 Ill. 2d 324, 335–36 (2005), *citing People v. Rissley*, 206 Ill. 2d 403, 459–60 (2003). Either showing would help a reviewing court gauge the ultimate showing, whether "there is a reasonable probability that, absent counsel's errors, the defendant would have pleaded not guilty and insisted on going to trial." *Hall*, 217 Ill. 2d at 335; see *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Hall rebuts the appellate court's requirement of a plausible defense to all charges. "[A] plausible defense that could have been raised at trial" is just that, not multiple defenses, and not a defense to all charges. In *Hall*, in fact, the Court found a substantial showing of prejudice based on a proffered defense that applied solely to aggravated kidnapping, the charge to which the defendant pled guilty. 217 Ill. 2d at 334–41. The Court did not require the plausible defense address counts for other offenses dismissed as part of the plea deal. See *id.* at 327 (State dismissed charges of theft and aggravated unlawful refusal to obey an order to stop). In its analysis, the Court repeatedly referred only to "the charge" (singular) of aggravated kidnapping. *Id.* at 335, 340. The approach in *Hall* is thus incompatible with the one used in the appellate court's decision.

The appellate court's expansive version of prejudice is also inconsistent with the requirement that a defense be merely "plausible." A plausible defense is not a conclusive, or even a compelling, defense. *Cf. People v. Nelson*, 2017 IL 120198, ¶ 37 (when a defendant posits a "plausible alternative defense strategy or tactic" in context of conflict-of-interest case, a defendant "need not show that the defense would necessarily have been

successful if it had been used"). In *Hall*, the Court advanced the petition to an evidentiary hearing despite the State's contention that the proffered defense "strain[ed] belief." *Hall*, 217 Ill. 2d at 336. Hatter's claim, considerably stronger, meets the lower standard of having an arguable basis.

The appellate court also appeared to proceed on the mistaken assumption that Hatter's plea to the two family-member counts showed guilt on the other counts. The State's nol-prossing of the other counts "denote[d] its unwillingness to prosecute" those charges. See *People v. Hughes*, 2012 IL 112817, ¶ 22; accord *People v. Artis*, 232 Ill. 2d 156, 169 (2009). Since the counts were not pursued, much less proven, they cannot stand as a barrier to Hatter's ineffective assistance claim.

Finally, even if there were some merit to the appellate court's novel prejudice requirement, that would still not justify summary dismissal of Hatter's petition. A *pro se* petition lacks a legal basis only if it "based on an indisputably meritless legal theory." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Hatter's argument on prejudice is supported by *Hall* and thus is, minimally, not indisputably meritless.

Under *Hall*, Hatter's petition presents an arguable claim of ineffective assistance of counsel. He should be allowed to develop that claim, with the help of counsel, at second-stage proceedings.

CONCLUSION

Anthony Hatter's *pro se* post-conviction petition alleged a viable defense to an element of the crime, a defense plea counsel failed to investigate and raise. Since Hatter's ineffective-assistance claim had an arguable legal and factual basis, his petition should not have been summarily dismissed. Yet that was the circuit court's judgment, one the appellate court affirmed. The appellate court decision, however, was contrary to this Court's precedent on post-conviction review and ineffective assistance of counsel. Since Hatter's petition set out an arguable constitutional violation, this Court should reverse the judgments of the circuit and appellate courts and remand for second-stage post-conviction proceedings.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

JONATHAN KRIEGER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

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 or words contained in 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, is 24 pages.

/s/Jonathan Krieger
JONATHAN KRIEGER
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Anthony Hatter No. 125981

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Court No: 1-17-0389

Circuit Court No: 2013CR1825801

Trial Judge: OBBISH JAMES M.

v.

ANTHONY HATTER

Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 2

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 2 of 2

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 1-17-0389
Circuit Court No: 2013CR1825801
Trial Judge: OBBISH JAMES M.

v.

ANTHONY HATTER

Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 1

Report of Proceedings ("R")

IN THE CIRCUIT COURT OF Cook COUNTY
PEOPLE OF THE STATE OF ILLINOIS)
)
vs) IND. NO.: 13CR1825801
)

FILED
SEP 21 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

Anthony HATTER

PRO SE POST-CONVICTION PETITION

Now comes Anthony HATTER, Defendant, pro se, and petitions this Honorable Court to grant him relief under the post-conviction act. [725 ILCS 5/122-1. 1992]

In support of this petition, Defendant states:

1. He/She was convicted of the offense(s) of: C.S.A. after a jury trial, bench trial or entered a guilty plea before the Honorable Mauricio Araujo and was sentenced to 8 85% years on Jan 10 2014, ____. 4+4 Consecutive
2. He/She did not appeal his/her conviction or he/she appealed his/her conviction to the Appellate Court of Illinois and that Court affirmed his/her conviction on ____, ____ (APPELLATE NO. ____).
3. He/She did not petition the Supreme Court of Illinois to take his/her case or his/her petition for leave to appeal was denied on ____, ____.(SUPREME COURT NO. ____)
4. This petition was mailed to the clerk of the circuit court within the time frame enumerated under 725 ILCS 5/122-1.
5. Petitioner's constitutional rights were violated because (STATE ALL FACTS KNOWN TO PETITIONER THAT DEMONSTRATE THAT HIS/HER CONSTITUTIONAL RIGHTS WERE VIOLATED):

Due Process Violate through ineffective Assistance of counsel. I am Convicted of Crime set Assault on a family member. I did not Assault a family member. my Attorney lied to me and force me/coherced me into Pleading guilty. This is not what I was Accused of doing. There was not any family member involved at all. My lawyer stated I have to take 3yrs to life, but the judge order 2yrs m.S.R. 720 5/11-0 state "Family member" means a parent, grandparent, child, aunt, uncle, great-aunt or great-uncle, whether by whole blood, half-blood or adoption, and includes a step-grandparent, step parent or stepchild. "Family member" also means, if the victim is a child under 18 years of age, an abused who has resided in the household with the child continuously for at least one year. I only was there one night.

Anthony HATTER, Defendant, pro se, states, under penalty of perjury, that the facts set out in this petition are true and correct to the best of his/her knowledge and belief.

SIGNED: Anthony Hatter

SEP 21 AM 11:10
CLERK CIRCUIT COURT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Respondent	)	
	)	Initial Post-Conviction Petition
v.	)	13 CR18258-01
	)	
ANTHONY HATTER,	)	
	)	Honorable James M. Obbish
Defendant-Petitioner.	)	Judge Presiding

ORDER

Petitioner, Anthony Hatter, seeks post-conviction relief from the judgment of conviction entered against him on January 10, 2014. On that day, petitioner entered a plea of guilty to two counts of criminal sexual assault of family member (720 ILCS 5/11-1.20 (a)(3) (LEXIS 2013)). The trial court sentenced petitioner to four years of imprisonment in the Illinois Department of Corrections ("IDOC") on each count, served consecutively. As grounds for relief, petitioner contends (1) his guilty plea was involuntary; (2) he is actually innocent, and (3) his trial counsel was ineffective.

BACKGROUND AND PROCEDURAL HISTORY

Petitioner's conviction stems from the criminal sexual assault of Faith Thomas ("the victim") on August, 21, 2013. Petitioner was a live-in boyfriend of the victim's mother. On the day petitioner committed the crime, the victim was thirteen years of age.

On January 10, 2014, while present with his trial counsel, petitioner entered a fully negotiated plea of guilty to two counts of criminal sexual assault of family member (720 ILCS 5/11-1.20 (a)(3) (LEXIS 2013)) and the State nol-prossed the remaining seven courts. The court sentenced petitioner to eight years in the IDOC and two years of mandatory supervised release

("MSR"). Petitioner did not file a post-plea motion or otherwise attempt to appeal the judgment entered on his plea conviction.

When the court recognized that the MSR portion of petitioner's sentence was less than mandated by section 5-8-1(d)(4) of the Unified Code (730 ILCS 5/5-8-1(d)(4) (LEXIS 2013)), it gave petitioner the opportunity to withdraw his plea and proceed to trial if he so chooses. On November 18, 2015, while present with his court appointed counsel, petitioner decided not to vacate his prior plea of guilty. *See Report of Proceedings*, November 18, 2015, pgs. 5-6.

ANALYSIS

On September 21, 2016, petitioner filed the instant *pro se* petition which is now is before the court for an initial determination of its legal sufficiency pursuant to Section 2.1 of the Post-Conviction Hearing Act ("the Act"). 725 ILCS 5/122-2.1 (LEXIS 2016). A post-conviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings. *People v. English*, 2013 IL 112890, ¶ 21; *People v. Simms*, 192 Ill. 2d 348, 359 (2000). The Act provides a procedural mechanism through which a petitioner may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. *English*, 2013 IL 112890 at ¶ 21.

A *pro se* post-conviction petition may be summarily dismissed as frivolous or patently without merit during the first stage of post-conviction review, unless the allegations in the petition taken as true and liberally construed present the "gist" of a valid constitutional claim. *People v. Allen*, 2015 IL 113135, ¶ 22; *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A petition is frivolous or patently without merit if the claims asserted have no arguable basis in either law or fact. *People v. Hodges*, 234 Ill. 2d 1, 23 (2009). Claims based upon matters outside of the record may be summarily dismissed if the petitioner fails to attach any evidence,

affidavits, or records that are necessary to support the claims, or explain their absence. *People v. Collins*, 202 Ill. 2d 59, 66 (2002).

In the instant petition petitioner contends (1) his guilty plea was involuntary; (2) he is actually innocent of the offense he was convicted of because the victim was not his family member, and (3) his trial counsel was ineffective.

I. Voluntariness of Petitioner's Guilty Plea

Petitioner first argues his guilty plea was involuntary because his trial counsel coerced him into pleading guilty even though he "was accused of another crime." He fails to attach any evidence, affidavits, or records to support his claim. If a defendant claims that his guilty plea was coerced, then that coercion provides the necessary constitutional deprivation for which post-conviction relief would be appropriate. *People v. Simmons*, 388 Ill. App. 3d 599, 615 (2009). A plea of guilty based on reasonably competent advice, is an intelligent plea not open to attack on the ground that counsel may have misjudged the admissibility of the defendant's confession. *McMann v. Richardson*, 397 U.S. 759, 770-71 (1970). Furthermore, a guilty plea, voluntarily and intelligently entered, may not be vacated because a trial counsel did not advise defendant of every conceivable constitutional plea in abatement he might have to the charge, no matter how peripheral such a plea might be to the normal focus of counsel's inquiry. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Where the record refutes the defendant's declaration that his plea was involuntarily entered, a post-conviction petition alleging such may properly be dismissed by the trial court. *People v. Stein*, 255 Ill. App. 3d 847, 849 (3rd Dist. 1993).

In the case at bar, according to the record, on January 10, 2014, petitioner had solemnly admitted in open court that he is in fact guilty of two counts of criminal sexual assault of a family member (720 ILCS 5/11-1.20 (a)(3) (LEXIS 2013)). *See Report of Proceedings*, January

10, 2014, pg. 10. Contrary to petitioner's claim, the record clearly demonstrates that petitioner knowingly entered a plea of guilty with full knowledge of the nature of the charge, the possible penalties, the right to plead not guilty, and the right to have a trial by a jury or a judge. *See Report of Proceedings*, January 10, 2014, pgs. 4-3. Furthermore, petitioner stipulated to the factual allegations serving as a basis for his plea. *See Id.* pgs. 7-8. A review of the transcript of his guilty plea and sentencing hearing reveals that he entered his plea freely and voluntarily. Specifically, during the hearing, the following colloquy occurred:

> THE COURT: Knowing all this, how do you wish to plead; guilty or not guilty?
> THE DEFENDANT: Guilty.
> THE COURT: You are pleading guilty of your own free will, sir?
> THE DEFENDANT: Yes.
> THE COURT: Anyone threaten you or promise you anything except for the promise of the sentence here to get you to plead guilty?
> THE DEFENDANT: No, sir.
> *Report of Proceedings*, January 10, 2014, p. 7.

The court found a factual basis exist to support petitioner's plea, the plea was freely and voluntarily made, and sentenced him according to the parties' plea agreement. *See Id.* at pgs. 10-12. After entering the plea, the court admonished petitioner that he could move to withdraw his plea within 30 days of entry. *Id.* at p. 12. However, following the entry of his guilty plea on January 10, 2014, petitioner did not challenge its voluntariness, file a motion to withdraw the plea or raise the voluntariness of his guilty plea on direct appeal.

As a result, the voluntariness of petitioner's plea was established during the guilty plea proceedings and petitioner has not presented evidence in contradiction thereof. Based on the foregoing, it is clear to this court that petitioner's guilty plea was knowingly and intelligently

entered. Accordingly, petitioner's self-serving assertions are insufficient to merit post-conviction relief.

II. Actual Innocence

Next, petitioner contends he is actually innocent of the crime of which he was convicted. He asserts he is not guilty of criminal sexual assault of a family member because the victim was not his family member. The Illinois Supreme Court in *People v. Washington*, 171 Ill. 2d 475, 489 (1996), first recognized that "[t]he wrongful conviction of an innocent person violates due process under the Illinois Constitution, and, thus, a freestanding claim of *actual innocence* is cognizable under the Post-Conviction Hearing Act." *People v. Barnslater*, 373 Ill. App. 3d 512, 519 (1st Dist. 2007). There is a distinction, however, between being found "not guilty" and being "actually innocent." As defined in *People v. Savory*, 309 Ill. App. 3d 408, 414-415 (3rd Dist. 1999), "'actual innocence' mean[s] 'total vindication,' or 'exoneration,'" not that evidence at trial was insufficient to convict beyond a reasonable doubt. *Washington*, 171 Ill. 2d at 479; *Barnslater*, 373 Ill. App. 3d at 520.

Where the constitutional basis under which the Act is invoked rests upon a defendant's claim of actual innocence, there must be a substantial showing that his continued incarceration in the face of such evidence would violate his rights under due process. *Barnslater*, 373 Ill. App. 3d at 527. Defendant's post-conviction claim of actual innocence does not deprive him of his due process rights in the face of the fact that the defendant previously confessed to the commission of the crime in his plea. *Id.* Here, as mentioned above, on January 10, 2014, petitioner pleaded guilty to two counts of criminal sexual assault of family member (720 ILCS 5/11-1.20 (a)(3) (LEXIS 2013)). Thus, since petitioner already confessed to the commission of criminal sexual assault, his actual innocence claim cannot suffice to raise a cognizable constitutional deprivation

under the Act. Moreover, even if not barred, petitioner's actual innocence claim is frivolous and it fails.

Section 11-0.1 provides that a "family member" "means a parent, grandparent, child, aunt, uncle, great-aunt, or great-uncle, whether by whole blood, half-blood, or adoption, and includes a step-grandparent, step-parent, or step-child. 720 ILCS 5/11-0.1 (LEXIS 2013) However, a "family member" also means, **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.* [Emphasis added.] Here, on August 21, 2013, petitioner sexually assaulted his live-in girlfriend's thirteen-year-old daughter. Moreover, if the case were to proceed to trial, the State would have proven petitioner resided with the victim and her mother in the same household. *See Report of proceedings*, January 10, 2014, p. 7-8. Therefore, since petitioner is considered a family member under the statue, his frivolous and meritless claim fails on post-conviction review.

III. Ineffective Assistance of Counsel

Lastly, petitioner claims his counsel was ineffective where prior to entering his guilty plea, his counsel advised him he will be required to serve three-years-to-life of MSR, even though the trial court sentenced him to two-year MSR term. All criminal defendants are guaranteed the effective assistance of counsel at trial and on appeal. U.S. Const. amend. VI; Ill. Const. art. I, § 8. An allegation of a violation of the constitutional right to effective assistance of counsel is evaluated under the two-pronged standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted in Illinois by *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984).

To survive the first stage of post-conviction proceedings, a petition claiming ineffective assistance of counsel need only demonstrate (1) that it is arguable counsel's representation fell

below an objective standard of reasonableness, and (2) that it is arguable defendant was prejudiced by counsel's performance. *Hodges*, 234 Ill. 2d at 17. However, if a defendant fails to show he was arguably prejudiced by his counsel's actions, then a trial court can dispose of the ineffective claim on this prong alone. *People v. Wilson*, 2014 IL App (1st) 113570, ¶ 46. Here, this court proceeds directly to the prejudice prong of the *Strickland's* test, as the instant petition does not allege sufficient facts to make out an arguable claim of prejudice.

In the guilty plea context, prejudice exists if there is a reasonable probability that, but for counsel's errors, the defendant would have pleaded not guilty and would have insisted on going to trial. *People v. Hall*, 217 Ill. 2d 324, 335 (2005). However, a bare allegation that the defendant would have pleaded not guilty and insisted on a trial is not enough to show prejudice. *Id.* citing *People v. Rissley*, 206 Ill. 2d 403, 458-59 (2003). Instead, "the defendant'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." *Hall*, 217 Ill. 2d at 335-36 citing *Rissley*, 206 Ill. 2d at 459-60.

Petitioner failed to satisfy either prong of the *Strickland* test and his claim fails on post-conviction review. First, petitioner failed to show his trial counsel's performance fell below an objective standard of reasonableness because his counsel properly advised him that by statute, the MSR term for criminal sexual assault "term of mandatory supervised release shall range from a minimum of 3 years to a maximum of the natural life." 730 ILCS 5/5-8-1(d)(4) (LEXIS 2013).

The Supreme Court has interpreted that statute as requiring the MSR period to be set at the indeterminate term of three-years-to-life and, therefore, a court could not impose a determinate MSR term. *People v. Rinehart*, 2012 IL 111719, ¶ 309. Courts do not have authority to impose a sentence that does not conform to statutory guidelines (*People v. Whitfield*, 228 Ill. 2d 502, 511 (2007)), and a court exceeds its authority when it orders a lesser or greater sentence

than that which the statute mandates (*People v. White*, 2011 IL 109616, ¶ 20). Even where the State and the defendant agree to reduce the statutorily required MSR term, the circuit court lacks the authority to act in accordance with their agreement. *People v. Andrews*, 403 Ill. App. 3d 654, 664 (2010). "A sentence, or portion thereof, that is not authorized by statute is void." *People v. Donelson*, 2013 IL 113603, ¶ 15. When the parties enter into an unauthorized agreement, the proper remedy is "either the 'promise must be fulfilled' or defendant must be given the opportunity to withdraw his plea." *People v. Strom*, 2012 IL App (3rd) 100198 citing *Whitfield*, 217 Ill. 2d at 202

Based on the foregoing, a two-year term of MSR imposed by the court in the present case, was not an available option because section 5-8-1(d)(4) of the Unified Code mandated that petitioner be sentenced to an indeterminate term of three-years-to-life. *Rinehart*, 2012 IL 111719, ¶ 30. The court could not fix the problem by changing the MSR term to three-years-to-life because although this change would conform the sentence to section 5-8-1(d)(4) of the Unified Code, it would fundamentally alter the parties' agreement. Thus, since the MSR portion of petitioner's sentence was less than mandated by section 5-8-1(d)(4) of the Unified Code, it was unauthorized by law and void. However, once the court recognized it misadvised petitioner, it gave him the opportunity to withdraw his plea. *Whitfield*, 217 Ill. 2d at 202. According to the record, on November 18, 2015, while present with his court appointed counsel, petitioner decided not to vacate his prior plea of guilty. *See Report of Proceedings*, November 18, 2015, pgs. 5-6. As a result, petitioner cannot show it is arguable he was prejudiced by counsel's performance.

Therefore, petitioner failed to establish either prong the *Strickland* test. Accordingly, his claim is meritless and it fails on post-conviction review.

CONCLUSION

The court finds that the issues raised and presented by petitioner are frivolous and patently without merit. Accordingly, the petition for post-conviction relief is hereby dismissed. Petitioner's request for leave to proceed in *forma pauperis* and for appointment of counsel is likewise denied.

ENTERED: _____

Honorable James M. Obbish
Circuit Court of Cook County
Criminal Division

DATE: _____

ENTERED
JUDGE JAMES M. OBBISH-1752
NOV 18 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

In the Circuit Court of the First Judicial Circuit
Cook County, Illinois
(Or in the Circuit Court of Cook County).

THE PEOPLE OF THE STATE OF ILLINOIS)
v.)
Anthony HATTER)
Defendant/Appellant

No. 13 CR 1825 & 01

Notice of Appeal

An appeal is taken from the order or judgment described below:

(1) Court to which appeal is taken:
In the Circuit Court of the First Judicial Circuit Cook County Illinois

(2) Name of appellant and address to which notices shall be sent:
Name: Anthony HATTER
Address: 13423 E 1150th Ave Robinson IL 62454 B.C.C.

(3) Name and address of appellant's attorney on appeal:
Name: N/A
Address:
If appellant is indigent and has no attorney, does he want one appointed?
Yes I would like attorney

(4) Date of judgment or order: 11/18/16 ✓

(5) Offense of which convicted: CRim Sex ASLT /family member<18
Count 7-9

(6) Sentence: 7 yrs plus 4 yrs at 85% consecutively

(7) If appeal is not from a conviction, nature of order appealed from:
Post Conviction Petition

Signed Anthony Hatter
(May be signed by appellant, attorney for appellant, or clerk of circuit court)

Revised Feb 2002

16 DEC 22 AM 9:11

FILED
DEC 22 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

2020 IL App (1st) 170389-U

No. 1-17-0389

Order filed March 5, 2020

Fourth Division

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. 13 CR 18258
	)	
ANTHONY HATTER,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's summary dismissal of defendant's postconviction petition is affirmed where defendant failed to present a non-frivolous claim of a constitutional violation to warrant further proceedings under the Post-Conviction Hearing Act. We remand so that defendant may raise alleged errors in the application of *per diem* presentencing custody credit to his fines and fees in the trial court.

¶ 2 Defendant Anthony Hatter appeals from the summary dismissal of his *pro se* petition for post-conviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). On appeal, defendant contends the trial court erroneously dismissed his petition

where he set forth a non-frivolous claim of a constitutional violation, namely that defense counsel was ineffective for not raising a credible defense to the charges to which defendant pled guilty.[1] Defendant also argues certain monetary assessments against him should be offset by *per diem* presentencing credit. We affirm the trial court's judgment and remand to the trial court to allow defendant to raise alleged errors in the trial court's imposition of fines, fees, and costs.[2]

¶ 3 Defendant was charged with nine counts of criminal sexual assault arising out of three acts of sexual penetration defendant inflicted on F.T., his live-in girlfriend's minor daughter, on August 21, 2013. The State charged defendant made contact between his penis and F.T.'s vagina, made contact between his mouth and F.T.'s vagina, and inserted his finger into F.T's vagina, and that he committed each act (1) by use of force or the threat of force; (2) knowing F.T. was unable to give knowing consent; and (3) while F.T. was under 18 years of age and defendant was a "family member," specifically he was the live-in boyfriend of F.T.'s mother (Counts 7, 8, 9). 720 ILCS 5/11-1.2(a)(1), (2), (3) (West 2016).

¶ 4 On January 10, 2014, pursuant to a negotiated plea, defendant agreed to plead guilty to two counts of criminal sexual assault in exchange for a four-year sentence on each count, to be served consecutively. The trial court advised defendant he was pleading guilty to Counts 7 and 9, which charged he committed criminal sexual assault where he knowingly committed an act of sexual penetration (penis to vagina; finger into vagina) upon F.T., a minor, and defendant was her "family member," the live-in boyfriend of F.T.'s mother. The court informed defendant that the charge

---

[1] We note the State's brief contains approximately four pages of argument apparently from another appeal, referencing DNA results and a confession unrelated to the instant case.

[2] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

carried a possible sentence of 4 to 15 years' imprisonment with possible extension up to 30 years' imprisonment if certain aggravating factors were present, and a two-year term of mandatory supervised release (MSR). Defendant told the court he understood the charges and the sentencing range. He understood he was giving up the right to a jury or bench trial, to confront and cross-examine witnesses, present evidence on his own behalf, and to remain silent and rely on the State's inability to prove him guilty. Defendant indicated he was pleading guilty of his own free will, and nobody threatened or promised him anything in order to plead guilty.

¶ 5 The parties stipulated that, if the case proceeded to trial, F.T. would testify that, on August 21, 2013, she was at home with defendant, her mother's live-in boyfriend, whom she would identify in open court. On that day, she laid down to go to sleep and felt someone touching her clothing. She saw defendant in the room; he told her he was looking for the remote control. F.T. lay back down and pretended to go back to sleep. She shortly felt defendant pulling down her underwear and leggings, at which point he "placed his head between her buttocks and began to lick." Defendant subsequently placed his fingers inside her vagina. F.T. would testify "it hurt," and she was "extremely afraid and continued to act as though she were asleep."

¶ 6 F.T. would testify defendant then "put his penis inside of her vagina," which also "hurt" F.T. He removed his penis a short time later and F.T. felt wetness in the area. Defendant pulled up F.T.'s underwear and leggings and walked out of the room. When F.T.'s brother arrived home, she cried out to him and subsequently called the police, who arrived and arrested defendant. The evidence would show that F.T.'s birthday was February 25, 2000, and that the "family member relation" was that defendant was F.T.'s mother's live-in boyfriend, who lived with F.T. at that address and was over the age of 17 at the time of the incident.

¶ 7 Defendant agreed these were the facts the State would present. The court accepted defendant's guilty plea, finding he understood the nature of the charges, penalties, and his legal rights, that he was pleading guilty freely and voluntarily, and that a factual basis existed to support the plea. The State nol-prossed the remaining seven counts. The court sentenced defendant to two consecutive four-year prison terms, two years of MSR, awarded him 143 days of presentence custody credit, and imposed $699 in mandatory fines, fees, and costs. Defendant did not move to withdraw his plea or file a direct appeal.

¶ 8 In late 2015, defendant wrote to his plea counsel to inform her that, while he was told his parole would be two years' MSR, he subsequently learned the actual term was statutorily "three years to life." Plea counsel filed a motion in the circuit court, calling this issue to the attention of the court which scheduled a hearing with defendant present. Recognizing defendant had agreed to plead guilty to a determinate two-year MSR term and not an indeterminate term of three years to life, the court offered defendant the opportunity to "start all over again," where the plea would be vacated and defendant could "go to trial, negotiate or whatever." Defendant chose to accept the previous plea negotiation but with the amended three years to life MSR term. Defendant told the court no one threatened or promised him anything to make his decision, and his defense counsel adequately explained the situation to him so that he could make a rational decision. The court issued a corrected mittimus reflecting the change on November 18, 2015, *nunc pro tunc* to the original sentencing date.

¶ 9 On September 21, 2016, defendant filed a *pro se* post-conviction petition alleging his constitutional rights were violated at the plea proceeding. In a single handwritten paragraph of argument, set forth here in its entirety, he argued:

> "Due process violate [*sic*] through the ineffective Assistance of counsel. I am convicted of crime sex assault on a family member. I did not assault a family member. My attorney lied to me and force [*sic*] 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. 720 5/11-0.1 state "family member" means a parent, grandparent, child, aunt, uncle, great-aunt or great-uncle, whether by whole blood, half-blood or adoption, and includes a step-grandparent, step-parent, or step-child. "Family member" also means, 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 mos. I only was there [word scratched out] [unclear writing] 2 mos."

Defendant attached a notarized affidavit verifying the allegations in his petition were true and correct to the best of his knowledge.

¶ 10 On November 18, 2016, the trial court dismissed defendant's petition in a written order, finding the issues presented to be frivolous and patently without merit. The court interpreted defendant's petition as presenting three claims: his guilty plea was involuntary because trial counsel coerced him into pleading guilty, he was actually innocent of the crimes of which he was convicted as he was not a "family member" as charged, and ineffective assistance of counsel in advising him regarding the MSR term. The trial court found the guilty plea to be voluntary, the actual innocence claim was meritless as defendant pled guilty and the State would have proven defendant resided with F.T. and her mother in the same household at trial, and plea counsel had properly advised defendant regarding the three years to life MSR term. The trial court noted that,

when the court determined it had imposed the incorrect MSR term, it gave defendant an opportunity to withdraw his plea, which defendant elected not to do.

¶ 11 On appeal, defendant argues the trial court erred when it summarily dismissed his post-conviction petition. He contends that, reading the petition liberally, he set forth a non-frivolous claim that plea counsel was ineffective for not raising a credible defense to defendant's charges, namely that he was not a "family member" under the criminal sexual assault statute because the statute requires a six-month continuous residency but he only resided with F.T.'s mother for two continuous months. Defendant argues that, given the viability of the defense, counsel was arguably deficient in not raising it at trial where a reasonable investigation would have discovered the lack of proof that he resided in the household for six months. He claims he was arguably prejudiced by that deficient performance as the strength of the defense demonstrates the likelihood he would have pleaded not guilty and gone to trial.

¶ 12 The Act provides a three-stage method by which imprisoned persons may collaterally challenge their convictions for violations of federal or state constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2016); *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007). The trial court here summarily dismissed defendant's petition at the first stage. At the first-stage of postconviction proceedings, the trial court must independently review the petition, taking the allegations as true, and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A petition is frivolous or patently without merit if it has no arguable basis either in law or in fact and, rather, is based on a meritless legal theory or fanciful factual allegations. *People v. Hodges*, 234 Ill. 2d 1, 11-13, 16 (2009). The petition need only present a limited amount of detail and need not set forth the claim in its entirety.

People v. Edwards, 197 Ill.2d 239, 244 (2001). In determining whether a petition presents a valid claim for relief, "the court may examine the court file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding and any transcripts of such proceeding," as well as any affidavits, records, or other evidence supporting its allegations. 725 ILCS 5/122-2.1(c) (West 2016); 725 ILCS 5/122-2 (West 2016). Our review of the summary dismissal of defendant's petition is *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 13 To state a claim of ineffective assistance of counsel in first stage postconviction proceedings, defendant must demonstrate it is arguable that (1) counsel's performance "fell below an objective standard of reasonableness" and (2) defendant was prejudiced by counsel's deficient performance. *Id.* at 17 (citing *Strickland v. Washington*, 466 U.S. 668, 678-88 (1984)). In the context of a guilty plea, "[a]n attorney's conduct is deficient if the attorney failed to ensure that the defendant's guilty plea was entered voluntarily and intelligently." *People v. Hall*, 217 Ill. 2d 324, 335 (2005). To establish the prejudice prong of the ineffective assistance of counsel claim, the defendant must show there is a reasonable probability that, absent counsel's errors, he would have pleaded not guilty and insisted on going to trial. *Id.*

¶ 14 However, we need not determine whether counsel's performance was deficient before examining the prejudice suffered by defendant as a result of any alleged deficiencies. *People v. Pugh*, 157 Ill. 2d 1, 15 (1993). If the defendant fails to show he was arguably prejudiced by his counsel's performance, then we can dispose of the ineffective assistance claim on prejudice alone. *People v. Wilson*, 2014 IL App (1st) 113570, ¶ 46. We proceed directly to the prejudice prong here.

¶ 15 Defendant pled guilty to two counts of criminal sexual assault alleging as an element of the offense that he was a "family member" of the minor F.T. when he committed the acts of sexual penetration. 720 ILCS 5/11-1.2(a)(3) (West 2012). Relevant here, "family member" is defined as "an accused who has resided in the household with the child continuously for at least 6 months" if the victim is a child under 18 years of age. 720 ILCS 5/11-0.1 (West 2016). He pled guilty to these two charges in exchange for the State's *nolle prosequi* of the other seven criminal sexual assault counts against him.

¶ 16 To show prejudice from ineffective assistance of counsel, defendant must show there is a reasonable probability that, absent counsel's errors, he would have pleaded not guilty and insisted on going to trial. *Hall*, 217 Ill. 2d at 335. "A bare allegation that [he] would have pleaded not guilty and insisted on going to trial if counsel had not been deficient is not enough to establish prejudice." *Id.* Rather, his 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.* Further, defendant must convince the court that a decision to reject the plea would have been rational under the circumstances. *People v. Valdez*, 2016 IL 119860, ¶ 29. The question of whether counsel's alleged deficient performance actions caused defendant to plead guilty depends in large part on predicting whether he likely would have succeeded at trial. *Hall*, 217 Ill. 2d at 336; *Pugh*, 157 Ill. 2d at 15.

¶ 17 We find defendant has not established a reasonable probability that, absent counsel's failure to investigate and present the "not any family member" defense, defendant would have pleaded not guilty and insisted on going to trial.

¶ 18 Defendant must show there is a reasonable probability that, absent counsel's errors, he would have pleaded not guilty to the two "family member" counts and insisted on going to trial

(*Hall*, 217 Ill. 2d at 335), but nowhere in his petition or attached verification affidavit does defendant contend he would not have pleaded guilty to those counts absent counsel's deficient performance. Even though a *pro se* defendant may present a "limited amount of detail," in his postconviction petition, he is not excused "from providing any factual detail whatsoever on the alleged constitutional deprivation." *People v. Brown*, 236 Ill. 2d 175, 184 (2010); 725 ILCS 5/122-2 (West 2016) ("The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.")

¶ 19 Even if we read defendant's assertion that counsel coerced him into pleading guilty liberally as an assertion that he would not have pleaded guilty had counsel raised the "family member" defense, this bare allegation is still insufficient to show prejudice. See *Hall*, 217 Ill. 2d at 335. Taking defendant's unsupported assertion that he only lived with F.T. for two months as true, he has a plausible defense against the two charges to which he pleaded guilty. But in order to show prejudice, defendant must convince the court that his decision to reject the plea would have been rational under the circumstances. *Valdez*, 2016 IL 119860, ¶ 29. Defendant cannot make that showing here, where he was originally charged with nine counts of criminal sexual assault, but as a result of his plea was only sentenced on two counts. In exchange for his pleading guilty to two counts premised on his being F.T.'s "family member," the State nol-prossed the other seven counts. Six of those counts did not rely on defendant's status as a "family member." Instead, they charged defendant with three separate acts of sexual penetration (penis, mouth and finger), each committed by his use or threat of force (720 ILCS 5/11-1.20(a)(1) (West 2012)) and/or knowing F.T. was unable to consent (720 ILCS 5/11-1.20(a)(2) (West 2012)). Defendant does not claim he would have succeeded on any of these other counts had he rejected the plea agreement and gone

to trial on all counts. Indeed, defendant never claimed 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. See *Hall*, 217 Ill. 2d at 336 (whether counsel's alleged deficient performance caused defendant to plead guilty depends in large part on predicting whether he likely would have succeeded at trial).

¶ 20 Accordingly, the record does not demonstrate a reasonable probability that, but for counsel's alleged deficient performance, defendant would have rejected the plea agreement. We find defendant's petition does not demonstrate he was arguably prejudiced by counsel's alleged deficiencies during the plea negotiations and thus does not state an arguable claim of ineffective assistance of counsel.

¶ 21 In his opening brief, defendant contends certain fines and fees the trial court assessed against him should be offset by *per diem* monetary credit. However, in his reply brief, he agrees with the State that, because he failed to raise these claims in the trial court, the issue should be remanded to the trial court under Illinois Supreme Court Rule 472. We agree with the parties.

¶ 22 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the application of *per diem* credit against fines." Ill. S. Ct. R. 472(a)(2) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that "[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). "No appeal may be taken" on the ground of any of the sentencing errors enumerated in the rule unless that alleged error "has first been raised in the

circuit court." Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, as defendant's appeal was pending on March 1, 2019, pursuant to Rule 472, we "remand to the circuit court to allow [defendant] to file a motion pursuant to this rule," raising the alleged errors regarding *per diem* credit. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 23 Accordingly, the fines and fees issues are remanded pursuant to Rule 472(e). The trial court is affirmed in all other respects.

¶ 24 Affirmed; fines and fees issues remanded.

OERRM212

AS OF DATE : 1/16/2019

ILLINOIS DEPARTMENT OF CORRECTIONS
OFFENDER TRACKING SYSTEM

OFFENDER CUSTODY HISTORY

PAGE: 1
RUN DATE: 1/16/2019
RUN TIME: 1:14:40 PM

NAME :ANTHONY HATTER
DATE OF BIRTH :4/3/1980

IDOC # :K89203
CURRENT STATUS :IN CUSTODY
CURRENT LOCATION :ROBINSON:ROBINSON

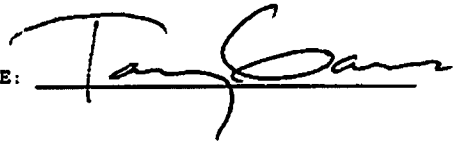
RECORDED PERIODS OF IDOC INCARCERATION

MVMT DATE	MVMT TYPE	PARENT INST
1/13/2014	ADMIT IN	STATEVILLE
4/18/2013	DISCHARGE OUT	STATEVILLE
3/11/2013	ADMIT IN	STATEVILLE
5/4/2012	PAROLE OUT	EAST MOLINE
7/26/2011	ADMIT IN	STATEVILLE
10/2/2010	DISCHARGE OUT	CENTRALIA
10/2/2009	PAROLE OUT	CENTRALIA
12/5/2008	ADMIT IN	STATEVILLE
1/6/2005	DISCHARGE OUT	SHAWNEE
5/24/2004	ADMIT IN	STATEVILLE
1/16/2004	PAROLE OUT	LOGAN
12/8/2003	ADMIT IN	STATEVILLE
6/26/2003	PAROLE OUT	HILL
8/16/2002	ADMIT IN	STATEVILLE
1/2/2002	PAROLE OUT	JOLIET
11/14/2001	ADMIT IN	JOLIET
3/1/2001	ADMIT IN	JOLIET
8/30/2000	DISCHARGE OUT	VANDALIA
8/30/1999	PAROLE OUT	VANDALIA
6/29/1999	ADMIT IN	GRAHAM

MITT/SENTENCE INFORMATION

			CLASS	YR	MO	DAY
13CR1825801	COOK	CRIM SEX ASLT/FAMILY MEMBER<18 - 00157907173	CL: 1	4	0	0
MITT ADMIT: 1/13/2014		SENT DATE: 1/10/2014	DISC/REM DATE:			
13CR1825801	COOK	CRIM SEX ASLT/FAMILY MEMBER<18 - 00157907173	CL: 1	4	0	0
MITT ADMIT: 1/13/2014		SENT DATE: 1/10/2014	DISC/REM DATE:			
11CF847	KANE	FORGERY/MAKE/ALTER DOCUMENT - 10800007071	CL: 3	2	0	0
MITT ADMIT: 7/26/2011		SENT DATE: 7/21/2011	DISC/REM DATE: 4/5/2013			
08CR2063101	COOK	POSS AMT CON SUB EXCEPT(A)/(D) - 51011105285	CL: 4	3	0	0
MITT ADMIT: 12/5/2008		SENT DATE: 11/20/2008	DISC/REM DATE: 10/2/2010			
02CF89	IROQUOIS	RECEIVE/POSS/SELL STOLEN VEH - 57100015031	CL: 2	3	0	0
MITT ADMIT: 9/26/2002		SENT DATE: 9/26/2002	DISC/REM DATE: 1/6/2005			
2001CF46	CHAMPAIGN	RECEIVE/POSS/SELL STOLEN VEH - 57100015031	CL: 2	3	0	0
MITT ADMIT: 3/1/2001		SENT DATE: 2/21/2001	DISC/REM DATE: 4/18/2003			
98C44063501	COOK	POSS CANNABIS/30-500 GRAM/1ST - 50154005087	CL: 4	1	0	0
MITT ADMIT: 6/29/1999		SENT DATE: 6/24/1999	DISC/REM DATE: 8/30/2000			
98CR2151901	COOK	CARRY/POSSESS FIREARM/1ST - 00106555736	CL: 4	1	0	0
MITT ADMIT: 6/29/1999		SENT DATE: 6/24/1999	DISC/REM DATE: 8/30/2000			

-* THE CUSTODY HISTORY REPRESENTED IN THIS DOCUMENT IS TAKEN FROM THE ELECTRONIC RECORDS MAINTAINED IN THE ILLINOS DEPARTMENT OF CORRECTIONS BASED ON MASTER FILE PAPER RECORDS. MASTER FILES FOR EACH OFFENDER ARE CURRENTLY KEPT IN STORAGE AT DIFFERENT ILLINOIS DEPARTMENT OF CORRECTIONS FACILITIES AROUND THE STATE BASED ON THE LOCATION OF THE OFFENDER UPON REACHING DISCHARGE FOR THAT INCARCERATION FROM THE ILLINOIS DEPARTMENT OF CORRECTIONS. THE ELECTRONIC CUSTODY HISTORY DOCUMENT WAS CREATED IN AN EFFORT TO PROVIDE AN OVERVIEW OF THE CUSTODY HISTORY OF AN OFFENDER, TO PROCESS THE REQUEST MORE EFFICIENTLY, TO CUT THE COSTS, AND TO IMPROVE THE HANDLING TIME.

RECORD OFFICER/DESIGNEE: 

UserID: TAMMY GARCIA

App. 1

No. 125981

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Anthony Hatter, 80227 440th St, Hector, MN 55342

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 24, 2020, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Carol M. Chatman
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us