

September 25, 2026

No. 1-24-2558

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	No. 02CR23680
EIAD BARGHOUTI,	)	
	)	Honorable
Defendant-Appellant.	)	Nicholas Kantas,
	)	Judge, presiding.

JUSTICE C.A. WALKER delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice Mikva concurred in the judgment.

ORDER

¶ 1 **Held:** The circuit court did not manifestly err in denying defendant's postconviction petition following a third-stage evidentiary hearing where defendant failed to establish that he was prejudiced by posttrial counsel's failure to investigate and present witnesses in mitigation.

¶ 2 Defendant, Eiad Barghouti, appeals from the circuit court’s denial of his petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq. (West 2024)) following a third-stage evidentiary hearing. Eiad contends that the circuit court manifestly erred in denying his petition because he established that posttrial counsel was ineffective for failing to investigate and present witnesses in mitigation at his sentencing hearing. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Following a joint bench trial with his brother and codefendant, Jamal Barghouti, Eiad Barghouti was convicted of aggravated criminal sexual assault and aggravated kidnapping of a 17-year-old victim. On October 25, 2006, the circuit court sentenced Eiad to 45 years’ imprisonment. This court affirmed Eiad’s conviction and sentence on direct appeal.

¶ 5 At Eiad’s sentencing hearing, posttrial counsel, Samuel Adam Jr., informed the circuit court that he had spoken with Eiad and requested a correction to the presentence investigation report concerning his education and vocational training. Counsel argued that Eiad did not have an extensive criminal history and a maximum sentence was unwarranted. Counsel also noted that Eiad had two children to raise and his wife and father were present in the courtroom. Counsel did not present any witnesses in mitigation. In imposing Eiad’s sentence, the court emphasized the seriousness of the offenses, their impact on the victim, and the need for deterrence. The court also considered Eiad’s criminal history.

¶ 6 Eiad subsequently sought relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq. (West 2010)), alleging, among other claims, that he received ineffective assistance of counsel. The circuit court summarily dismissed Eiad’s petition, and this court reversed and remanded for second-stage proceedings. Following the appointment of counsel and further postconviction proceedings, the court granted the State’s motion to dismiss Eiad’s petition at the

second stage. On appeal, this court determined that Eiad had made a substantial showing of ineffective assistance of counsel based on posttrial counsel's failure to investigate and present witnesses in mitigation at sentencing. Accordingly, this court reversed the second-stage dismissal and remanded for a third-stage evidentiary hearing. *People v. Barghout*, 2019 IL App (1st) 162287-U, ¶¶ 44-46.

¶ 7 On remand, the circuit court conducted a third-stage evidentiary hearing on May 8 and July 31, 2024. Eiad testified that, following his conviction, he retained Adam to represent him in posttrial proceedings and at sentencing. According to Eiad, he met with Adam at the Cook County jail and provided him with a list of potential mitigation witnesses, including family members, friends, and a coworker, along with their contact information. Eiad testified that Adam agreed to contact the witnesses but did not call any of them at sentencing.

¶ 8 Eiad's father also testified that he provided Adam with the names and contact information of potential mitigation witnesses and offered to assist in securing their attendance. According to Eiad's father, neither Adam nor anyone from his office contacted him to discuss his proposed testimony. He further testified that several potential witnesses were present at sentencing and were prepared to testify on Eiad's behalf, but none were called.

¶ 9 Adam testified that he had no independent recollection of the details of his representation of Eiad but had reviewed the relevant transcripts and other documents to refresh his memory. He explained that his general practice was to present mitigation witnesses if he knew of their availability and believed their testimony would assist his client. He stated he did not recall receiving a list of potential mitigation witnesses or speaking with Eiad's father before sentencing. He acknowledged, however, that the original sentencing transcript reflected his awareness that Eiad's wife and father were present in the courtroom. Adam further testified that, had he received

a list of witnesses who could provide favorable testimony, he would have investigated them and, if appropriate, called them to testify.

¶ 10 The parties also stipulated to the proposed testimony of six mitigation witnesses: Eiad's then wife, mother, coworker, two aunts, and a longtime friend. Each witness would have testified that he or she was ready and willing to testify on Eiad's behalf at sentencing but had not been contacted or interviewed by Adam or anyone from his office. The proposed testimony concerned Eiad's character, his relationships with and support of his family, his work history, and his rehabilitative potential. Certain witnesses also would have described Eiad's difficult upbringing, his efforts to avoid negative influences, and his assistance to others in the community.

¶ 11 On October 16, 2024, the circuit court denied Eiad's postconviction petition. The court found Adam's testimony credible concerning his lack of receipt of a list of mitigation witnesses and concluded that counsel's decision not to present such witnesses fell within the realm of trial strategy. The court further determined that Eiad had failed to establish prejudice because the additional mitigation testimony would not have resulted in a different sentence, given the original sentencing court's emphasis on the seriousness of the offenses. Eiad subsequently filed a motion to reconsider, which the circuit court denied on November 18, 2024. This appeal followed.

¶ 12 JURISDICTION

¶ 13 The circuit court denied Eiad's postconviction petition on October 16, 2024. Eiad filed a motion to reconsider, which the circuit court denied on November 18, 2024. Eiad filed his notice of appeal on December 3, 2024. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 606(b) (eff. Apr. 15, 2024) and 651(d) (eff. July 1, 2017).

¶ 14 ANALYSIS

¶ 15 On appeal, Eiad contends the circuit court erred in denying his postconviction petition following a third-stage evidentiary hearing. Specifically, he argues that posttrial counsel rendered ineffective assistance by failing to investigate and present available witnesses in mitigation at his sentencing hearing. Eiad maintains that counsel's failure to investigate the witnesses could not constitute reasonable trial strategy and that their testimony would have demonstrated his rehabilitative potential, creating a reasonable probability that he would have received a shorter sentence. The State responds that Eiad failed to establish deficient performance or prejudice and the circuit court's denial of his petition was not manifestly erroneous.

¶ 16 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West 2024)) provides a mechanism by which a defendant may assert that their conviction resulted from a substantial denial of their constitutional rights. At a third-stage evidentiary hearing, the circuit court acts as the finder of fact, makes credibility determinations, and weighs the evidence presented. *People v. Reed*, 2020 IL 124940, ¶ 51. Accordingly, we review the circuit court's denial of a postconviction petition following a third-stage evidentiary hearing for manifest error. *Id.* Manifest error is error that is clearly evident, plain, and indisputable, such that the opposite conclusion is clearly evident. *People v. Coleman*, 2013 IL 113307, ¶ 98.

¶ 17 Claims of ineffective assistance of counsel are evaluated under the two-pronged test established in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prevail, a defendant must establish that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. *Id.* at 687-88. To establish prejudice, a defendant must demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* Because a defendant must satisfy both prongs of the

Strickland test, a court may resolve an ineffective assistance claim on the prejudice prong without determining whether counsel's performance was deficient. *Id.* at 697.

¶ 18 First, Eiad argues that posttrial counsel's failure to investigate and present mitigation witnesses constituted deficient performance because counsel was aware that potential witnesses were available to testify at sentencing. Eiad acknowledges that the circuit court credited counsel's testimony concerning his failure to receive a witness list but maintains that the absence of such a list did not excuse counsel's obligation to independently investigate available mitigating evidence. Further, Eiad argues that counsel's failure to investigate the witnesses could not constitute reasonable trial strategy because counsel did not know what their testimony would have been. In support, Eiad relies on *People v. Steidl*, 177 Ill. 2d 239 (1997), *People v. Ruiz*, 177 Ill. 2d 368 (1997), and *People v. Wiley*, 205 Ill. 2d 212 (2001), in which our supreme court addressed counsel's failure to investigate and present available mitigating evidence.

¶ 19 Decisions concerning which witnesses to call generally constitute matters of trial strategy, but counsel's failure to investigate potential mitigation witnesses is not necessarily insulated from an ineffective assistance claim merely because counsel ultimately elected not to present their testimony. *Steidl*, 177 Ill. 2d at 258-59; *Ruiz*, 177 Ill. 2d at 385-88. Here, the record reflects that counsel was aware that Eiad's wife and father were present at sentencing and that neither was called to testify. Further, the parties stipulated that six witnesses were available to testify on Eiad's behalf but had not been contacted or interviewed by counsel or anyone from his office. But we need not determine whether counsel's failure to investigate and present these witnesses constituted deficient performance because, even assuming that counsel's performance was deficient, Eiad has failed to establish prejudice under *Strickland*. *Strickland*, 466 U.S. at 697.

¶ 20 When an ineffective assistance claim concerns counsel's failure to present mitigating evidence at sentencing, the prejudice inquiry requires consideration of the totality of the evidence, including the mitigating evidence that could have been presented and the evidence in aggravation. *People v. Morgan*, 2015 IL App (1st) 131938, ¶ 80. The relevant question is whether there is a reasonable probability that the omitted mitigation evidence would have resulted in a shorter sentence. *Strickland*, 466 U.S. at 694-96. In making that determination, we consider the additional mitigating evidence together with the evidence presented at the original sentencing hearing. *Morgan*, 2015 IL App (1st) 131938, ¶ 80.

¶ 21 Here, Eiad identifies six witnesses who were available to testify at sentencing concerning his character, family relationships, work history, and rehabilitative potential. Eiad's then wife, mother, coworker, and two aunts would have described him as a caring father and husband who worked to support his family and was not violent in nature. One of his aunts also would have testified that Eiad volunteered his time assisting elderly members of the community. Eiad's longtime friend would have described his upbringing, employment at a young age, efforts to avoid negative influences, and acts of generosity toward others. The friend also would have testified concerning Eiad's relationship with his children and his belief that Eiad did not commit the offenses of which he was convicted.

¶ 22 We acknowledge that the proposed testimony would have provided additional mitigating evidence concerning Eiad's personal history, character, and rehabilitative potential. In particular, the witnesses' firsthand accounts of his employment, community involvement, and family relationships would have provided details beyond those expressly discussed by counsel at the original sentencing hearing. But the record establishes that several of the mitigating considerations underlying the proposed testimony were already before the sentencing court. Counsel discussed

Eiad's education and vocational training, argued that he did not have an extensive criminal history, and specifically noted that Eiad had two children to raise. Counsel also informed the court that Eiad's then wife and father were present and argued that a maximum sentence was unwarranted. Although counsel did not present witnesses in mitigation, the sentencing court had received information concerning Eiad's family responsibilities, education, vocational training, and employment prospects, all of which were relevant to his rehabilitative potential.

¶ 23 The proposed testimony would have supplemented the mitigating information presented at sentencing by providing firsthand accounts of Eiad's conduct and personal circumstances. Several witnesses would have testified concerning Eiad's relationship with his family and his efforts to support his children, matters that counsel had already brought to the sentencing court's attention. Other portions of the proposed testimony, including his community involvement and acts of generosity, would have provided additional mitigating information not expressly addressed during counsel's sentencing argument. We do not discount the value of such testimony merely because certain aspects concerned matters already presented at sentencing. However, much of the proposed testimony would have reinforced existing mitigating considerations, while the remaining testimony would have provided additional evidence of Eiad's character and rehabilitative potential. We must therefore consider the mitigating value of this evidence together with the evidence presented at the original sentencing hearing.

¶ 24 We must also consider the evidence in aggravation and the circumstances underlying the original sentencing determination. In imposing Eiad's sentence, the circuit court emphasized the seriousness of the offenses, their impact on the victim, and the need for deterrence. The court also addressed Eiad's criminal history and expressed skepticism concerning his prospects for rehabilitation considering the circumstances of the offenses. Although the State requested a

sentence of 120 years, the circuit court imposed a term of 45 years' imprisonment. The sentencing court's remarks demonstrate that the nature and circumstances of the offenses and the need for punishment and deterrence were substantial considerations in its sentencing determination. While those considerations do not eliminate the mitigating value of the proposed testimony, they provide important context for assessing whether the additional evidence creates a reasonable probability that Eiad would have received a shorter sentence.

¶ 25 Eiad argues that the circuit court improperly relied on the original sentencing court's statements in concluding that additional mitigation testimony would not have affected his sentence. We agree that the prejudice inquiry under *Strickland* is an objective one and does not depend on the sentencing court's inclination toward harshness or leniency. *Strickland*, 466 U.S. at 695. But the original sentencing court's on-the-record consideration of the evidence in aggravation remains relevant to assessing whether the omitted mitigation evidence creates a reasonable probability of a different result. Accordingly, our determination does not rest on the circuit court's conclusion that the original sentencing court would not have imposed a different sentence. Rather, we consider the additional mitigating evidence alongside the circumstances of the offenses and the other evidence presented at sentencing.

¶ 26 Eiad maintains that he established prejudice because the proposed mitigation witnesses could have persuaded the sentencing court to impose a shorter sentence. Eiad relies on *Glover v. United States*, 531 U.S. 198, 203-04 (2001), for the proposition that even a minimal increase in a defendant's term of imprisonment may constitute prejudice under *Strickland*. Although Eiad correctly observes that prejudice does not require a showing that counsel's deficient performance resulted in a particular minimum increase in imprisonment, he must still establish a reasonable probability that the sentence would have been shorter absent counsel's alleged deficiencies.

Strickland, 466 U.S. at 694; *Glover*, 531 U.S. at 203-04. The possibility that additional favorable testimony could have resulted in a lesser sentence does not, alone, establish the requisite prejudice.

¶ 27 Considering the totality of the evidence, we find that Eiad has failed to establish a reasonable probability that the proposed mitigation testimony would have resulted in a shorter sentence. Although the witnesses would have provided additional information concerning Eiad's character, community involvement, family relationships, and rehabilitative potential, several of the mitigating considerations underlying their proposed testimony were already before the sentencing court. The remaining testimony would have provided further insight into Eiad's positive conduct and personal circumstances, but after weighing the additional mitigating value of that testimony against the aggravating evidence and considering the record, we find that the omitted testimony does not undermine confidence in the sentence imposed. Accordingly, even assuming posttrial counsel performed deficiently by failing to investigate and present the proposed mitigation witnesses, Eiad has failed to establish prejudice under *Strickland*. Thus, the circuit court did not manifestly err in denying his postconviction petition.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 30 Affirmed.