

NOTICE
This Order was filed under
Supreme Court Rule 23 and is
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under Rule 23(e)(1).

2026 IL App (4th) 250995-U

NO. 4-25-0995

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 19, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Knox County
BRANDON S. WILSON,	)	No. 22CF116
Defendant-Appellant.	)	
	)	Honorable
	)	Andrew J. Doyle,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Steigmann and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed and remanded the trial court’s summary dismissal of defendant’s *pro se* postconviction petition, finding the petition set forth the gist of a claim that appellate counsel was ineffective for failing to argue that defendant’s right to due process was violated where the State failed to correct false testimony at defendant’s trial.

¶ 2 Defendant, Brandon S. Wilson, appeals the summary dismissal of his *pro se* postconviction petition at the first stage of postconviction proceedings. Specifically, defendant argues that his petition set forth the gist of two constitutional claims—namely, that (1) his appellate counsel was ineffective for failing to argue that the State violated defendant’s right to due process pursuant to the holding in *Napue v. Illinois*, 360 U.S. 264 (1959), by failing to correct the victim’s false testimony and (2) his trial counsel was ineffective in responding to the victim’s false testimony. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2022)), aggravated battery (*id.* § 12-3.05(e)(1)), aggravated discharge of a firearm (*id.* § 24-1.2(a)(2)), and unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)). The charges stemmed from an incident during which defendant allegedly shot Walter Brown in the hip.

¶ 5 The matter proceeded to a jury trial. Brown testified that, at the time of the incident, he had known defendant for approximately three or four months through Facebook and mutual friends. He had spent time with defendant, and he was able to recognize defendant's face and voice. Brown stated that he came home the evening before the incident and found that his apartment had been "trashed." Brown also stated that, at one point, his motorcycle had been stolen from a storage facility and vandalized. Brown talked to some individuals who told him that defendant had bragged about stealing his motorcycle and breaking into his apartment.

¶ 6 On the day of the incident, Brown called defendant over Facebook. Defendant was making a pizza, and Brown asked him to bring some over. Defendant arrived at Brown's apartment with another man, who Brown did not know. Defendant also brought pizza between two paper plates. Defendant told Brown he had stolen his motorcycle and broken into his apartment. Defendant handed Brown the pizza, and Brown sat down on the stairs outside his apartment. Defendant then pointed a gun at Brown and asked, "[W]here do you want it?" Defendant aimed at Brown's face, but the gun misfired. Defendant fired another round as Brown was standing up, striking him in the abdomen. Defendant and the other man then ran away. Brown identified defendant in court as the individual who shot him.

¶ 7 Brown testified that his neighbor called the police, and he told the officers that defendant shot him. Brown spent four or five days in the hospital. He gave a statement to the

police at his apartment once he was discharged from the hospital. Brown stated he was currently in custody for a parole violation that occurred after the shooting.

¶ 8 On cross-examination, defense counsel asked Brown if he was ever given a photo lineup. Brown said he was given a photo lineup at the police station by different officers than the detectives who came to see him at his apartment after the shooting. They provided Brown with a stack of 10 or more photos, and he picked out defendant. Brown stated that he had a felony conviction and was on parole at the time of the incident.

¶ 9 Ronald West, who lived in a different building in the same apartment complex as Brown, testified that he observed two men walking quickly out of Brown's apartment building on the afternoon of the incident, and he identified defendant in court as one of the two men.

¶ 10 Courtney Livingston, who lived in the same apartment building as Brown, testified that she heard a loud "bang" on the afternoon of the incident and heard Brown scream for help. She opened the door to her apartment and observed that Brown appeared to be in pain and unable to stand. He told her to call the police and tell them that "Brandon Wilson" shot him.

¶ 11 Officer Jared Tapscott of the City of Moline Police Department testified that he responded to the scene on the day of the incident. Brown told him that he had been shot by defendant. Tapscott observed a small, circular wound near Brown's hip.

¶ 12 Detective Travis Smith testified that he responded to the scene of the incident. He and Detective Timothy Spitzer also spoke with Brown a few days after the incident at his apartment. Spitzer showed Brown a photograph of defendant, and Brown identified him as the shooter. On cross-examination, defense counsel asked Smith if he had spoken to Brown a third time at the police station, and Smith said he had not. Smith stated they only showed Brown one photograph rather than an array because he had already identified defendant by name as the

shooter. Smith stated that he did not at any time present defendant with a photo array and have him identify the person who shot him.

¶ 13 Body camera footage from both Tapscott and Smith that was captured when the officers responded to the scene of the shooting was admitted into evidence and played for the jury. In both recordings, Brown can be heard stating that the shooter's name was "Brandon." An officer then asked, "Wilson?" Brown then replied, "Brandon Wilson."

¶ 14 Detective Spitzer testified that he responded to the scene of the shooting. Spitzer stated that officers recovered from the scene two paper plates taped together with pizza inside. Spitzer learned that the shooter may have brought the pizza to the scene, and he sent the plates to the crime lab for testing. Meredith Budde, a forensic scientist, testified that she was able to recover one latent fingerprint suitable for comparison on the tape connecting the plates. She compared it to a known standard for defendant and was able to determine that the fingerprint belonged to defendant.

¶ 15 Spitzer testified that he later obtained defendant's Facebook records, which were admitted into evidence. Spitzer testified that the records showed that Brown and defendant exchanged messages and calls on the afternoon of the incident. At 1:48 p.m. on the day of the incident, defendant sent Brown a message stating, " 'I'm here.' "

¶ 16 During closing arguments, defense counsel argued that Brown lacked credibility and that the jury should not believe his testimony. Counsel stated that Brown was a liar and a felon. Counsel also argued that the police had concluded that defendant was the shooter before they arrived on the scene. Counsel stated that when the detectives visited Brown at his apartment a few days after the shooting, they "told him who shot him." Counsel stated: "There was no *** array of pictures, no line up." Counsel argued: "The police knew from the get-go, which is

unexplained to us, that the perpetrator of this crime was one person, [defendant].”

¶ 17 During its rebuttal argument, the State indicated that defendant became a suspect immediately because Livingston had given his name during her 911 call at Brown’s direction. The State asserted: “A photo lineup, therefore, was not utilized. As you heard from the detectives, they don’t necessarily utilize a photo lineup when we have this type of situation because there was an identification.”

¶ 18 The jury found defendant guilty of all four charges.

¶ 19 After the trial, defendant, through counsel, filed a motion for a new trial. Thereafter, the trial court allowed defense counsel to withdraw and appointed the public defender to represent defendant. Defendant’s new attorney requested that trial transcripts be prepared to assist him in preparing a new posttrial motion. However, it took the court reporter several months to complete the transcripts. The court stated that the matter would proceed to sentencing, but defense counsel could file a posttrial motion after the sentencing hearing, and the sentence would be vacated if the motion were granted.

¶ 20 On July 20, 2023, the trial court sentenced defendant to 48 years’ imprisonment for attempted first degree murder and vacated the remaining convictions.

¶ 21 On July 31, 2023, defendant filed a motion for a new trial. On August 18, 2023, defendant filed a second amended motion for a new trial, which alleged, *inter alia*, that defendant’s trial counsel was ineffective for failing to ask for a mistrial when Brown testified that he went to the police station “on a third occasion” and reviewed an array of photographs and documents. The motion alleged that trial counsel received “no information, reports, or photographs in discovery.” The motion also stated:

“[T]he State subsequently put an officer on the stand to testify by way of

impeachment that there had not been a third line-up. The State knowingly put the alleged victim on the stand whereupon he committed perjury. [The] State did not cross-examine him regarding his statement. The State and defense did not ask the Court to admonish the jury as to his statement.”

¶ 22 In its response to the second amended motion for a new trial, the State asserted that Brown’s testimony that he viewed an array of photographs at the police station was not a basis for a mistrial. The State alleged that it was “not in possession of a photo lineup and there was no report or other evidence relating to same because a photo lineup had not been conducted in this case.” The State further asserted: “The jury heard from the detective that a photo lineup had done been [sic] conducted in this case. It was up to the jury to determine what weight to give the evidence and the contradictions.” The State asserted that a “reasonable conclusion could be that Walter Brown was confusing a photo lineup he participated in relating to another matter with this case.”

¶ 23 The trial court denied the second amended motion for a new trial.

¶ 24 On direct appeal, defendant argued that the trial court erred when addressing his *pro se* posttrial claim that his trial counsel was ineffective by appointing new counsel to represent him without conducting an inquiry into his *pro se* claims pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). *People v. Wilson*, 2024 IL App (4th) 231281-U, ¶ 2. We affirmed the judgment of the trial court. *Id.* ¶ 33.

¶ 25 On June 30, 2025, defendant, *pro se*, filed a postconviction petition asserting multiple claims. Relevant here, defendant alleged that the prosecutor committed a *Napue* violation by failing to correct Brown’s “perjured testimony about a second identification” that Brown claimed happened at the police station. The petition alleged that Brown had testified that

he picked defendant out of at least 10 photographs, and the prosecutor “had to know” this was untrue. Defendant also alleged that this “perjured identification” had the effect of “prejudicing [him] severely.”

¶ 26 Defendant also argued that he received ineffective assistance of appellate counsel, asserting that appellate counsel “did not know the record and rendered ineffective assistance of counsel by misstating fact [*sic*] of the record for reasons why he stated [defendant’s] claims had no merit.” Regarding the *Napue* claim, defendant asserted that his appellate counsel “misstated what the prosecutor *** did at trial concerning the State[’]s star witness’s (Mr. Walter) direct testimony.” Defendant attached to his petition a letter from his appellate counsel stating:

“I do not believe it can be argued that the State violated *Napue* ***. The State responded as required when Brown gave his unexpected testimony about the alleged second photo lineup. The prosecutor immediately informed the judge that was the ‘first we heard about this,’ and elicited testimony from other witnesses that the second photo lineup never happened.”

¶ 27 Defendant asserted in his *pro se* postconviction petition that appellate counsel’s letter showed that he either failed to read the transcripts or was lying about what the prosecutor did at trial.

¶ 28 On September 3, 2025, the trial court dismissed the *pro se* postconviction petition, finding it to be frivolous or patently without merit and finding that it failed to make an arguable claim of ineffective assistance of counsel. This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant argues that the trial court erred by summarily dismissing his *pro se* postconviction petition at the first stage of postconviction proceedings. Defendant contends that

his petition set forth the gist of two constitutional claims. First, defendant argues his petition set forth the gist of a claim that his appellate counsel was ineffective for failing to argue that the State violated his right to due process pursuant to the holding in *Napue* by failing to correct Brown’s false testimony that he was given a photographic lineup at the police station from which he identified defendant. Second, defendant contends that his trial counsel was ineffective in responding to Brown’s false testimony concerning this lineup.

¶ 31 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2024)) provides criminal defendants a means of asserting that their convictions were due to substantial violations of their constitutional rights during their trials or sentencings. *People v. Allen*, 2015 IL 113135, ¶ 20. A postconviction action is a collateral attack on the trial court proceedings. *People v. Tate*, 2012 IL 112214, ¶ 8. Accordingly, “issues raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised but were not are forfeited.” *Id.*

¶ 32 There are three stages to postconviction proceedings. *Allen*, 2015 IL 113135, ¶ 21. At the first stage, the trial court must independently review the petition and may summarily dismiss the petition if it determines the petition “is frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2024); see *Tate*, 2012 IL 112214, ¶ 9. If the petition is not dismissed at the first stage, it advances to the second stage, where counsel may be appointed to assist an indigent defendant and make any necessary amendments to the *pro se* postconviction petition. *People v. Johnson*, 2021 IL 125738, ¶ 27. The State may move to dismiss the petition or file an answer. *Id.* At the second stage, the defendant bears the burden of making a substantial showing of a constitutional violation. *Allen*, 2015 IL 113135, ¶ 21. If the petition is not dismissed at the second stage, it advances to a third-stage evidentiary hearing. *Johnson*, 2021 IL 125738, ¶ 27.

¶ 33 In this case, defendant’s *pro se* postconviction petition was summarily dismissed

at the first stage of postconviction proceedings. A petition may be summarily dismissed at the first stage only if the trial court determines it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2024). A petition is frivolous or patently without merit if it has no arguable basis in law or fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). “A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation.” *Id.* at 16.

¶ 34 “The first stage of postconviction proceedings presents a ‘low threshold,’ requiring only that the petitioner plead sufficient facts to assert an arguably constitutional claim.” *Johnson*, 2021 IL 125738, ¶ 25. At this stage, the allegations in the petition must be taken as true and liberally construed unless contradicted by the record. *Id.* “A petitioner need only allege sufficient facts to state the ‘gist’ of a constitutional claim for the petition to be advanced to the second stage.” *Id.* ¶ 26. We review *de novo* the summary dismissal of a postconviction petition. *Id.* ¶ 28.

¶ 35 We first address defendant’s claim that his appellate counsel was ineffective for failing to argue that the State violated his right to due process pursuant to *Napue* by failing to correct Brown’s false testimony that he selected defendant’s photograph out of a stack of photos presented to him at the police station. To establish a claim of ineffective assistance of appellate counsel, “a defendant must show both that appellate counsel’s performance was deficient and that, but for counsel’s errors, there is a reasonable probability that the appeal would have been successful.” *People v. English*, 2013 IL 112890, ¶ 33. “Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel’s appraisal of the merits is patently wrong.” *People v. Easley*, 192 Ill. 2d 307, 329 (2000). “[U]nless the underlying issues

are meritorious, [the] defendant has suffered no prejudice from counsel's failure to raise them on appeal." *Id.*

¶ 36 In *Napue*, the United States Supreme Court held that a defendant's right to due process is violated when a conviction is obtained through the use of false evidence "known to be such by representatives of the State." *Napue*, 360 U.S. at 269; see *People v. Olinger*, 176 Ill. 2d 326, 345 (1997) ("The rule is well-established that the State's knowing use of perjured testimony to obtain a criminal conviction constitutes a violation of due process of law."). When a conviction is obtained by the knowing use of perjured testimony, it "must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's verdict." *Olinger*, 176 Ill. 2d at 345.

¶ 37 Even when the State does not solicit the false testimony, these same principles apply where it subsequently fails to correct it. *Id.*; *Napue*, 360 U.S. at 269. Moreover, these principles apply even when the false testimony goes only to the witness's credibility. *Olinger*, 176 Ill. 2d at 345; *Napue*, 360 U.S. at 269; see *Glossip v. Oklahoma*, 604 U.S. 226, 249 (2025) ("Even if [the witness's] bipolar disorder were wholly irrelevant, *** his willingness to lie about it to the jury was not."). This is because "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Napue*, 360 U.S. at 269.

¶ 38 Here, we find that the trial court erred by summarily dismissing defendant's *pro se* postconviction petition because defendant set forth the gist of a claim that he received ineffective assistance of appellate counsel where counsel failed to argue that defendant's right to due process was violated when the State allowed Brown's false testimony to go uncorrected

during his trial. The allegations in the *pro se* postconviction petition, taken as true and liberally construed, established that Brown testified falsely about identifying defendant from a photo lineup at the police station, the prosecutor knew this testimony was false, and the prosecution allowed the testimony to go uncorrected. The record does not contradict these allegations. Notably, in its response to the defendant's second amended motion for a new trial, the State asserted that "a photo lineup had not been conducted in this case." While this does not establish that the State knew Brown's testimony was false, it is consistent with defendant's allegation that Brown testified falsely concerning the photo lineup.

¶ 39 While the *pro se* postconviction petition contained only a general allegation of prejudice and did not elaborate on the effect that Brown's allegedly false testimony may have had on the verdict, defendant correctly notes in his brief that Brown was a key witness for the prosecution—he was the sole witness to identify defendant as the shooter. As mentioned, even false testimony only affecting a witness's credibility can support a *Napue* claim. See *Olinger*, 176 Ill. 2d at 345; *Glossip*, 604 U.S. at 249. Moreover, "a *pro se* petitioner is not required to allege facts supporting all elements of a constitutional claim to survive summary dismissal." *People v. Brown*, 236 Ill. 2d 175, 188 (2010).

¶ 40 To the extent that defendant's *Napue* claim was forfeited due to his failure to raise it on direct appeal, defendant has set forth an arguable claim that his appellate counsel provided ineffective assistance for failing to argue it. As discussed, taking as true the allegations in the *pro se* postconviction petition, it is arguable that the *Napue* claim was meritorious and that the result on direct appeal would have been different if it had been raised. Also, the record supports defendant's allegation that his appellate counsel misunderstood the record when he discussed his reasons for not raising a *Napue* claim on direct appeal. Contrary to appellate counsel's assertions

in his letter to defendant, the record does not indicate that the State informed the trial court after Brown's testimony that it was the first it had heard about the photographic lineup, and the State did not elicit testimony from other witnesses that the photographic lineup never happened.

¶ 41 We acknowledge that defense counsel (not the State) elicited testimony from Smith that he and Spitzer showed Brown one photograph of defendant rather than an array of photographs when they spoke with him at his apartment a few days after the incident. Defense counsel also elicited testimony from Smith that he did not at any time give Brown a photo array from which to identify the shooter. However, Smith's testimony is not necessarily inconsistent with Brown's testimony that he was shown an array of photographs by different officers on another occasion.

¶ 42 We conclude that defendant has stated the gist of a constitutional claim, such that his petition must be docketed for further proceedings. See 725 ILCS 5/122-2.1(b) (West 2024). As a point of clarification, we make no determination in this order as to whether (1) Brown testified falsely at the trial, (2) the State knew his testimony was false, (3) there is a reasonable likelihood that Brown's alleged false testimony affected the jury's verdict, or (4) appellate counsel was ineffective for failing to raise this issue. We find only that, taking as true the allegations in the *pro se* postconviction petition and construing them liberally, defendant has met the low threshold of establishing an arguable constitutional claim, such that further postconviction proceedings are warranted.

¶ 43 As we have found that defendant's *pro se* postconviction petition set for the gist of a claim that his appellate counsel provided ineffective assistance for failing to raise a *Napue* claim on direct appeal, we do not address defendant's argument that the petition also set forth an arguable claim that his trial counsel was ineffective in responding to Brown's allegedly false

testimony. Once a court finds that a claim in a petition is not frivolous or patently without merit, the entire petition must be docketed for further proceedings. *People v. Rivera*, 198 Ill. 2d 364, 370-71 (2001); see *People v. Paleologos*, 345 Ill. App. 3d 700, 706 (2003) (“If any one allegation states the gist of a constitutional deprivation, the entire petition should be docketed for second-stage review.”).

¶ 44

III. CONCLUSION

¶ 45 For the reasons stated, we reverse the trial court’s judgment summarily dismissing the *pro se* postconviction petition and remand the matter for second-stage postconviction proceedings.

¶ 46 Reversed and remanded.