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

2026 IL App (4th) 260188-U

NO. 4-26-0188

FILED
November 3, 2026
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
PHILLIP R. ANGLIN,	)	No. 22CF277
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Steigmann and Justice Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's judgment regarding which issues to raise and not to raise on appeal is generally entitled to substantial deference and will not be second-guessed unless counsel's judgment was patently erroneous.

¶ 2 Defendant, Phillip R. Anglin, who is serving a sentence of 30 years' imprisonment for unlawful delivery of cocaine (see 720 ILCS 570/401(a)(2)(A) (West 2022)) and unlawful possession of cocaine with the intent to deliver it (see *id.*), filed a *pro se* petition in the circuit court of Livingston County for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2024)). The court summarily dismissed the *pro se* petition as frivolous or patently without merit. See *id.* § 122-2.1(a)(2). Defendant appeals, arguing that the petition contained an arguable claim, namely, that his counsel on direct appeal rendered ineffective assistance by failing to seek a correction of the record pursuant to Illinois Supreme Court Rule 329 (eff. July 1, 2017). In our *de novo* review, we are unconvinced that this claim is

arguable, especially considering the substantial deference we owe to counsel's judgment on which issues to raise and not to raise in an appeal. Therefore, we affirm the circuit court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Evidence at the Jury Trial

¶ 5 At trial, Seth Rich testified he was a confidential source for the Livingston County Sheriff's Office. He had an agreement with the sheriff's office to buy drugs from suspects. If a suspect expressed to Rich a willingness to sell him drugs, Rich was to contact Inspector Zachary Benning so that a controlled buy from the suspect could be arranged.

¶ 6 In a phone conversation on November 27, 2022, defendant told Rich he was "ready to go up," meaning that defendant was ready "[t]o go pick up drugs." Defendant asked Rich if he, too, was ready. Rich told defendant he was ready and that he wanted an ounce of cocaine. They agreed that Rich would buy the cocaine the next day for $1,200. Rich informed Benning.

¶ 7 The next day, before the controlled buy, Rich met with police officers, who searched his truck and his person, finding no drugs. The police issued Rich a recording device disguised as a key fob, put a GPS tracker on his truck, and supplied him with $1,200. Rich then parked in front of his house but did not go inside—the police had told him that, having been searched, he was not to reenter his house. So, Rich just waited in his truck for defendant to show up.

¶ 8 Defendant arrived at Rich's house with another man, whom Rich did not know. As those two were getting into Rich's truck, Rich went back inside his house to use the bathroom. Benning texted Rich, " ['W]hat are you doing[?] You can't go inside your house. You

need to come back here right now.[’] ” Consequently, in a ruse, Rich told defendant and the other man that he “had to go to Casey’s[,] up the street,” and meet someone who was “real[ly] sketchy”—so sketchy that he preferred “to go down the street to meet” the person instead of having the person come to the house. Defendant and his companion waited in defendant’s car while Rich drove up the street, to Casey’s.

¶ 9 At Casey’s, Benning asked Rich why he had gone back inside his house. Rich answered that he had needed to use the bathroom. After Benning searched Rich and his truck again, Rich drove back to his house.

¶ 10 Defendant and the man who had come with him were still there. They got into Rich’s truck, and the three of them set out for the place where Rich was to buy the cocaine. Rich thought they would go to the Aurora, Illinois, area, but instead, defendant gave him directions to Yorkville, Illinois.

¶ 11 As they drew near to Yorkville, defendant’s companion made a phone call, obtained an address, and “put it in the GPS.” They drove to that Yorkville address.

¶ 12 Upon arriving at that address, they parked. Rich testified:

> “We called and said, [‘H]ey, we’re here.[’] I don’t know the guy’s name. He came out. He handed drugs to [defendant]. [Defendant] gave him the cash. We talked a little bit. He left, and then we left.
>
> Q. Where were the drugs when you left?
>
> A. They wanted me to try some. I didn’t really want to do that so I offered to set it in the seat. I had a cubbyhole in the back passenger seat. I kind of pulled forward, and there was like a cubby hole there. I said, [‘P]ut it there just in case we get pulled over. They won’t find it.[’]

Q. So a cubbyhole. And where did you say the cubbyhole was?

A. In the back seat of the truck.

Q. *** So whatever you had purchased at that point was then put into the back seat?

A. Right."

¶ 13 On the return journey, the police pulled Rich over. "They took everybody out of the vehicle." Rich further testified, "I was asked where was it at. I said, ['I]t's in the cubbyhole in the back seat.['] They grabbed it. They arrested everybody, put everybody in cars; and they took them away to jail; and they let me out; and I drove away, drove home."

¶ 14 Rich identified People's exhibit No. 1 as the cocaine. The parties stipulated that this exhibit contained more than 24.1 grams of cocaine.

¶ 15 On cross-examination, defense counsel asked Rich:

"Is it true that you have had a delivery of meth case pending against you since September of 2020?

A. Yes.

Q. And you are set for a sentencing next month?

A. Yes.

Q. And what, if anything, has the State promised you in order to get you to testify today?

A. Nothing."

¶ 16 Also, on cross-examination, defense counsel asked Rich:

"Q. So moving back to November 28th, isn't it true that you were the one that set up this drug buy?

A. No. I don't believe so. I asked [defendant] the next time he was going up let me know. He said he was going up. I said, ['O]kay, I'm ready.['] "

¶ 17 Rich further denied, on cross-examination, that he was "the one that [had] used the other passenger's phone." Also, Rich denied it was he who had made "contact with the seller to get a correct address."

¶ 18 Defense counsel also asked Rich:

"Q. When the seller arrived to the vehicle, he was on the passenger side of the vehicle?

A. Yes.

Q. And isn't it true that he threw the drugs into the car, and it landed on your lap?

A. No.

Q. And isn't it true you handed the money directly to the seller?

A. No."

¶ 19 Benning and Inspector Samer Assaf were on the surveillance team for the controlled buy. Benning testified that, before the controlled buy, he searched Rich "around his residence in Flanagan," searched his truck, provided him $1,200 in cash for the drugs, and "provided him with the overhear device"—which, they discovered after the controlled buy, "ultimately did not work." In his preliminary search, Benning found no contraband, either on Rich or in his vehicle (according to Benning's testimony). After Rich went into his house with defendant and the other man, Benning had Rich meet him at Casey's, where Benning again searched Rich and his truck and again found no contraband.

¶ 20 Although Benning, Assaf, and their team maintained surveillance on Rich's truck

at all times, neither Benning nor Assaf could see the drug transaction. Benning saw the seller of the drugs come to the passenger side of Rich's truck, but he could not see who passed the money or the drugs.

¶ 21 After the controlled buy, the police followed Rich's truck, which stopped at a gas station. Benning testified, "Basically the vehicle stopped. [The confidential source] stayed in the vehicle the whole time. He never went inside. I believe [defendant] went inside to use the restroom. Nothing out of the ordinary. Nothing that appeared to be anything out of the ordinary stopping at a gas station."

¶ 22 This stop at the gas station was the only voluntary stop on the way back.

¶ 23 When Rich took an exit for Pontiac, Illinois, the police pulled him over (Benning continued in his testimony). The police had all the occupants of the truck, including Rich, get out. Rich told Benning where the cocaine was. Benning asked him "if there was any more cocaine other than what he had bought." Rich answered no. He was searched, and no drugs were found on his person. Benning found the cocaine where Rich had told him it was: in a cubbyhole in the back seat, behind the driver's seat.

¶ 24 Assaf likewise testified that "the narcotics were in the vehicle at [the] time" its occupants were arrested. Assaf further testified that he was the one who took Rich into custody after the controlled buy and that when he patted Rich down, he found no drugs on Rich's person.

¶ 25 Defendant took the stand in his own behalf and testified substantially as follows. In October 2022, he met Rich through Mallory Conroy. When they first became acquainted, Rich told defendant that he, Rich, was a police officer and that he wanted defendant to become an informant for him.

¶ 26 On cross-examination, the prosecutor asked defendant:

"Q. Your testimony is you believed you were working as an informant for Seth Rich?

A. That's what he told me originally when he put the gun on us and took, robbed Mallory Conroy in the front seat of her car.

Q. *** So you believed you were working for Seth Rich who's committing crimes on you and he's a police officer?

A. You have never met a dirty cop in your life?

Q. Oh. So the cops are dirty, and Seth is one of them? I'm just trying to make sense of that.

A. Do you want me to answer?

Q. Yeah. So Seth is dirty, and he's one of the cops?

A. That's what he said. Yeah.

Q. *** Did you talk to any police officers about Seth Rich?

A. No.

Q. You had a month to talk to police officers about Seth Rich.

A. I was in the hospital during that month for about three weeks.

Q. Okay. But you can call a police department. Correct?

* * *

A. I'm not going to call the police when he's threatening me with going to jail.

Q. Right.

A. He said he was the police, and he said that if the cops come to his house that night that he would have to put me in jail for what he took from

Mallory Conroy."

¶ 27 Despite this threat, defendant socialized with Rich. Defendant testified that, on November 28, 2022, around 8 or 9 p.m., he and a man named Mauricio (last name unspecified) traveled in defendant's car from Gilman, Illinois, to Rich's residence in Flanagan. When asked why he made this trip, defendant answered, "I hung out with [Rich] all the time."

¶ 28 Defendant and Mauricio arrived at Rich's house. When defendant came out of Rich's bathroom, Rich said he needed to go to Casey's because "he was having an argument with his lady."

¶ 29 After Rich returned from Casey's, defendant and Mauricio "got in the car with him." Rich was in the driver's seat, defendant was in the front passenger seat, and Mauricio was in the back passenger seat.

¶ 30 Defense counsel asked defendant:

"Q. And what did you believe was going to take place when you went to Yorkville?

A. I thought he said something about trading the guy some guns on his phone for a jeep."

¶ 31 Defendant denied using Mauricio's phone to contact anyone in Yorkville. Instead, according to defendant's testimony, it was Rich who used "used Mauricio's phone to contact the person in Yorkville." Defendant explained that Rich "had his phone plugged into the radio and the GPS so he said he couldn't use it." Consequently, Rich "asked him to use his phone in the back."

¶ 32 In Yorkville, according to defendant's testimony:

"A. [Rich] pulled into a parking spot; and then he called the guy back; and

the guy—

Q. What guy are you referring to?

A. They call him Rat.

* * *

Q. Rat. Okay.

A. And when Rat come out, where he parked at in his subdivision, on the driver's side of the truck there was a State Police SUV. So instead of him going around and talking to [Rich] on that side, he come up to the passenger side window; and [Rich] went in his pocket and reched [*sic*] the $1200 and took a bag of coke and tossed it to [Rich] in his lap. [Rich] then took the bag of coke—

Q. Hold on. So at any point, did you touch the money that was given to this Rat guy?

A. No. It wasn't my money.

Q. And at any point did you touch the drugs? You said they were thrown into the vehicle?

A. Yeah. He tossed them in [Rich's] lap. I was laid back in the seat. My leg was up because I had a [*sic*] external fixated bolts to my leg.

Q. And so then what happened?

A. [Rich] opened up the bag of coke and put some on top of his cellphone and put lines out for everybody in the car.

Q. Okay. And then what happened?

A. Everybody was snorting lines."

¶ 33 They then set out on their return journey. At the second exit to Pontiac, the police

stopped Rich's truck. Defendant testified:

"A. They pulled Mauricio out of the back seat; and then the detective, the second detective, he pulled [Rich] out; and [Rich] reched [*sic*] him something in his hand.

Q. Hold on. [Rich] did what?

A. Reched [*sic*] him a bag of drugs in his hand.

Q. What is that word you are using?

A. Reched [*sic*]. Like reached.

* * *

Q. Reached toward the officer?

A. Yes.

Q. Okay.

A. The second officer was on the stand. Assar [*sic*] or whatever, he reched [*sic*] him a white bag of substance in his hand to the detective.

Q. Okay. You saw that actually take place?

A. Yeah."

¶ 34 Then, according to defendant's testimony, the police opened the door to the front passenger seat, whereupon defendant protested, "['Y]ou can't pull me out like that. I've got metal going through my legs.[']

¶ 35 Defense counsel preemptively brought out two of defendant's prior convictions. She asked defendant:

"Q. You have previously been convicted of a felony offense?

A. Yeah.

Q. A 2012 delivery of a controlled substance?

A. Yes.

Q. And a 2019 possession of a stolen vehicle?

A. I rented a U-Haul.

Q. I'm sorry. What?

A. I had rented a U-Haul, and I didn't get it back on time.

Q. ***. So did you make, were you part of any arrangements between [Rich] meeting this guy, Rat?

A. No."

¶ 36 On cross-examination, the prosecutor asked defendant if he had seen any guns in Rich's vehicle. Defendant answered he had not searched Rich's vehicle but that he had seen no guns. Nevertheless, defendant explained that Rich "said he was going up there to show him some guns on his phone, and then he ends up texting me for a drug deal." (It does not appear that this text message was presented at trial.)

¶ 37 The prosecutor asked defendant:

"Q. *** Now what jeep were you guys going to be getting? Do you know?

A. It was a gray I think 2000, either '18 or '17.

Q. There was no gray jeep though. Correct?

A. Yeah. There was a jeep out there. In the guy's driveway."

¶ 38 According to defendant's testimony, "[Rich] was doing a lot of drugs all the way up [to Yorkville,] with the radio up." The prosecutor asked defendant:

"Q. What were you guys talking about on the way to Yorkville? It's like an hour and a half drive. Right?

A. He was on his phone. He had the music on.

Q. No conversation?

A. Not really. No.

Q. And then you said at Yorkville you were all sniffing drugs, cocaine?

A. No. He had a methamphetamine pipe.

Q. So now he's smoking meth?

A. Correct."

¶ 39 The State called Rich in rebuttal. He denied that, on November 28, 2022, he had any guns in his car or any "pictures of guns on a phone that [he] wanted to show someone." A rule of the controlled buy was that he had to refrain from consuming drugs. He believed that if he had violated that rule, he would have been arrested and jailed.

¶ 40 The State then offered certified copies of defendant's previous felony convictions, People's exhibit Nos. 3 and 4, as impeachment evidence.

¶ 41 Both parties gave closing arguments. The prosecutor maintained that Rich was more believable than defendant. The prosecutor urged the jury to

"think of where Seth Rich's mind was at and the perspective he had because again in order to believe this Defendant, to find him not guilty, you would have to believe that Seth Rich framed this Defendant and somehow pulled one over on all the police in their efforts as well. I think that's belied by the evidence."

¶ 42 The prosecutor argued that Rich could not have framed defendant, because Rich "had an absence of knowledge about how he was going to do that," especially considering that there was a recording device that, for all Rich knew, was picking up everything that was said in his truck. "Obviously he anticipated that he would have had the audio recording," the prosecutor

noted, “but Seth Rich had no idea that it had malfunctioned. Detective Benning had no idea it malfunctioned”—until after the controlled buy.

¶ 43 The prosecutor acknowledged that, at first, it might seem “weird” to talk about an “audio recording that malfunctioned.” Yet, the prosecutor explained, “it’s not [weird] when you think about this boiling down to credibility, when it’s boiling down to whether or not you believe Seth Rich and what he sat there and testified to or if you believe this man” (that is, defendant).

¶ 44 According to the prosecutor, defendant was “the only one with interest and bias in this situation,” and “[t]here’s been no demonstrated interest or bias put forth on behalf of Seth Rich framing this Defendant.” Anticipating that a jury instruction on credibility would be given, the prosecutor told the jury, “So you are going to be asked to consider the believability of the witnesses by me and the State, when you are making your determinations because I think it’s a very important part of your decision today in who you believe.” Because the parties had stipulated that the substance the police recovered was more than 15 grams of cocaine, the prosecutor reasoned, “All you are left to determine really is whether or not you believe this Defendant and everything that he has to lose in this case or if you believe what the officers and Seth Rich were able to put forward to you.”

¶ 45 Defense counsel responded that, contrary to the prosecutor’s assertion, “Seth Rich has a vested interest in becoming a [confidential source] in the hopes of something favorable *** happen[ing] to him regarding [his own drug] case.” Defense counsel disputed that the State had carried its burden of proof. It was the position of the defense that defendant never touched the drugs and never had possession of the money.

¶ 46 In his rebuttal argument, the prosecutor reiterated that the State had made no promises to Rich for his testimony and that “[t]here’s nothing from that mere fact that he’s now

doing good deeds for the police working as a confidential source that would bring into suspicion his motivations." The prosecutor characterized defendant's testimony as "ridiculous" and argued, "[H]is explanation for why he never saw any police officers with this Seth Rich person who was an informant with the police was because they are all dirty and very confrontational about that fact and the fact that all officers are dirty and [']have I ever met a dirty cop.['] "

¶ 47 Defense counsel objected, "That's a misstatement of the facts of what my client actually testified to. He did testify that Mr. Rich he believed was dirty. I do not recall him making a statement that he thought all cops were dirty." The circuit court responded, "Overruled. He did make a more general statement, but also it's argument so he's entitled to make an argument. There are facts in the record that support that argument."

¶ 48 The prosecutor then summed up:

> "And that just I think sets out the tenor of what this Defendant is asking you to believe today, asking you to decide whether you are believing his testimony or not.
>
> Again, it comes down to a reasonable doubt. This is not an insurmountable standard. It's not beyond a shadow of a doubt. It's not beyond all doubt. It's beyond a reasonable doubt.
>
> What about what this Defendant testified to today was reasonable from your ability to sit and review his manner while testifying? I would argue nothing. Nothing is reasonable.
>
> Seth Rich was working for the police. He as we learned from Detective Benning and from Seth Rich, learned he was able to sell drugs. He then cooperates with the police. Gives them that tip. Controlled buys. Everything that

happens after that largely out of his control.

So to believe this Defendant, believe that Seth Rich framed him for this event occurring on November 28, 2022, and this Defendant's role in that event I would argue is not reasonable; and I would ask that you reject that argument and find him guilty."

¶ 49 On June 20, 2023, the jury found defendant guilty on both counts of the amended information: count I, unlawful delivery of a controlled substance, and count II, unlawful possession of a controlled substance with the intent to deliver it.

¶ 50 On August 7, 2023, the circuit court sentenced defendant to imprisonment for 30 years.

¶ 51 B. The Direct Appeal

¶ 52 Defendant took a direct appeal. One of the contentions in his direct appeal was that an argument the prosecutor made to the jury was a plain error. According to defendant, "the prosecutor 'misstated the law and improperly shifted or diminished the burden of proof by arguing the jury could only acquit [defendant] if they believed him and found Rich and the officers were lying.' " *People v. Anglin*, 2024 IL App (4th) 231162-U, ¶ 79. Defendant had forfeited this contention by not raising it in the proceedings below (see *id.* ¶ 80), but he claimed that the evidence was closely balanced and that the doctrine of plain error, therefore, should undo the forfeiture (*id.* ¶ 81).

¶ 53 We agreed that, under *People v. Banks*, 237 Ill. 2d 154, 185 (2010), the prosecutor's argument was a clear or obvious error. *Id.* ¶ 79. Under *Banks*, "[t]he test [was] not which side [was] more believable, but whether, taking all of the evidence in the case into consideration, guilt as to every essential element of the charge ha[d] been proven beyond a

reasonable doubt." (Internal quotation marks omitted.) *Id.* We disagreed, however, that the evidence at trial was closely balanced. *Id.* ¶ 94. We remarked, "[I]n the inherent believability of their competing accounts, Rich and defendant were not on the same level of credibility. Although both witnesses were problematic with respect to their background and circumstances, Rich's testimony was not unbelievable on its face, whereas defendant's testimony abounded in evasions and improbabilities." *Id.* ¶ 84. Therefore, rejecting the claim that the evidence was closely balanced, we concluded that the doctrine of plain error did not avert the procedural forfeiture of the error the prosecutor made during closing arguments. See *id.* ¶ 94. We affirmed the circuit court's judgment. *Id.* ¶ 127.

¶ 54 C. The Petition for Postconviction Relief

¶ 55 On November 24, 2025, defendant petitioned, *pro se*, for postconviction relief. One of the claims in his petition—the only claim that is at issue in this appeal—was that his counsel on direct appeal rendered ineffective assistance by failing to file a motion pursuant to Illinois Supreme Court Rule 329 (eff. July 1, 2017) to supplement the record with testimony by defendant that allegedly was left out of the trial transcript. The circuit court summarily dismissed the petition as frivolous or patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2024).

¶ 56 This appeal followed.

¶ 57 II. ANALYSIS

¶ 58 The transcript of the trial shows that, at one point in the prosecutor's cross-examination of him, defendant interrupted the prosecutor by speaking at the same time the prosecutor was speaking. The circuit court told defendant, "Sir, hold on. Excuse me. One person can speak at a time because the court reporter can't take two people down at a time." In his postconviction petition, defendant alleged as follows. While he and the prosecutor were speaking

at the same time, he, defendant, was testifying that, at the Pontiac exit where the police had pulled over Rich's vehicle, Rich handed Assaf a "second bag" of cocaine. This bag of cocaine, which Rich had been carrying on his person, was a second bag because it was in addition to the bag of cocaine the police took out of Rich's vehicle. The transcript of the trial omitted this part of defendant's testimony (because the court reporter could not take down the words of two people speaking at the same time). When counsel was appointed on direct appeal, defendant informed counsel of this omission in the transcript. Counsel on direct appeal rendered ineffective assistance, the petition claims, by failing to obtain a correction or supplementation of the transcript, as Rule 329 would have allowed counsel to do.

¶ 59 The question for us, in our *de novo* review (see *People v. Tate*, 2012 IL 112214, ¶ 10), is whether those allegations in the petition for postconviction relief state an arguable claim that appellate counsel rendered ineffective assistance. See *id.* ¶ 19; *People v. Easley*, 192 Ill. 2d 307, 328 (2000). The supreme court has held:

> "[C]ounsel's choices as to the issues to raise on appeal are normally entitled to substantial deference. *** [C]ounsel on appeal has no obligation to raise every conceivable argument which might be made, and counsel's assessment of what to raise and argue will not be questioned unless it can be said that his judgment in this regard was patently erroneous." (Internal quotation marks omitted.) *People v. Mack*, 167 Ill. 2d 525, 532-33 (1995).

The question, then, can be more specifically worded this way. Do the allegations in the petition arguably show it was patently erroneous to refrain from seeking a correction of the record pursuant to Rule 329? In other words, is it arguable that not seeking a correction was so clearly erroneous that the substantial deference we owe to appellate counsel's judgment on which issues

to raise and not to raise is overcome?

¶ 60 For us to conclude that the substantial deference arguably is overcome, we would have to conclude that, arguably, every reasonable appellate counsel would have thought the obscured testimony would significantly add to what defendant already said on direct examination.

¶ 61 It is not arguable that every reasonable appellate defense counsel would have thought so. On direct examination, defendant did not dispute that the police took a bag of cocaine out of the cubbyhole in the backseat of Rich's vehicle, as the State's witnesses had testified. Defendant merely testified that when Assaf pulled Rich out of the vehicle, Rich handed Assaf a bag of cocaine. Because the existence of the bag of cocaine in the cubbyhole was uncontradicted, the bag of cocaine that, according to defendant's testimony, Rich handed to Assaf was necessarily a second bag of cocaine. That, in the cacophony of his and the prosecutor's speaking at the same time, defendant called this handed-over bag a second bag would have added nothing to what defendant said before, on direct examination.

¶ 62 More to the point, it is unclear what difference it would make whether the bag which Rich handed to Assaf was the second bag or the only bag. In either event, the claim would be that the State's witnesses told a material falsehood. According to the State's witnesses, the only bag of cocaine was the bag the police took out of the cubbyhole, whereas, in reality, according to defendant's testimony on direct examination, Rich handed Assaf a bag as soon as Assaf pulled him out of the vehicle. This claimed falsehood made the State's witnesses unbelievable—that was the point the defense intended to convey. "Who cares whether the bag that Rich handed Assaf was the only bag or the second bag?" a reasonable appellate counsel might think. Either way, there was this supposed lie, this supposed credibility-destroying

falsehood. It is not arguable that such logic would be clearly erroneous.

¶ 63 In sum, "[a]t the first stage of postconviction proceedings ***, a petition alleging ineffective assistance may not be summarily dismissed if (i) it is *arguable* that counsel's performance fell below an objective standard of reasonableness and (ii) it is *arguable* that the defendant was prejudiced." (Emphases in original and internal quotation marks omitted.) *Tate*, 2012 IL 112214, ¶ 19. It is not arguable that appellate counsel clearly erred by declining to seek a supplementation of the record with cumulative testimony. Nor is it arguable that the defense was prejudiced by the omission of an allegation that already was inherent in defendant's testimony on direct examination.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we affirm the circuit court's judgment.

¶ 66 Affirmed.