2026 IL App (1st) 250995-U

No. 1-25-0995

Order filed October 13, 2026

SECOND DIVISION

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
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 09 CR 1752801
	)	
VINCENT BLACK,	)	Honorable
	)	Terry Gallagher,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE D.B. WALKER delivered the judgment of the court.
Justices McBride and Van Tine concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's ineffective assistance of counsel claim was legally sufficient, and therefore its dismissal at the second stage of postconviction proceedings was improper. We remand the petition for a third-stage evidentiary hearing.

¶ 2 This appeal comes before us following the second-stage dismissal of a post-conviction petition filed by Vincent Black (Defendant), in which he asserted that his trial counsel was ineffective for failing to convey to him a plea deal offering a sentence of 16 years if he pled

guilty to attempted murder. Defendant entered a guilty plea and was sentenced to 25 years' incarceration.

¶ 3 I. BACKGROUND

¶ 4 On September 8, 2009, defendant fired a .22 caliber revolver and struck Jordan Hynes in the abdomen. Defendant was arrested and, on October 14, 2009, was indicted on charges of attempted first degree murder (720 ILCS 5/8-4 (West 2008), 720 ILCS 5/9-1 (West 2008)) and aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 2008)). As defendant does not dispute his guilt and the issue raised in his petition filed under the Post-Conviction Hearing Act does not concern the offense itself, there is no need to further elaborate on the factual basis of the charges. 725 ILCS 5/122-1 (West 2014).

¶ 5 On September 25, 2012, defendant pled guilty to the attempted murder charge pursuant to a plea agreement that offered him a 25-year sentence in return for pleading guilty. Given his guilty plea, defendant did not file a direct appeal. On October 5, 2015, defendant filed a *pro se* post-conviction petition alleging, among other things, that one of his attorneys at trial failed to relay to him a 16-year plea offer, though he was unsure which specific attorney was responsible for the failure. He stated that he was represented by Erin K. Farrell (Farrell) of the Law Office of the Cook County Public Defender for his initial bond hearing; Peter Papoutsis (Papoutsis) from October 14, 2009 through November 25, 2010; Farrell again from November 29, 2010 through March 16, 2011; Lillian M. McCartin (McCartin) and Erica Green (Green) from March 16, 2011 through June 7, 2011, and Lisa Wood from June 7, 2011 through September 25, 2012, when defendant entered his guilty plea. McCartin continued to represent him alongside Wood.

¶ 6 A. Initial *Pro Se* Petition

¶ 7 Defendant's *pro se* petition alleges that "[a]t some point during the course of proceedings[,] the Assistant State's Attorney[] presented an offer to plead guilty [] in exchange for [] 16 years in the Illinois Department of Corrections, except at no point did [his attorneys] discuss this plea with him." He further alleged that "[w]hen [defendant] was made aware of the offer to plead guilty, counsel[']s erroneous advice caused [defendant] to reject the offer and [defendant] subsequently received a greater sentence." Defendant clarified later that the offer that he rejected, allegedly because counsel believed he or she could obtain a plea deal of less than ten years, was a 20-year offer that was presented after the 16-year offer was withdrawn. Defendant argued that both the failure to bring the 16-year offer to his attention and the advice to decline the 20-year offer constituted ineffective assistance of counsel.

¶ 8 Defendant's *pro se* petition was accompanied by affidavits from himself, his mother, and his sister. In his affidavit, defendant averred that he did not learn of the 16-year offer until the state's attorney withdrew it during a pre-trial motions hearing, at which time his attorney stated on the record that defense counsel had not been aware that there was an offer on the table. Defendant's sister, Jessica Ramos, averred that she felt that defendant and his family were pressured by his attorneys to accept a guilty plea, despite defendant's stated desire to go to trial. The contents of the third affidavit, which was from defendant's mother, Tina Black, were much the same as his sister's affidavit.

¶ 9 Defendant also attached to his initial petition letters to the Attorney Registration and Disciplinary Commission (ARDC) in which Farrell, McCartin, and Wood responded to complaints defendant filed against them.

¶ 10 In Farrell's letter, she stated that based on the court file and her calendar records, "it appears [defendant] rejected the offer of 16 years in open court on 11-09-11 while represented by two private attorneys," but that she was willing to provide any further information she could find once she received her file from the warehouse.

¶ 11 McCartin stated in her letter that she met with defendant in March 2011, before she had formally filed an appearance, and defendant told her "that a public defender, but not his public defender, had told him that there was an offer of 16 years" and that she discussed the offer with him "and he explained that he was not interested in pleading guilty at that time." McCartin added that at no point during the process of receiving discovery from his previous public defender was the 16-year offer mentioned, nor did any state's attorney mention it prior to revoking the offer "at some point after [two pre-trial motions to quash arrest and suppress statements] were filed, but before any hearings."

¶ 12 Wood stated in her letter that it was her understanding upon filing her appearance "that there was no plea offer on the table." No offer was mentioned during "a number of interactions" between Wood and the state's attorneys during "the first months" she was on the case. Neither McCartin nor Greene, with whom Wood had "numerous conversations about the case" mentioned an offer. Defendant and his family members did not mention an offer. Wood learned of the offer when the state's attorney revoked the offer during a status hearing. After the status hearing, Wood spoke with the state's attorney in question, who stated that the offer had been made by her predecessor on the case, and that she revoked it because it was "illegal," which Wood understood "to mean that the offer was not within the statutory sentencing range for either charge."

¶ 13 After the hearing, Wood learned from someone, possibly defendant, one of his family members, or McCartin, that "an [assistant public defender (APD)] who was not [defendant's] assigned APD told him in passing in the lockup that the State had made an offer of 16 years." Wood stated again that the offer was never brought to her attention. She also stated in the letter that defendant "later said he did not know if this offer was real since it did not come from his assigned APD." Wood "attempted to negotiate with the State to reinstate the 16 year offer," but the state's attorney refused and "made an offer of 20 years, which [defendant] rejected." Wood went on to state that during that time, she litigated a motion to quash arrest and suppress evidence, and was unsuccessful, which "greatly diminished the chances of success at trial," at which time the State presented a 25-year plea offer with time limit for acceptance. Defendant refused to accept the offer before the deadline, but at a later Rule 402 conference, the State reinstated the 25-year offer, and defendant accepted it.

¶ 14 B. Amended Second-Stage Petition

¶ 15 Defendant's *pro se* petition was passed on to the second stage of the postconviction petition process, at which time he hired private counsel to represent him. Defendant, through counsel, filed an amended petition for post-conviction relief, which presented the same claim without the attached affidavits and with some additional details. Defendant asserted that a hearing was held February 16, 2011, at which Assistant Public Defender Samantha Blake appeared on Farrell's behalf. While the transcript of that hearing did not reflect an offer being made, defendant stated that Assistant State's Attorney Galvin "made an offer of 16 years on that same date," as evidenced by a note in the prosecutor's blueback that read: "O=16 years IDOC." Under that was written somewhat unclear text that defendant identified in his amended petition as reading "offer not related." On appeal, defendant asserts that the text

reads "offer not" followed by an illegible word. A later note, written seemingly by a different state's attorney on October 7, 2011, read: "make new offer – why was it just 16 years???" The amended petition's statement of facts states that "[i]t is unclear from the notes whether [the 16-year offer] was ever conveyed to APD Blake, APD Farrell, or any other assistant public defender."

¶ 16 Defendant's amended petition also asserted that defendant "indicated that no attorney conveyed that evidence of his age and background could be considered in sentencing," and, had he been informed, "he would not have accepted the guilty plea to 25 years in prison." Further, defendant argued that even if no offer was ever made, defense counsel had an affirmative duty to enter plea negotiations. These two additional arguments were not renewed on appeal.

¶ 17 The State filed a motion to dismiss, in which it argued that defendant's post-conviction petition was late, that the proportionate penalties claim was barred by forfeiture, and that defendant alleged insufficient facts to support his claim that a 16-year offer was made but not relayed to him. Defendant responded, arguing that the mailbox rule made the petition timely, and that the court should not consider the attorney letters included with the *pro se* petition, as the amended petition did not include them and the motion to dismiss concerned the amended petition, not the initial *pro se* petition. Defendant argued that speculation on the State's part that no 16-year offer was ever made, despite a state's attorney stating otherwise on the record, was inappropriate to entertain at second-stage proceedings.

¶ 18 The post-conviction court granted the motion to dismiss. In doing so, it stated on the record that "there is no evidence that the trial court defense attorney was given a 16-year offer." As a result, there was no evidence that defendant's attorneys' performance was

deficient and the ineffective assistance of counsel claim failed. The court also dismissed defendant's other two claims.

¶ 19 Defendant timely filed a notice of appeal, and this appeal follows.

¶ 20 II. ANALYSIS

¶ 21 Defendant argues on appeal only that his ineffective assistance of counsel claim met the bar to move from the second stage of the postconviction process to the third stage evidentiary hearing, and so the circuit court erred in prematurely dismissing it. We possess jurisdiction to hear this appeal, as the appeal was timely filed and concerns a valid final order disposing of the petition. We review the trial court's determination at the second stage *de novo*. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 22 The Act is a "legislative creation" that allows an incarcerated defendant to assert a substantial violation of his constitutional rights at trial. *People v. Bailey*, 2017 IL 121450, ¶ 17. A postconviction proceeding is not a substitute for a direct appeal but instead "offers a mechanism for a criminal defendant to assert a collateral attack on a final judgment." *People v. Robinson*, 2020 IL 123849, ¶ 42. "The purpose of a postconviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal." *People v. English*, 2013 IL 112890, ¶ 22. Therefore, issues raised and decided on direct appeal or in a prior proceeding are barred as *res judicata*, and issues that could have been raised, but were not, are forfeited. *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 21.

¶ 23 Proceedings under the Act are divided into three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the trial court may dismiss a postconviction petition that is "frivolous or *** patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2020). A petition

is frivolous or patently without merit if it has no arguable basis either in law or fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). If the trial court does not dismiss the petition, it advances to the second stage where the court may appoint counsel to represent the defendant. 725 ILCS 5/122-2.1(b) (West 2020); *Bailey*, 2017 IL 121450, ¶ 18.

¶ 24 At the second stage, the defendant must make a substantial showing of a constitutional violation. *People v. Domagala*, 2013 IL 113688, ¶ 33. Such a showing is made when the petition's well-pled allegations, if proven at an evidentiary hearing, would entitle the defendant to relief. *Id.* ¶ 35. The trial court does not engage in fact-finding or credibility determinations at this stage; rather, all well-pleaded facts not positively rebutted by the original trial record are taken as true. *Id.* The State may choose to file a motion to dismiss or to answer the petition. 725 ILCS 5/122-5 (West 2020).

¶ 25 If the petition fails to make a substantial showing of a constitutional violation, it is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). "If not dismissed, however, the petition advances to the third stage, where the circuit court conducts an evidentiary hearing before deciding whether to grant relief." *Bailey*, 2017 IL 121450, ¶ 18. At the third stage, the court functions as the fact finder by determining witness credibility and resolving conflicts in the evidence. *Domagala*, 2013 IL 113688, ¶ 34.

¶ 26 The second stage of postconviction proceedings tests only the legal sufficiency of the petition. *Id.* ¶ 35. "In other words, the 'substantial showing' of a constitutional violation that must be made at the second stage [citation] is a measure of the legal sufficiency of the petition's well-pled allegations of a constitutional violation, which if proven at an evidentiary hearing, would entitle [defendant] to relief." (Emphasis added and in original.) *Id.* This inquiry does not require the trial court to make findings of fact or assess the parties'

credibility. *People v. Coleman*, 183 Ill. 2d 366, 385 (1998). A motion to dismiss filed at the second stage "raises the sole issue of whether the petition being attacked is proper as a matter of law." *Id.*

¶ 27 Accordingly, where the petition and trial record present questions of fact or credibility concerns, granting postconviction relief at the second stage without a third-stage evidentiary hearing is improper. See *People v. Wheeler*, 392 Ill. App. 3d 303, 310-11 (2009) (finding the trial court's grant of postconviction relief at the second stage without an evidentiary hearing "premature" because the State's motion to dismiss raised the issue of the defendant's credibility); *People v. Cleveland*, 2012 IL App (1st) 101631, ¶¶ 52-53 (refusing to grant the defendant's request for relief at the second stage of proceedings without an evidentiary hearing, where fact questions existed regarding his conflict of interest claim).

¶ 28 Defendant's claim is one of ineffective assistance of counsel. "Illinois courts evaluate claims of ineffective assistance of counsel under the two-prong test established by the United States Supreme Court." *People v. Torres*, 2024 IL 129289, ¶ 26 (citing *Strickland v. Washington*, 466 U.S. 668). "[T]o prevail on a claim of ineffective assistance of counsel, a defendant must show (1) that his attorney's representation fell below an objective standard of reasonableness and (2) that a reasonable probability exists that, but for counsel's errors, the result of the proceeding would have been different." *Id.* ¶ 27. "A defendant's failure to satisfy either prong of the *Strickland* standard precludes a finding of ineffective assistance of counsel." *Id.*

¶ 29 Synthesizing the requirements of an ineffective assistance of counsel claim with the standard at the second stage of the postconviction petition process, the question is this: did the claim and the accompanying facts, if taken as true, show that the performance of one or

more of his attorneys fell below an objective standard of reasonableness, and that defendant was prejudiced by that failure to provide effective counsel?

¶ 30 When seeking to establish prejudice from a lapsed plea offer:

> "[D]efendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law." *Missouri v. Frye*, 566 U.S. 134, 147 (2012)

¶ 31 Defense counsel have the duty to convey plea offers to their clients. *Frye*, 566 U.S. at 145. There is no question that defendant's claim presents enough evidence that a trier of fact could find prejudice. Because this petition is at the second stage, we do not weigh the evidence showing that prejudice: we take as true that an offer was available for the taking and that defendant was never informed of the offer. Defendant ultimately accepted a plea offer for a greater sentence and has since averred that he would have accepted the 16-year plea offer had he been aware of it. The credibility of that assertion is a matter for the trier of fact that can only be resolved by a third-stage evidentiary hearing. Taking defendant's factual allegations as true, the time during which the offer was available and the time during which defendant was interested in pursuing a plea offer overlapped. Without questioning the attorney or attorneys responsible for making and later withdrawing the offer, it is unclear what greater proof defendant could have that the offer would not have been withdrawn prior to acceptance, or that it would not have been rejected by the court. The State raises the fact that the offer could not have been accepted by the court because it was below the statutory

minimum, but the plea negotiations could well have included an offer to plead guilty to a lesser charge. Whether the evidence shows a reasonable probability that the offer could have been successfully accepted is another matter for the trier of fact to determine after a third-stage evidentiary hearing.

¶ 32 The question that then remains is whether defendant's claim successfully alleged behavior on the part of defense counsel that fell below an objective standard of reasonableness. This case presents an unusual question: can defendant establish deficient representation without certainty as to which specific attorney it was who erred? We see no reason why not. The foundational case here, *Strickland*, repeatedly uses phrases like "counsel's assistance," "the deficient performance," and "an error by counsel" to describe the subject of our review. *Strickland*, 446 U.S. at 687, 691. The Supreme Court stated: "The purpose of the Sixth Amendment guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding." *Id*. at 691-92. The only portion of the *Strickland* standard that requires more specific knowledge of the attorney who allegedly erred is the requirement that counsel's alleged error be viewed from the attorney's perspective, including what the attorney did and did not know at the time of the error. *Id*. at 689. The facts before us eliminate that concern, as there is no context in which defense counsel is relieved of the duty to relay a plea offer, nor could the choice to refrain from passing on a plea offer ever constitute sound trial strategy. *Frye*, 556 U.S. at 145 ("When defense counsel allowed the offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the Constitution requires.").

¶ 33 Defendant has presented a certified trial court transcript in which the prosecution stated on the record that an offer had been made and subsequently withdrawn. A trier of fact could reasonably infer that the offer had a recipient, and that recipient was one of defendant's attorneys. It is possible that a trier of fact might find the prosecution's statement on the matter to be incredible, but, again, that is a judgment to be made following a third-stage evidentiary hearing. Even if a claim is held together with proverbial duct tape and string, it must pass second-stage review if it is legally sufficient. Defendant was required to show that his counsel's behavior fell below an objective standard of reasonableness. By presenting evidence that an offer existed and that none of his attorneys presented it to him, he met the second-stage burden, regardless of which of his attorneys may have been responsible for the error. Even if a court might look at this or any other postconviction petition that comes before it and have grave doubts about its ultimate success, the temptation to dismiss the petition sooner rather than later in the name of judicial economy must be resisted if defendant's claim is legally sufficient. Defendant's petition checked all of the boxes to constitute a legally sufficient claim, so its dismissal at the second stage of the postconviction process was erroneous. We remand the case for a third-stage evidentiary hearing.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we reverse the lower court's decision and remand the case for a third-stage evidentiary hearing.

¶ 36 Reversed and remanded.