



child pornography (720 ILCS 5/11-20.1B(a)(1)(i) (West 2014)). (The charge was later amended to child pornography (720 ILCS 5/11-20.1(a)(1)(i) (West 2014)) without dispute. See *People v. Jenkins*, 2019 IL App (3d) 160480-U, ¶ 4 n.1.) During defendant's bench trial, no mention was made of handcuffs or shackling on the record. The trial court found defendant guilty of all counts and sentenced defendant to consecutive sentences of seven years' imprisonment for predatory criminal sexual assault and six years' imprisonment for child pornography. In 2019, the appellate court reversed one predatory criminal sexual assault conviction but affirmed the remaining convictions. *Jenkins*, 2019 IL App (3d) 160480-U, ¶ 2.

¶ 5 In June 2020, defendant filed a postconviction petition, alleging his right to due process under the United States and Illinois Constitutions was violated because he was shackled during his bench trial. The trial court dismissed the petition at the second stage of proceedings, and the appellate court reversed and remanded for a third-stage evidentiary hearing. *People v. Jenkins*, No. 3-21-0129 (2023) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 6 In July 2023, the trial court conducted an evidentiary hearing. Cori Jenkins, defendant's niece, testified defendant was a very close relative and she had attended defendant's bench trial. Cori could see defendant when she was seated and saw defendant was shackled with handcuffs and feet shackles when he entered the courtroom. The shackles remained on throughout the trial. Defendant was also wearing an orange jumpsuit during the trial. Cori did not recall anyone in the courtroom saying anything about the shackles. Cori stated she thought defendant was wrongly convicted.

¶ 7 Lisa Kolesar, defendant's sister, also testified she saw defendant enter the courtroom in shackles, which were not removed. Kolesar thought defendant had difficulties

standing up, sitting down, and signing papers. She did not recall what defendant was wearing but assumed it was a jumpsuit. Kolesar did not know of anyone in the courtroom saying anything about defendant being shackled.

¶ 8 Michael Jenkins, defendant's brother, also gave similar testimony. However, he added defendant's hands were shackled and he could not move them. This prevented defendant from getting the attention of his counsel. Michael testified defendant's lawyer brought the shackling to the trial court's attention, but the court "just pushed it off to the side" and "didn't say anything about it." Michael did not include that information in a previous affidavit submitted in support of defendant's postconviction petition. Like Cori, Michael thought defendant was wrongly convicted. Lisa Jenkins, defendant's sister-in-law, provided testimony similar to the other witnesses, and she also thought defendant was wrongly convicted.

¶ 9 Defendant testified that, at the time of the trial, he was detained at the Knox County jail. When he was brought into the courtroom, he was wearing handcuffs and shackles with a chain between them. He generally remained shackled throughout the trial. He also wore an orange jumpsuit during the trial.

¶ 10 According to defendant, when he struggled to write something because of the restraints, his trial counsel said something to the trial court, and the court asked the prosecutor if there was a reason for defendant to be handcuffed. As a result, defendant was allowed to be uncuffed until the lunch recess. When he returned to court after lunch, he was again shackled, and he remained so for the rest of the trial. Defendant stated he could not get his attorney's attention because of the shackles. He had a pen and paper but could not write anything. There were certain things he wanted to bring up, such as questions he wanted counsel to ask witnesses, but he could

not do so. Defendant testified his inability to get his counsel's attention impeded his ability to assist in his own defense.

¶ 11 Judge Paul Mangieri testified he presided over defendant's bench trial. Mangieri stated there was always a court reporter present during his felony trials. However, there could be times where there were communications off the record that the court reporter did not transcribe. Typically, if there was such a discussion on a major substantive issue, a record would be made of it.

¶ 12 Mangieri testified, before the appellate court case of *People v. Rippatoe*, 408 Ill. App. 3d 1061, 945 N.E.2d 132 (2011), which held shackling was inappropriate in both jury and bench trials, the Knox County Sheriff's Office had a policy of shackling felony defendants. Mangieri's policy was to not keep a defendant in shackles. After the *Rippatoe* decision, Mangieri was "very, very careful" about making sure defendants were not shackled. His normal protocol was to visually determine if a defendant was shackled. If a defendant was shackled, he would either order the defendant to be released from the shackles or ask the State if it had a motion for the defendant to remain in shackles. Defendants in custody would wear an orange jumpsuit during a bench trial.

¶ 13 Mangieri testified it was not unusual for a defendant to be brought into his courtroom in shackles for a felony case. When this happened, he would typically address it before starting the proceedings and before going on the record. Many times, defendants were already in place at the counsel table when Mangieri took the bench. Depending on how the defendant was positioned, Mangieri may not have been able to determine whether the defendant was in restraints. If he was seated when the defendant was brought into the courtroom, he would have the opportunity to observe the defendant walk in and determine whether the defendant was shackled.

Mangieri also stated there was an auditory component to shackling, with a very intrusive sound. He stated he did not see how a person could miss it if a defendant was in shackles.

¶ 14 Mangieri stated the bench was elevated above defense counsel's table, so he had the ability to see defendants at the counsel's table. If a shackled defendant were trying to write during trial, with his hands on the table, Mangieri would have stopped the trial and fixed the situation. If he did not observe the defendant shackled, he would not have known and would not have said anything, as he could not rectify instances of shackling that he was not aware of.

¶ 15 Mangieri remembered two cases where he had not realized a defendant was shackled. In those cases, when it was brought to his attention, he had the shackles removed. In one case, it was brought up in court and discussed on the record. In the other case, it was brought to his attention in chambers. He could not recall the details or names of the defendants in those cases.

¶ 16 Mangieri testified he had some recollection of defendant's case. He recognized defendant, remembered the charges and the fact pattern of the case, the guilty verdict, and that he ordered consecutive sentences. Mangieri recalled the trial occurring in a smaller courtroom across the hall. He did not have a specific recollection as to whether defendant was shackled. He did not recall defendant being shackled at any point during the trial, unless defendant was one of the two cases he had previously mentioned. If defendant did not fall within one of those two cases, then he did not have an independent recollection of defendant being shackled.

¶ 17 Stephanie Hilton testified she was an assistant state's attorney in Knox County and second chair during defendant's bench trial. She said normally, court security would address the shackling of defendants. Otherwise, Mangieri always ensured defendants would be unshackled. Hilton stated it was part of Mangieri's procedure to check the status of shackling. She described him as a "creature of habit" and "pretty meticulous in how he ran his courtroom." Hilton did not

have any memory of being at any bench trial where a particular defendant was discovered to still have been in shackles. Hilton had an independent recollection of defendant's trial and did not believe defendant was shackled. Hilton testified there is a lot of "jingling" when a shackled defendant walks into the courtroom, and a person can hear when handcuffs or shackles hit against the wooden counsel tables. She stated it could be very loud and distracting. Hilton also testified she believed defendant was not in custody because he would walk in normally, which a person could not do when shackled. However, the docket sheets in the record indicate defendant was present for his trial "in custody of the Knox County Jail."

¶ 18 On October 17, 2023, the trial court denied the postconviction petition, noting the parties had presented contrary evidence concerning whether defendant had been shackled. The court questioned the credibility of defendant and his witnesses and found their testimony appeared scripted and unreliable. As a result, the court concluded defendant had not met his burden of showing a constitutional violation.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, OSAD moves to withdraw. Counsel for OSAD asserts he (1) read the record on appeal, (2) reviewed the facts and applicable law, and (3) discussed the case with another attorney. OSAD concludes an appeal in this case would be without arguable merit. This court gave defendant the opportunity to respond to the motion, and defendant did not file a response.

¶ 22 OSAD submits it would be frivolous to argue the trial court erred in denying defendant's postconviction petition. We agree this appeal presents no nonfrivolous issues.

¶ 23 The Act provides a three-stage process by which a defendant may obtain relief for the substantial denial of his constitutional rights at trial. During the first stage, within 90 days of

the filing of the petition, the trial court determines whether the petition states an arguable claim. 725 ILCS 5/122-2.1 (West 2022). If the court does not dismiss the petition pursuant to section 122-2.1, the petition is docketed for further consideration and proceeds to stage two of the postconviction process. *People v. Gaultney*, 174 Ill. 2d 410, 418, 675 N.E.2d 102, 106 (1996). At the third stage, the matter proceeds to an evidentiary hearing, where the trial court must determine whether the defendant has met his burden of establishing a substantial deprivation of his constitutional rights. *People v. Griffin*, 109 Ill. 2d 293, 303, 487 N.E.2d 599, 603 (1985).

¶ 24 Following a third-stage hearing, the trial court’s decision will be reversed only if it was manifestly erroneous. *Griffin*, 109 Ill. 2d at 303. We find manifest error only where the court’s decision was “arbitrary, unreasonable and not based on the evidence.” *People v. Wells*, 182 Ill. 2d 471, 481, 696 N.E.2d 303, 308 (1998). Put another way, we will reverse only if the opposite conclusion is clearly evident, plain, and indisputable. *People v. Morgan*, 212 Ill. 2d 148, 155, 817 N.E.2d 524, 528 (2004).

¶ 25 A trial court should not physically restrain or shackle a defendant in court unless there is a showing of manifest need. *People v. Boose*, 66 Ill. 2d 261, 265-66, 362 N.E.2d 303, 305 (1977). The court should state on the record its reasons for shackling the defendant and provide the defense with an opportunity to offer reasons against shackling. *People v. Urdiales*, 225 Ill. 2d 354, 416, 871 N.E.2d 669, 706 (2007). A trial court’s failure to follow procedures established in *Boose* and subsequently codified in Illinois Supreme Court Rule 430 (eff. July 1, 2010) is a violation of a defendant’s due process rights. *People v. Reese*, 2017 IL 120011, ¶ 49, 102 N.E.3d 126. Rule 430 requires the trial court to conduct a separate hearing, outside the presence of the jury, to determine whether shackling the defendant is necessary. *Reese*, 2017 IL 120011, ¶ 48; Ill. S. Ct. R. 430 (eff. July 1, 2010). Following the hearing, the court must make specific findings

based on factors enumerated in Rule 430, weighing the defendant's right to due process against the manifest need for shackling him. Ill. S. Ct. R. 430 (eff. July 1, 2010).

¶ 26 Here, the sole issue was whether defendant was deprived of his constitutional right to due process because he was shackled during his bench trial. The trial court found defendant failed to meet his burden of showing he was shackled. While defendant presented testimony he was shackled, and close family members similarly testified, the court found the defense witnesses lacked credibility because their testimony appeared scripted and unreliable. Several of those witnesses also indicated the potential for bias, noting they believed defendant was wrongly convicted. Meanwhile, Mangieri and Hilton provided testimony indicating defendant was not shackled during trial. From the evidence presented, the trial court, which was in the best position to judge the credibility of the witnesses, could reasonably infer defendant was not shackled. The opposite conclusion is not clearly evident, plain, and indisputable. Accordingly, the court's determination was not manifestly erroneous. As a result, we agree with OSAD there is no meritorious argument to be raised on appeal.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 29 Affirmed.