

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) 260007-U

NO. 4-26-0007

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 2, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macoupin County
DAVID W. BUCK, JR.,	)	No. 18CF28
Defendant-Appellant.	)	
	)	Honorable
	)	Joshua Aaron Meyer,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Zenoff and Doherty concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed, finding the trial court erred when it failed to address a claim within defendant's *pro se* postconviction petition.

¶ 2 In January 2023, defendant, David W. Buck Jr., was convicted by a jury of, *inter alia*, first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)). In September 2025, he filed a postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)), which was subsequently dismissed. On appeal, defendant argues the trial court erred when dismissing his *pro se* petition at the first stage because he had stated the gist of a constitutional claim when he argued he was not permitted to be present during jury selection. For the reasons that follow, we reverse the trial court's summary dismissal.

¶ 3 I. BACKGROUND

¶ 4 In February 2018, defendant was charged with, among other things, first degree

murder for shooting and killing Rachel Warren (720 ILCS 5/9-1(a)(1) (West 2018)). The matter proceeded to a jury trial in January 2023, where he was found guilty. Because the sole issue on appeal involves jury selection, we recite only the facts relevant to his claim on appeal.

¶ 5 On the first day of defendant’s trial, the trial court impaneled a venire of 27 potential jurors. The court asked the entire venire if they knew any of the people involved in the case. Juror No. 177, Kevin S., said, “Well, I know of the family. And then one of the people that you mentioned was going to testify was in class with my children.” The court asked the juror if the acquaintance would make it difficult for him to be fair and impartial to either party. The juror said, “I don’t believe so.” After further questioning of the entire venire, a sidebar was held, wherein the court asked the State and counsel for defendant whether any jurors, including juror No. 177, should be struck for cause. Counsel for defendant declined to strike the juror. The court then asked the parties whether they would use any preemptory challenges. Both parties declined, and juror No. 177 was impaneled on the jury.

¶ 6 After defendant was found guilty, he appealed. See *People v. Buck*, 2023 IL App (4th) 230151-U. On appeal, he argued, *inter alia*, the evidence was insufficient to find him guilty and his trial counsel was ineffective for failing to move to suppress his statements. *Id.* ¶ 33. This court affirmed. *Id.* ¶¶ 49, 75.

¶ 7 In September 2025, defendant filed a *pro se* petition pursuant to the Act. In his petition, defendant contended his trial counsel was ineffective for (1) failing to investigate the facts of his case, (2) failing to raise a defense, and (3) failing to impeach certain witnesses. In a section titled “Final Argument,” defendant recounted the sidebar following *voir dire* and noted he was not present. He stated his trial counsel permitted “jurors to stay that knew people involved with the case and [their] family.” He contended there was “no possible way to make a

non[-]bias[ed] decision” if the juror(s) knew somebody or their family. He argued his family did not “get along” with juror No. 177, and the same juror’s wife grew up in a small town with some of the witnesses. He rhetorically questioned how these facts could afford him a fair trial. The remainder of his final argument section makes numerous conclusory arguments, many of which attacked the sufficiency of the evidence.

¶ 8 In November 2025, the trial court issued a written decision summarily dismissing defendant’s petition at the first stage. The court’s written decision did not address the issue of defendant being unable to participate in the acceptance or striking of jurors.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred when dismissing his *pro se* postconviction petition at the first stage because his jury-selection argument stated the gist of a constitutional claim. Specifically, he argues his petition had set forth an arguable basis in fact when he contended his family and the juror did not get along and the juror’s wife grew up with two witnesses who had testified at trial. He contends, had he been present during the sidebar, he would have had the opportunity to request his counsel seek to strike the juror.

¶ 12 “The [Act] provides a procedural mechanism through which criminal defendants can assert that their federal or state constitutional rights were substantially violated in their original trials or sentencing hearings.” *People v. Buffer*, 2019 IL 122327, ¶ 12. A postconviction petition must clearly set forth the ways in which a defendant claims his constitutional rights were violated. 725 ILCS 5/122-2 (West 2024). “The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” *Id.*

¶ 13 “The Act provides a three-stage process for the adjudication of postconviction petitions.” *Buffer*, 2019 IL 122327, ¶ 45. “At the first stage, the [trial] court reviews the petition independently within 90 days after it is filed and docketed.” *People v. Hatter*, 2021 IL 125981, ¶ 22. The threshold to survive summary dismissal at the first stage is low, and a petition should only be summarily dismissed “if it is ‘frivolous or is patently without merit.’ ” *Id.* ¶ 23 (quoting 725 ILCS 5/122-2.1(a)(2) (West 2016)). “A postconviction petition is frivolous or patently without merit if it has no arguable basis either in law or in fact.” (Internal quotation marks omitted.) *Id.* “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.” *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). “An example of an indisputably meritless legal theory is one which is completely contracted by the record.” *Id.*

¶ 14 “The allegations of the petition, taken as true and liberally construed, must present the gist of a constitutional claim.” *Hatter*, 2021 IL 125981, ¶ 24. “To set forth the gist of a constitutional claim, the post-conviction petition need only present a limited amount of detail [citation] and hence need not set forth the claim in its entirety.” (Internal quotation marks omitted.) *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). To raise the gist of a constitutional claim, the petition “need not present formal legal arguments or citations to legal authority.” *Hatter*, 2021 IL 125981, ¶ 24. We review the summary dismissal of a postconviction petition at the first stage *de novo*. *Id.*

¶ 15 The State argues defendant did not raise his jury-selection claim in his petition. Alternatively, the State contends that if we find the issue was properly raised in the petition, defendant’s argument is either forfeited or without merit. We disagree.

¶ 16 In response to the State’s first argument, we find the issue was raised in

defendant's petition. As we explained above, allegations within a *pro se* petition, at the first stage, are liberally construed, and a defendant is not required to set forth the claim in its entirety or present it in proper legal form. Defendant clearly narrated what had occurred during jury selection and alleged—with facts outside the record—one of the selected jurors was biased. We conclude this was sufficient to raise the issue at the first stage.

¶ 17 Regarding the State's forfeiture argument, we note defendant's petition alleged two facts outside the record. Specifically, he alleged the juror at issue did not get along with his family and the juror's wife grew up with two of the witnesses at trial. Defendant's contention on appeal that, had he been present for the sidebar, he would have objected to counsel's acceptance of juror No. 177 necessarily implies he knew these facts prior to the direct appeal. However, our supreme court has clearly stated, when reviewing "whether a postconviction claim has been forfeited, the question is not whether the facts supporting the claim were 'known' by the defendant at the time of the direct appeal." *People v. Carroll*, 2026 IL 131360, ¶ 64. Our review is confined to what is within the record and, where a "postconviction claim relies on facts not of record[,] then there is no forfeiture, 'irrespective of whether [the] supporting facts [were] available as a practical matter at the time of the direct appeal.'" *Id.* (quoting *People v. Newbolds*, 364 Ill. App. 3d 672, 676 (2006)). Therefore, we find defendant has not forfeited his jury-selection claim.

¶ 18 Lastly, the State contends defendant's claim is without merit. Both parties cite *People v. Brown*, 2023 IL 126852, in support of their respective arguments.

¶ 19 In *Brown*, the central issue was whether the defendant had "received ineffective assistance of trial counsel because, while he was present at trial for *voir dire*, his attorney agreed to a process where the parties exercised juror challenges at sidebar conferences held off the

record and outside his presence.” *Id.* ¶ 1. It is worth noting here that two of the seven justices took no part in the decision. *Id.* ¶ 105.

¶ 20 The lead opinion noted “our appellate court has long held that a defendant’s right to be present at all critical stages of the proceedings does not extend to the striking and accepting of jurors.” *Id.* ¶ 18. (opinion of Theis, C.J., joined by Overstreet, J.). The lead opinion found the rationale convincing in cases such as *People v. Spears*, 169 Ill. App. 3d 470 (1988), *People v. Beacham*, 189 Ill. App. 3d 483 (1989), and *People v. Gentry*, 351 Ill. App. 3d 872 (2004), and concluded a defendant does not have a constitutional right to be present during the striking and accepting of jurors. *Brown*, 2023 IL 126852, ¶ 24. The lead opinion explained the defendant in *Brown* “was present throughout *voir dire* when prospective jurors were questioned. Thus, [the] defendant had the opportunity to hear the prospective jurors’ answers and to view their demeanor. He could then provide whatever input he desired to counsel before his attorney acted on his behalf at the sidebars.” *Id.* ¶ 25. The lead opinion addressed the defendant’s claim of ineffective assistance of counsel and found no basis to conclude counsel had rendered deficient performance. *Id.* ¶ 27. Lastly, the lead opinion noted the defendant conceded there was no evidence he had been tried by a biased jury and concluded no prejudice was shown. *Id.* ¶ 28.

¶ 21 *Brown* had two specially concurring opinions. The first explained it agreed with the lead opinion that the defendant failed to show he had received ineffective assistance of counsel but disagreed the acceptance and striking of jurors was not a critical stage of trial. *Id.* ¶ 33. (Neville, J., specially concurring). This concurrence found a defendant *does* have a constitutional right to be present for the acceptance and striking of jurors. *Id.* ¶ 74. The concurrence stated that where “a defendant fails to object and preserve his presence error, we review it for plain error, and the defendant has the burden of proving prejudice.” *Id.* The

concurrence concluded the defendant in *Brown* had failed to show prejudice, thus failing to show ineffective assistance, and affirmed. *Id.*

¶ 22 The second concurring opinion also agreed with the lead opinion’s conclusion the defendant had failed to show he had received ineffective assistance but disagreed with its reasoning. *Id.* ¶ 76. (O’Brien, J., specially concurring, joined by Holder White, J.). This concurrence found the lead opinion’s bifurcation of the jury selection process into two stages, “(a) the questioning of prospective jurors *** [or] ‘*voir dire*’ and (b) the subsequent ‘striking and accepting of jurors’ after the conclusion of *voir dire*,” was irrelevant and not the dispositive issue. *Id.* ¶¶ 76, 83. The concurrence also disagreed that a defendant does not have the right to be present during the acceptance and striking of jurors. *Id.* ¶ 83. Additionally, the concurrence found the lead opinion’s analysis of deficient performance incorrectly placed too much emphasis on the defendant’s conduct and not on counsel’s conduct. *Id.* ¶ 85. The concurrence stated it was counsel’s “obligation to ensure her client [was] present at all stages of jury selection, not [the] defendant’s obligation to inform counsel of his wishes and concerns prior to certain stages of jury selection.” *Id.* The concurrence concluded counsel was deficient for “agreeing to a process where the parties struck and accepted jurors at sidebar conferences held off the record and outside [the] defendant’s presence.” *Id.* Ultimately, the concurrence also noted the defendant conceded no evidence existed in the record that his jury was biased, so it affirmed the judgment. *Id.* ¶ 103.

¶ 23 The State argues defendant’s petition is meritless because the *Brown* court held a defendant does not have a constitutionally protected right to be present during the acceptance and striking of jurors. As we explained above, of the five participating justices, only two supported a bright-line rule that a defendant does not have a constitutionally protected right to be present

during the acceptance and striking of jurors. Both concurring opinions—accounting for three of the five participating justices—rejected the lead opinion’s bright-line rule. Therefore, we conclude, because the *Brown* court failed to secure four concurring justices, it is not binding authority. See *Perlman v. First National Bank of Chicago*, 60 Ill. 2d 529 (1975).

¶ 24 The issue, however, is whether defendant’s absence during the acceptance and striking of jurors constituted ineffective assistance of counsel. “A claim of ineffective assistance of counsel is evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).” *People v. Henderson*, 2013 IL 114040, ¶ 11. “Under this test, a defendant must demonstrate that counsel’s performance fell below an objective standard of reasonableness, and a reasonable probability exists that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* “A defendant’s failure to establish either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel.” *Id.*

¶ 25 The issue of whether defendant’s counsel was ineffective for permitting the acceptance and striking of jurors to occur in his absence was never addressed by the trial court. As we have already found, this claim was raised in the petition. Therefore, we remand the matter back to the court for second-stage proceedings on defendant’s postconviction petition, as his jury-selection claim is not based on an undisputedly meritless legal theory. See *Hodges*, 234 Ill. 2d at 16.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we reverse the judgment of the trial court and remand for further proceedings consistent with this order.

¶ 28 Reversed and remanded.