

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) 250987-U

NO. 4-25-0987

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 24, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Rock Island County
TERRIONCE C. KITCHEN,	)	No. 22CF425
Defendant-Appellant.	)	
	)	Honorable
	)	Frank R. Fuhr,
	)	Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.
Justices DeArmond and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding defendant's posttrial counsel did not render ineffective assistance in preparing the motion for a new trial.

¶ 2 In January 2024, a jury found defendant, Terrionce C. Kitchen, guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 2022)). In May 2025, defendant's posttrial counsel filed a motion for a new trial, arguing, *inter alia*, defendant's trial counsel rendered ineffective assistance by failing to investigate exculpatory witnesses. Posttrial counsel did not introduce evidence or testimony in support of the claims not apparent from the trial record. The trial court dismissed defendant's motion for a new trial and sentenced him to 55 years in prison.

¶ 3 Defendant appeals, arguing his posttrial counsel rendered ineffective assistance by failing to introduce evidence or testimony in support of the motion. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2022, the State charged defendant with one count of first degree murder (720 ILCS 5/9-1(a)(2) (West 2022)) for the shooting death of Desavion Foster. In January 2024, the case proceeded to a jury trial. The following evidence was adduced at trial.

¶ 6 On May 22, 2022, Desavion Foster and his cousin, Desmond Hanes, were walking along 10th Avenue in Rock Island, Illinois, passing the Greater Antioch Baptist Church (Church) on the way to a friend's house. Hanes testified, at the corner of 15th Street, they noticed a masked man wearing all black was walking behind them. After Foster and Hanes turned onto 15th Street, the masked man called out their names and pulled a gun from his waistband. As they started running, Hanes heard gunshots, and Foster was shot.

¶ 7 At trial, Hanes identified defendant in the courtroom as the shooter. Hanes stated he "knew who it was" when he first saw the shooter behind him and could see his eyes and nose under the mask. Hanes acknowledged his previous statements to police that he couldn't identify the shooter and couldn't see behind the mask.

¶ 8 The local neighbors, Donavin Caston, Kenneth Ramey, and Christopher Devore, all lived on the block of 15th Street where the shooting took place and testified at trial. All three neighbors testified that they were at home at their respective houses when each heard six gunshots fired. Devore looked out from his front porch, where he saw the shooter, "standing in the middle of the street in all black and shooting a gun" before running down the alley. Ramey testified when the shots stopped, he also saw someone in all black running toward the alley. Ramey and Caston both went outside, saw the wounded victim lying on the ground, and waited for police to arrive.

¶ 9 Officer Tyler Evans of the Rock Island Police Department testified he was the first officer to respond to the shooting and rendered aid until paramedics arrived. Evans believed

Foster had already died from the gunshot wound. Forensic pathologist Mark Peters testified Foster died of a gunshot wound to the chest, consistent with the autopsy's findings. A crime scene analyst, Garrett Alderson, testified he found six casings at the crime scene, and a microscopic examination of the markings indicated all the casings were fired from the same weapon.

¶ 10 Kelvin Franklin and defendant's mother lived on 14½ Street. Franklin testified defendant did not live at their house. The recording of Franklin's conversation with police on May 27, 2022, was admitted and played for the jury. In the recording, Franklin recalls he was sitting outside when he heard gunshots and saw defendant come running to his house. Franklin stated defendant was masked and dressed in black when he ran into the house and left shortly after.

¶ 11 Damya Payton had been in a relationship with defendant for a few months prior to the shooting. In exchange for Payton's testimony in this case, the State dismissed the murder charge against her. Payton's car was a dark blue Nissan Altima. Payton testified, on May 22, 2022, defendant drove the Nissan past the Church before dropping himself off in the alley by Franklin's house. Defendant was wearing a black hoodie, a black ski mask, black jeans, and white shoes. Defendant "ran off," and Payton drove the Nissan home to her apartment. Payton drove back to the alley when defendant called her to be picked up. At the apartment, defendant told Payton he had to leave town because the boy he shot had died.

¶ 12 The trial court admitted into evidence a video from the day of the shooting. It was played for the jury. The video consists of a chronological montage of local surveillance video from the day of the shooting. It shows a dark blue Nissan driving in the neighborhood. The Nissan drives past the Church before entering and leaving the alley. After the Nissan turns onto

10th Avenue, at approximately 2:52 p.m., a person is seen running across the intersection. When the Nissan returns to the alley, at approximately 3:10 p.m., a person enters the passenger side, and the Nissan drives away. The routes taken by the Nissan in the surveillance video were consistent with Payton's testimony.

¶ 13 The defense did not present any evidence. Following closing arguments and instructions, the jury found defendant guilty of first degree murder.

¶ 14 Defendant retained another attorney to represent him in posttrial matters, and that attorney was granted leave to withdraw in July 2024. The trial court then appointed posttrial counsel William Breedlove to represent defendant.

¶ 15 On May 8, 2025, posttrial counsel filed defendant's motion for a new trial. The motion raised ineffective assistance of defendant's trial counsel on several issues. Relevant to this appeal, the motion raised trial counsel's failure to investigate "an alibi witness, and a witness that would have provided information about defendant's purpose for being out of state." The motion stated that any ineffective assistance claims "that need a further record" should be addressed in postconviction proceedings. The motion argued, "because completing the record" would necessarily require waiving attorney-client privilege, the issues requiring evidence outside the record should be addressed on collateral review to avoid defendant "having to prematurely waive attorney-client privilege with trial counsel."

¶ 16 At the hearing on the motion, counsel reiterated, "There were witnesses that were not investigated." Counsel stated his "position" that any issues requiring "additional record and testimony would have to be raised" in postconviction proceedings "because that's a collateral attack that involves something outside of the record." Counsel suggested "the [issues] that are ripe and are apparent from the record, in [his] view, are not objecting to the motion *in limine*

about flight, and not dealing with the public trial right.”

¶ 17 The trial court denied defendant’s motion for a new trial and sentenced him to 55 years in prison.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant argues posttrial counsel rendered ineffective assistance in preparing the motion for a new trial by failing to present testimony or evidence in support of his claims against trial counsel. Specifically, defendant contends that evidence of his trial counsel’s failure to investigate exculpatory witnesses should have been presented by posttrial counsel. Defendant argues posttrial counsel prevented the trial court from examining these claims due to the “mistaken belief that he could not introduce this evidence” at the motion hearing.

¶ 21 Ineffective assistance of counsel claims must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must show both that his counsel’s performance was deficient and that the deficient performance resulted in prejudice. *Strickland*, 466 U.S. at 687. Specifically, “a defendant must demonstrate that (1) counsel’s performance was objectively unreasonable compared to prevailing professional standards and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *People v. Cherry*, 2016 IL 118728, ¶ 30 (citing *Strickland*, 466 U.S. at 688, 694). A defendant’s failure to establish either prong precludes a finding of ineffective assistance of counsel. *People v. Poole*, 2022 IL App (4th) 210347, ¶ 73. Where a claim of ineffective assistance was not raised in the trial court, our review is *de novo*. *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24.

¶ 22 In this case, posttrial counsel filed a written motion for a new trial, which raised

trial counsel's failure to investigate "an alibi witness, and a witness that would have provided information about defendant's purpose for being out of state." The written motion explained that the trial court could "enter an order for an evidentiary hearing on the above issues—allowing the court a full review with a completed factual record preserving that record for appeal—or make a ruling based solely on the evidence before it, allowing the defendant to reserve the completion of the record" for postconviction proceedings. The motion requested "the court [to] take the second option, thus allowing all the reviewable claims to be heard" while reserving the claims requiring additional evidence for collateral review. The motion stated, "[T]he court should determine first if it must grant a new trial without invading the sanctity of the attorney-client privilege *** where the invasion may ultimately prove unnecessary." We agree with the State that at the motion hearing, posttrial counsel "vigorously argued the issues supported by the trial record."

¶ 23 Under these circumstances, we cannot find posttrial counsel's performance was deficient. Posttrial counsel's decision to reserve specific claims for postconviction proceedings, where these claims required evidence outside the trial record, was not objectively unreasonable. Indeed, our supreme court has recognized that collateral review is entirely suitable for ineffective assistance claims that require the development of a further record. See *People v. Veach*, 2017 IL 120649, ¶ 46 ("In our view, ineffective assistance of counsel claims may sometimes be better suited to collateral proceedings but only when the record is incomplete or inadequate for resolving the claim."). We agree with the State that it was a matter of strategy for counsel to reserve these claims for postconviction proceedings.

¶ 24 Defendant argues posttrial counsel's comments at the motion hearing showed a "misunderstanding of the law" where counsel stated that issues outside the record could not be raised at the posttrial motion stage. At the motion hearing, counsel stated:

“[I]t’s my position that those issues that can be raised that are viewed only from the trial record created are ripe in a post-trial motion. Those that would require or may require additional record and testimony would have to be raised in a post-conviction petition because that’s a collateral attack that involves something outside of the record.”

Posttrial counsel’s “position” did not amount to deficient performance. Counsel was not required to raise ineffective assistance of counsel claims in the posttrial motion if those claims were not apparent from the record. See *Veach*, 2017 IL 120649, ¶ 46 (establishing that defendants are required “to raise ineffective assistance of counsel claims on direct review if apparent on the record”). In the written motion, counsel requested the trial court “reserve the completion of the record” for postconviction proceedings, rather than holding an evidentiary hearing.

¶ 25 On this record, it is not possible for this court to find defendant was prejudiced by posttrial counsel’s performance. The record does not provide any information regarding exculpatory witnesses that trial counsel failed to investigate or what their testimony might have been. Instead, defendant has the opportunity to raise these claims in further postconviction proceedings, where the record may be developed. See *Veach*, 2017 IL 120649, ¶ 47 (“Procedural default does not *** preclude a defendant from raising an issue on collateral review that depended upon facts not found in the record.”). Defendant has not shown posttrial counsel’s actions were objectively unreasonable and resulted in prejudice. Accordingly, his instant ineffective assistance claim fails.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court’s judgment.

¶ 28 Affirmed.