

2026 IL App (4th) 250854

NO. 4-25-0854

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 22, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County.
SEAN SULLIVAN,	)	No. 20CF223
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Justices Lannerd and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Sean Sullivan, appeals from the first-stage dismissal of his petition filed under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)). Defendant contends he stated an arguable constitutional claim alleging that his trial counsel was ineffective for failing to investigate and challenge a victim impact statement, which the trial court relied on at sentencing. We affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Trial

¶ 4 We recite only those facts necessary for this appeal and reference relevant facts from the direct appeal. Following a bench trial in 2022, defendant was found guilty of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2016)) (count X), aggravated criminal sexual abuse (*id.* § 11-1.60(c)(1)(i)) (count XI), indecent solicitation of a child (*id.* § 11-

6(a)) (count VII), and sexual exploitation of a child (*id.* § 11-9.1(a)(2)) (count VIII), all related to his abuse of N.R.C. over several years, when she was ages 10 to 12, and beginning in 2017. *People v. Sean S.*, 2024 IL App (4th) 230284-U, ¶¶ 5, 16. Evidence showed defendant had been in a long-term romantic partnership with N.R.C.'s aunt, Renee, and shared two children with Renee. For a time, he also lived in N.R.C.'s family home and worked with her father. He was considered family, and thus, N.R.C. effectively was his niece.

¶ 5 At trial, N.R.C., then age 15, testified that defendant committed multiple acts of sexual abuse against her. *Id.* ¶¶ 8-12. First, in the spring of 2017, defendant, who was in his mid-twenties, placed both his hands under N.R.C.'s jeans and for several minutes fully touched her buttocks beneath her underwear while she stood in the kitchen. *Id.* ¶ 8. He did this while N.R.C.'s parents were upstairs moving furniture, and he was present helping with the move. The same day, while they were alone in the bedroom, defendant told N.R.C. to look down the laundry chute and placed his whole hand on her buttocks over her clothes for several minutes. *Id.* Defendant threatened to hurt her if she told anyone, which made her feel scared.

¶ 6 Defendant exposed himself to N.R.C., who was alone in the living room. *Id.* Defendant opened the bathroom door, in N.R.C.'s sight, with his pants around his thighs and his penis out. *Id.* She testified that defendant was "playing with it" and "kind of like swinging it around." " *Id.* Defendant proceeded to chase N.R.C. with his penis in his hands until she escaped under the dining room table. *Id.* He stated it was okay to touch his penis and tried to have her do that. *Id.* Defendant then kneeled down at the table, still playing with his penis, but he eventually returned to the bathroom. *Id.* Finally, that same evening, defendant touched N.R.C.'s buttocks over her nightgown while playfully throwing her on the couch. *Id.*

¶ 7 In a separate occurrence, while N.R.C. attempted to sleep on the couch with her

hands by her face, defendant entered the room with his penis out, then rubbed it back and forth along her fingers for several minutes. *Id.* ¶ 10. N.R.C. pretended to be asleep and hoped defendant would stop. The abuse ended when N.R.C.'s father called to defendant, who had been helping her father at the time. *Id.*

¶ 8 Defendant exposed himself to N.R.C. on a number of other occasions. *Id.* ¶¶ 8-9. For example, defendant insisted N.R.C. could only drive a golf cart if she sat on his lap. *Id.* ¶ 9. She sat on the seat between his legs, and at the same time, she saw defendant's penis partially sticking out from the top of his shorts. *Id.* Another time, defendant sat on the staircase, playing with his penis while moving his hand back and forth. *Id.* N.R.C. also testified that she believed defendant took her photo in the shower, and additionally, he showed her a pornographic video of him with Renee. *Id.* ¶ 11.

¶ 9 In August 2020, N.R.C. told her mother, Jenny, and Renee about the abuse. Jenny testified that N.R.C. was upset because she was crying and shaky. N.R.C. did not previously report any abuse incidents because defendant had threatened her. *Id.* ¶ 12. Jenny nonetheless noted, several years prior to August 2020, N.R.C. had said she did not want to be at defendant's home alone or stay there overnight. Jenny further testified that, during the identified periods, there were times defendant would have been alone with N.R.C.

¶ 10 Notably, at trial, N.R.C. testified with a comfort dog by her side. As N.R.C. began to describe the first instance of abuse, it appears from the transcript she became very emotional, she began to cry, and the prosecutor eventually requested a break at her request. Once the trial resumed, N.R.C. related the incidents described above.

¶ 11 After the State rested, defendant testified on his own behalf denying the abuse allegations and claiming he was never alone with N.R.C. *Id.* ¶ 14. Renee testified for the defense,

claiming that other people, including herself, were usually present when defendant was with N.R.C. The defense posited that the abuse was not possible because of the layout of the house, where it was claimed to have occurred, and the number of people present during the times N.R.C. said the incidents transpired.

¶ 12 The trial court took the matter under advisement, and in a 22-page written order, the court found defendant guilty of the counts involving N.R.C. after finding N.R.C. was “very credible, sincere and honest,” and her testimony was corroborated by two other credible witnesses, Jenny and another young woman. In its order, the court noted that N.R.C. “was extremely nervous” when she started testifying, although she eventually calmed, and N.R.C. “was timid and somewhat embarrassed discussing the contact she had with the defendant.” By comparison, the court found defendant’s testimony incredible. Defendant filed a posttrial motion, which the court denied. *Id.*

¶ 17.

¶ 13 B. Sentencing and Direct Appeal

¶ 14 At the sentencing hearing in November 2022, in aggravation, the State noted the presentence investigation report revealed that defendant’s background included felony convictions for carrying/possessing firearms at school, possession of a controlled substance, and retail theft. *Id.* He also had misdemeanor convictions for criminal trespass to a vehicle, theft, and criminal sexual abuse. *Id.* As to the latter conviction, the State presented testimony that, during the investigation in this case, defendant failed to comply with sex offender registration, having left Illinois without notifying the sheriff’s office. The State also presented testimony regarding defendant’s pending charge of solicitation to commit murder for hire, which was eventually dismissed due to an uncooperative witness. Relevant testimony included “overhears” of telephone conversations between defendant and an undercover police officer posing as a hitman, as well as

text messages and drawings from defendant and the promised transfer of money to the undercover officer, all in furtherance of the plan to have Renee (N.R.C.'s aunt and the mother of defendant's children) killed prior to trial. When questioned, defendant claimed a cellmate had threatened to hurt his children if he did not engage in this plan.

¶ 15 Particularly relevant to this appeal, the State read the victim impact statement of N.R.C.'s mother, Jenny, into the record at her request. Describing the close relationship defendant had developed with the family, Jenny recounted how defendant was an accepted family member, involved in family functions, and even living in their home for a period of time. Eventually, N.R.C. grew to dislike defendant and did not wish to be around him. N.R.C. later reported that defendant had choked her and thrown her on the couch after finding out she liked a boy.

¶ 16 In 2020, N.R.C. disclosed the sexual abuse to Jenny, informing Jenny that defendant had been abusing her since she was 10 years old. Jenny described the emotional impact of learning "someone we considered a member of our family" had been abusing her daughter, "under [her] and [her] now husband's noses." Jenny described the "whirlwind of shock, anger, and just disappointment," which came from learning she had been unable to protect her daughter. She questioned how and why defendant could commit such acts against her child and cause the emotional damage he had, while at the same time exhibiting no remorse, acknowledgement, or acceptance of responsibility.

¶ 17 Jenny described the toll that learning of defendant's abuse had taken on the family as a whole. Jenny reported how N.R.C. had been "traumatized" from the sexual abuse. She was conscious of her clothing, often did not leave her room, shut herself off from family, and refused to discuss the abuse. Jenny stated N.R.C. was even more self-conscious of her clothing after taking the stand because "it was insinuated that perhaps some of the abuse" was inspired by her

“suggestive or provocative clothing.” Jenny continued, “Honestly, all I can say to that is how could you even let that escape from your mouth?” Jenny said now N.R.C. was more concerned about “whether or not her clothing is appropriate enough to be around family,” instead of thinking about high school and getting her driver’s license. According to Jenny’s statement, she and her husband “cannot trust anyone around our kids.” She continued, “It kills me to know that no matter how hard I try or have tried I am here writing this letter because we trusted someone to get close to our daughter and take advantage of her trust forcing her to stay silent for years.”

¶ 18 Jenny noted N.R.C. was turning 16, but she had been sheltered for 2 years. Even her staying overnight at Jenny’s mother’s house made Jenny “feel sick.” Jenny described her feelings about being unable to protect her daughter and that defendant had “threatened to kill [N.R.C.’s] family, her friends, their family, and her if she said anything to anyone.” Jenny explained how she wanted her daughter to feel safe again and how N.R.C. expressed her concern defendant would serve a small amount of time incarcerated, “only to get out and drive by our home to taunt [N.R.C.] and throw it in her face that she was not taken seriously.” Jenny continued, “She doesn’t want to be seen as a kid who lied and then be considered as yet another victim that never got the justice they deserved.”

¶ 19 Jenny closed her statement by saying, “Your [H]onor, [defendant] has an extensive history of being a sexual predator with several convictions and offenses against minors.” She asked that defendant remain imprisoned to prevent further abuse, asserting there was no certainty that defendant “would stop at just mere threats to keep his victim silent.” Because defendant had not learned from his prior convictions and to give N.R.C. peace of mind, Jenny requested that defendant be sentenced to the maximum term.

¶ 20 Defense counsel raised three objections, noting, first, the statement that defendant

had choked N.R.C. had never been presented at trial. Counsel argued this was “an unfair attempt to secure additional aggravation” and to change the evidence. Counsel next objected to Jenny’s insinuations that defendant had said N.R.C.’s clothing invited his actions. Counsel asserted defendant made no such comment, noting counsel had raised the subject of the victim’s clothing during trial while testing N.R.C.’s memory, recollection, and credibility on the stand. Counsel argued there was never a suggestion that the abuse occurred because of the victim’s clothing. Last, counsel objected to Jenny’s statement that defendant had an extensive history as a sexual predator. Counsel claimed this was inaccurate because defendant had “no history of being a sexual predator until the Court enters a judgment in this case later this afternoon.” Counsel asked the trial court to redact those three points.

¶ 21 Following the prosecutor’s response, the trial court acknowledged the legal distinctions defense counsel drew but observed the victim impact statement was by a layperson regarding how the crime affected her daughter. The court stated it understood the law and how prior offenses impacted the sentence. Accordingly, the court overruled defense counsel’s objections and admitted the statement in full, noting, “I will consider all of the evidence for sentencing in the manner in which I am to consider that.”

¶ 22 In mitigation, the defense presented eight letters on defendant’s behalf from friends, family, and employers. It also referenced his yet-to-be-given statement in allocution.

¶ 23 The State asked the trial court to sentence defendant to an aggregate sentence of 50 years on the several counts. The defense, on the other hand, challenged the State’s sentencing evidence and claimed the crimes were not “forcible offenses, violent offenses, offenses with injury,” adding there was “no history of necessary psychological treatment” for the victim. Counsel argued that N.R.C. was in the higher statutory age range and stated, “We have a scared girl is what

we have.” Counsel recommended defendant be sentenced to a lesser aggregate term of 12 years.

¶ 24 In allocution, defendant stated that the case was “embarrassing, degrading, and just horrible in every way imaginable.” He stated that, no matter the outcome, his life had been ruined. He lamented missing his children as they grew. Defendant argued he could be a strong community member given his hard work ethic and stated, “There is no aspect of my life to reform or rehabilitate except for the struggle I will face trying to resume my life to normalcy from these horrendous charges.” He said prison time would cause hardship to his family and “not do anything to help” in his life. He asked to be “relieved and unburdened by these charges obviously with the tremendous weight that it has imposed upon me and my family” or, alternatively, for the trial court to give him “the lightest sentence possible.”

¶ 25 The trial court entered a judgment of conviction on the relevant counts and indicated it had carefully reviewed and considered all the evidence in mitigation and aggravation. The court began by acknowledging its familiarity with the case, stating it had been dealing with the case for some time and understood the emotions involved. The court then expressly said it would “put aside all of that emotional stuff” and look at the evidence and relevant factors in fashioning a sentence that was appropriate under the circumstances and based on the law. The court identified one of those factors to be the seriousness of the offense, for which the court could consider the evidence at trial, the presentence investigation report, the financial impact of incarceration, the victim impact statement, defendant’s statement in allocution, and the recommendations of counsel. Referring to the predatory criminal sexual assault of a child count, the court observed that the legislature had created the possibility of sentencing defendant up to 60 years, which reflects “this crime is so abhorrent and *** frowned upon by society that the Court is to consider not just a normal Class X sentencing range but a sentencing range double” that and,

as such, this is a crime of the “utmost seriousness.” See 720 ILCS 5/11-1.40(a)(1), (b)(1) (West 2016).

¶ 26 Having taken into consideration all of the evidence, exhibits, and arguments presented, the trial court found that several points stood out. First, voicing its respect for a defendant’s fundamental right to maintain his innocence, the court explained, once a defendant elects to testify, “then I take that into consideration as well.” The court found defendant essentially lied under oath at trial and was not a credible witness, concluding defendant’s statement in allocution only reinforced those credibility findings. The court also took note of the assertions in the victim impact statement that defendant had not accepted responsibility for his crime or its impact on the individuals and families involved. The court stated, “You are not the person that you described in your statement in allocution; and had you actually thought about your children at all, then you would have not done this in the first place.” The court therefore found defendant’s statement in allocution inconsistent with the evidence in this case.

¶ 27 Next, the trial court found defendant had caused very serious harm to N.R.C., based in part on his trusted position in the family, thereby rejecting defense counsel’s argument that the harm was less because there was no violence. Considering defendant’s sex crimes against N.R.C. were repeated and extended over a period of years, including when he was already a convicted sex offender, the court concluded he was not entitled to a low-end sentence.

¶ 28 Last, the trial court found deterrence was “perhaps one of the strongest factors in this case,” and the public needed to be protected from defendant.

¶ 29 The trial court sentenced defendant to 45 years for the predatory criminal sexual assault of a child conviction (count X), a consecutive 5-year term for the aggravated criminal sexual abuse conviction (count XI), and a concurrent 5-year term for the indecent solicitation of a

child conviction (count VII). The court entered a conviction on the sexual exploitation of a child (count VIII).

¶ 30 Defendant filed a written motion to reconsider the sentence claiming three things: (1) the sentence was excessive; (2) the sentence was predicated, in part, on “improper consideration of evidence relating to an alleged subsequent crime” (the solicitation of murder for hire); and (3) “the sentence was predicated in part on improper consideration of a Victim Impact Statement.” Counsel reiterated in general terms his objection to considering the solicitation evidence and reminded the trial court of the “three objections to the information contained [in the victim impact statement].” Counsel also noted the State had dismissed the case involving solicitation for murder, previously referenced at sentencing, due to an uncooperative witness.

¶ 31 The trial court, in response, observed it had provided a “very detailed” order of its trial findings and ruling. Pointing out the sentence was well within the range prescribed by statute, the court said it had “carefully considered where this particular offense in [its] opinion falls in connection with that range,” and it believed the sentence was appropriate, based on the statutory factors and evidence. The court said it had not given the solicitation-for-murder case much consideration, other than how it affected defendant’s credibility in his statement in allocution. The court rested on its prior rulings and denied the motion.

¶ 32 Defendant appealed, again arguing his sentence was excessive and violated the Illinois proportionate penalties clause (Ill. Const. 1970, art. I, § 11). This court affirmed the judgment and conviction. *Sean S.*, 2024 IL App (4th) 230284-U, *appeal denied*, No. 130852 (Ill. Sept. 25, 2024).

¶ 33 C. Postconviction Proceedings

¶ 34 Defendant’s *pro se* postconviction petition, filed in June 2025, claimed, in relevant

part, that defendant's trial counsel provided ineffective assistance by failing to investigate, pursue, and challenge in the trial court certain false statements contained in the victim impact statement. Defendant acknowledged he was aware of the contents of the victim impact statement prior to sentencing and alleged he had informed counsel of the false statements contained therein. He also told counsel he could provide "witness testimony" as to the falsity of the statements, but he alleged counsel "brushed it off as if he didn't know how to proceed with the information." Defendant alleged the court placed "great weight" on the statements made in the victim impact statement, presumably including the allegedly false statements.

¶ 35 Defendant's petition was verified and accompanied by his own substantive, notarized affidavit, wherein he made claims of having spoken with Renee on several occasions, including at least once via the prison phone system on "June 15, 2024 at approximately 12:40 pm." According to defendant, Renee said N.R.C. told her she did not intend for " 'all of this to go this far and she did not want [defendant] to get all this time.' " Rather, N.R.C. "did not care what the outcome of the case was" and simply wanted the "whole court process to be over and done with." According to defendant, Renee asserted the victim impact statement was false in that N.R.C. "has not been so removed from her family, not distanced at all, and has no type of emotional damage that she has suffered." Defendant further averred that he was unable to obtain a sworn affidavit from Renee because she "does not want to be in the middle of [him] and her niece like that." He claimed *he believed* "that [Renee] fears that if her niece or her sister get attention brought upon them for lying or using any false information then they will be criminally prosecuted and she does not want to be in the middle of that process."

¶ 36 The trial court entered a detailed written order summarily dismissing the petition as frivolous and patently without merit within the 90 days allowed by section 2.1(a) of the Act (725

ILCS 5/122-2.1(a) (West 2024)). The court found defendant's evidentiary affidavit was insufficient to raise a claim, as it contained "only hearsay statements of a third party who is purportedly relaying hearsay statements of the victim," and therefore, it lacked reliability. The court found the affidavit did not support defendant's postconviction arguments or support the allegations in the petition. Further, the court found defendant did not explain how defense counsel's performance fell below an objective standard of reasonableness or prejudiced him. Last, the court concluded that the sentencing issues were defaulted because they could have been raised on direct appeal. As a result, the court found defendant's petition failed to set forth the gist of a constitutional claim.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 Defendant contends the trial court erred in dismissing his petition at the first stage of proceedings under the Act. The Act provides a procedural mechanism by which a criminal defendant can assert his federal or state constitutional rights were substantially violated in his original trial or sentencing hearing. *Id.* § 122-1(a); *People v. Davis*, 2014 IL 115595, ¶ 13. Proceedings under the Act are not an appeal from, or a continuation of, the original case but consist of a collateral attack on the criminal conviction and are limited in scope to matters of constitutional dimension. See *People v. Huff*, 2024 IL 128492, ¶ 18. The Act sets forth three stages of review for a postconviction petition. *People v. Hommerson*, 2014 IL 115638, ¶ 7. From the outset, a defendant must establish the petition's allegations are capable of objective or independent corroboration and identify the sources, character, and availability of the alleged supporting evidence. *People v. Moore*, 2022 IL App (1st) 192290, ¶ 25. The failure to attach the necessary "affidavits, records, or other evidence" or to explain their absence is fatal to a postconviction petition. 725 ILCS 5/122-2

(West 2024); *People v. Collins*, 202 Ill. 2d 59, 66 (2002). Additionally, nonfactual and nonspecific assertions amounting to conclusions are not sufficient to advance the petition. *People v. Resendiz*, 2020 IL App (1st) 180821, ¶ 23.

¶ 40 Following these requirements, the threshold inquiry at the first stage of proceedings is whether the allegations contained in the petition are frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 2024); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A petition is frivolous or patently without merit if the allegations contained therein, taken as true and liberally construed in favor of the petitioner (*Edwards*, 197 Ill. 2d at 244), have no arguable basis in law or fact (*People v. Hodges*, 234 Ill. 2d 1, 11-12, 16 (2009)). A petition that lacks an arguable basis in law or fact is one based on an indisputably meritless legal theory or a fanciful factual allegation. *People v. Joiner*, 2024 IL 129784, ¶ 32. In short, a defendant must allege the “gist” of a constitutional claim. *People v. Williams*, 2024 IL 127304, ¶ 15.

¶ 41 Defendant now contends his petition set forth the gist of a claim that his defense counsel was constitutionally ineffective at sentencing for failing to investigate and challenge the victim impact statement. Where a first-stage petition alleges ineffective assistance of trial counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), it “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.) *People v. Tate*, 2012 IL 112214, ¶ 19. Prejudice, under *Strickland*, cannot be based on “mere conjecture or speculation.” (Internal quotation marks omitted.) *People v. Johnson*, 2021 IL 126291, ¶ 58. For prejudice, we also determine whether the sentence “would reasonably likely have been different” with presentation of the alleged mitigating evidence. *People v. Ashford*, 168 Ill. 2d 494, 502-03 (1995).

¶ 42 From the outset, we observe in his petition that defendant asserted simply that his trial counsel “failed to perform due diligence by investigating and/or pursuing false statements made in the victim impact statement” and failed “to argue these in court.” Without identifying what they were, defendant asserted he could prove “these statements” were false. Further, in his accompanying affidavit, no particular statements in the victim impact statement were identified as false. Instead, defendant claimed he had spoken with Renee, the aunt of N.R.C., who said “[N.R.C.] did not care what the outcome of the case was, just that she wanted the whole court process to be over and done with.” Defendant further asserted that N.R.C. told Renee “she did not mean for ‘all of this to go this far and she did not want me to get all this time.’ ” Last, Renee told him N.R.C. “has not been so removed from her family, not distanced at all, and has no type of emotional damage that she has suffered.” We can safely assume these are not the false statements defendant references in his petition and affidavit; rather, defendant claims them to be true.

¶ 43 Thus, understanding defendant’s constitutional claim requires that we intuit the false statements by reading the petition and affidavit alongside the victim impact statement and then speculate about the facts in support, including: N.R.C., according to Jenny, was *not* traumatized by the sexual abuse; she was *not* conscious of her clothing; she often did leave her room; she did *not* shut herself off from family or refuse to discuss the abuse; she was *not* concerned that defendant would only serve a small amount of time incarcerated, rather than the maximum; and she did *not want* justice. See *supra* ¶¶ 17-19.

¶ 44 Giving defendant’s petition the broadest possible reading, these are the sum total of the “false statements” defendant apparently identifies from the victim impact statement. See *People v. Morales*, 2019 IL App (1st) 160225, ¶ 18. Defendant now specifically asserts his trial counsel was ineffective for failing to investigate the untrue statements because they “contributed

to [his] aggregate 50-year sentence.” As a result, he requests reversal of the summary dismissal and that his postconviction petition be remanded for second-stage proceedings.

¶ 45 Our review of the trial court’s summary dismissal of a postconviction petition is *de novo*. *People v. Matthews*, 2022 IL App (4th) 210752, ¶ 61. Under *de novo* review, we owe no deference to the trial court’s judgment or reasoning and may affirm the trial court on any basis found in the record, “whether or not the trial court relied on that basis or its reasoning was correct.” (Internal quotation marks omitted.) *People v. Walker*, 2018 IL App (1st) 160509, ¶¶ 22-23.

¶ 46 A. Ineffective Assistance of Counsel and Victim Impact Statements

¶ 47 We begin our *de novo* review with some historical background and by recognizing the unquestionable admissibility of victim impact evidence at a defendant’s sentencing hearing to inform the trial court of the specific harm caused by the crime in question. See *Payne v. Tennessee*, 501 U.S. 808, 825 (1991); 725 ILCS 120/1 *et seq.* (West 2022). The Rights of Crime Victims and Witnesses Act provides that where, as here, a defendant has been convicted of a violent crime, which includes any offense involving sexual exploitation or sexual conduct, the crime victims who suffer direct physical or psychological harm as a result, the parents of a minor victim (who also qualify as a “victim” under the statute), and other individuals impacted by the crime shall be allowed to present an oral or written statement at sentencing. 725 ILCS 120/3(a), (c), 6(a) (West 2022); see 720 ILCS 5/11-1.40(a)(1), (b)(1) (West 2016); *People v. Hestand*, 362 Ill. App. 3d 272, 280 (2005) (noting an offense involving sexual conduct constitutes a violent crime). Moreover, a “victim and any person making an oral statement shall not be put under oath or subject to cross-examination.” 725 ILCS 120/6(a) (West 2022). “The [trial] court shall consider any statement presented along with all other appropriate factors in determining the sentence of the defendant ***.” *Id.* Defendant does not now contest that N.R.C. was a crime victim, Jenny was also a victim

under the statute, and both had the right to present a statement at his sentencing. See *id.*

¶ 48 Recognizing the primacy of this ritual, the Rights of Crime Victims and Witnesses Act, then, precludes most claims based on statements contained in victim impact statements. *Id.* § 9; see *Payne*, 501 U.S. at 825-27; *People v. Richardson*, 196 Ill. 2d 225, 231 (2001) (superseded by statute as stated in *Hestand*, 362 Ill. App. 3d at 280-81); Ill. Const. 1970, art. VI, § 6. It provides, “Nothing in this Act shall create a basis for vacating a conviction or a ground for relief requested by the defendant in any criminal case.” 725 ILCS 120/9 (West 2022). Section 8.1(e) of article 1 of the Illinois Constitution, also concerning crime victims’ rights, likewise states: “Nothing in this Section or any law enacted under this Section shall be construed as creating (1) a basis for vacating a conviction or (2) a ground for any relief requested by the defendant.” Ill. Const. 1970, art. I, § 8.1(e).

¶ 49 In *Richardson*, our supreme court held this section “specifically removes victims’ rights from the spectrum of issues which a criminal defendant may appeal.” *Richardson*, 196 Ill. 2d at 231. Although *Richardson* concluded that the trial court erred in considering three victim-impact statements, where the statute at that time provided for consideration of only one statement, the defendant was not entitled to a new sentencing hearing. *Id.* at 228-30. *Richardson* held the constitution prohibited the defendant from seeking appellate relief based on that error, declaring section 8.1(e) serves as a limitation on a defendant’s usual right to appeal from final judgments in the trial court. *Id.* at 229-30; Ill. Const. 1970, art. VI, § 6; *id.* art I, § 8.1(e); see *People v. Harth*, 339 Ill. App. 3d 712, 715 (2003) (concluding the admission of the victim impact statement was error, but *Richardson* precluded appellate relief); *People v. Johnson*, 2026 IL App (4th) 250584-U, ¶ 49 (noting “defendants are typically barred from raising claims of error on appeal based on the contents of victim impact statements”); *People v. Melgoza*, 2024 IL App (4th) 230659-U,

¶¶ 55-57 (finding the defendant’s contentions that extended relatives were prohibited from presenting victim impact statements at sentencing and challenging the statements’ content were jurisdictionally barred).

¶ 50 *Richardson*’s holding thus reinforced the purpose of the Rights of Crime Victims and Witnesses Act, which is to “implement, preserve, protect, and enforce the rights guaranteed to crime victims” by section 8.1 of the constitution, so as “to ensure that crime victims are treated with fairness and respect for their dignity and privacy throughout the criminal justice system.” 725 ILCS 120/2 (West 2022)), added by P.A. 88-489, § 10, eff. Jan. 1, 1994. In fact, “[w]e are aware of no Illinois Supreme Court or appellate court case reversing any trial court decision based on victim impact statements.” *Melgoza*, 2024 IL App (4th) 230659-U, ¶ 57.

¶ 51 However, the use of victim impact statements is not limitless. While restricting appellate review of victim impact evidence, *Richardson* also recognized there may be circumstances where the State goes too far, by introducing evidence that is “so unduly prejudicial” as to render the trial fundamentally unfair, in violation of the fourteenth amendment due process clause. (Internal quotation marks omitted.) *Richardson*, 196 Ill. 2d at 233; U.S. Const., amend. XIV, § 1. As a result, the admissibility of victim impact evidence “does not give the prosecution a free rein to introduce and argue anything it wants.” (Internal quotation marks omitted.) *Richardson*, 196 Ill. 2d at 233. Evidence that the State introduces still must be reliable and relevant, notwithstanding the relaxed evidentiary standards at sentencing hearings. *People v. Cunningham*, 2018 IL App (4th) 150395, ¶ 22. Recent appellate court cases continue to recognize the due process principles espoused in *Richardson*. See *Johnson*, 2026 IL App (4th) 250584-U, ¶¶ 48-50; *People v. Coleman*, 2026 IL App (4th) 241515-U, ¶ 107.

¶ 52 Here, defendant did not raise a due process claim with factual support in his *pro se*

postconviction petition. See *Hodges*, 234 Ill. 2d at 10 (noting a *pro se* petition still must provide factual detail surrounding an alleged constitutional violation); *People v. Pendleton*, 223 Ill. 2d 458, 474-75 (2006) (holding a claim not raised in the petition cannot be raised for the first time on appeal). Defendant’s only reference to “due process” in his petition related to challenging whether the sentencing court considered certain mitigating evidence and his rehabilitative potential. Defendant also does not adequately argue a due process violation in his opening appellate brief. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (“Points not argued are forfeited and shall not be raised in the reply brief ***.”).

¶ 53 Rather, consistent with his petition, defendant’s appellate brief focuses chiefly on ineffective assistance of counsel. Again, defendant asserts that, due to his trial counsel’s deficiencies (namely, failing to investigate the allegedly false statements), the trial court relied on improper victim impact evidence, which in turn influenced the court’s decision to impose a 50-year sentence. He essentially claims that, but for these deficiencies, he would have received a lesser sentence, thus resulting in prejudice.

¶ 54 The State first contends defendant, by failing to raise due process under *Richardson*, has not availed himself of the only constitutional claim contemplated by our courts to challenge victim impact statements, and his appeal is otherwise barred. In so arguing, the State suggests no authority exists to extend *Richardson* to sixth amendment (U.S. Const., amend. VI) ineffective assistance of counsel claims. We disagree.

¶ 55 Both due process and ineffective assistance claims focus on whether the defendant suffered prejudice based on the admission or presentation of the victim impact statement itself or trial’s counsel’s error with respect to the statement. See *People v. Yankaway*, 2025 IL 130207, ¶¶ 62, 102 (satisfying prejudice for an ineffective assistance claim requires “a showing of actual

prejudice,” not just speculation that the defendant may have been prejudiced (internal quotation marks omitted)); *Richardson*, 196 Ill. 2d at 233 (satisfying a due process violation at sentencing requires a substantial showing of undue prejudice); see also *People v. Allen*, 222 Ill. 2d 340, 359-60 (2006) (distinguishing due process requirements in the context of procedural default); *People v. Ortiz*, 2023 IL App (2d) 220390-U, ¶ 26 (noting, generally, to establish prejudice at sentencing, the defendant must show a reasonable probability the trial court would have imposed a lesser sentence if his counsel had not erred (citing *People v. Steidl*, 177 Ill. 2d 239, 257 (1997))). A number of Illinois cases have addressed ineffective assistance of counsel claims within the context of victim impact statements at sentencing, although no United States Supreme Court cases have done so. See *Coleman*, 2026 IL App (4th) 241515-U, ¶¶ 107-09; *People v. Wilson-Neuleib*, 2023 IL App (3d) 170288-U, ¶ 36; *People v. Enk*, 2023 IL App (4th) 220580-U, ¶ 30-31; *Ortiz*, 2023 IL App (2d) 220390-U, ¶¶ 25-27. Moreover, the right to counsel exists during sentencing, and ineffective assistance at that stage can result in *Strickland* prejudice, as “any amount of [additional] jail time has Sixth Amendment significance.” (Internal quotation marks omitted.) *Lafler v. Cooper*, 566 U.S. 156, 165 (2012). Likewise, given that victim impact evidence informs the sentencing court of the specific harm caused by the defendant’s crime, it could theoretically be used to increase a defendant’s sentence. See *Payne*, 501 U.S. at 825. As such, the weight of authority reveals defendant’s present constitutional claim to be cognizable.

¶ 56 Accordingly, this court is not jurisdictionally or otherwise barred from considering defendant’s ineffective assistance claim, as the State appears to argue, and we proceed in our review. For the reasons to follow, however, defendant’s constitutional claim fails under the baseline strictures of the Act, and it is not even arguable under *Strickland*.

¶ 57 B. Defendant’s Postconviction Petition Lacks Adequate Factual and
Corroborative Support

¶ 58 As set forth, under the constraints of the Act, nonfactual and nonspecific assertions amounting to conclusions are not sufficient to advance a petition. *Resendiz*, 2020 IL App (1st) 180821, ¶ 23. The Act also requires a defendant to establish that the petition’s allegations are capable of objective or independent corroboration and identify the sources, character, and availability of the alleged supporting evidence. *Moore*, 2022 IL App (1st) 192290, ¶ 25. Dismissal is proper when the record or other evidence attached to the petition simply does not support the defendant’s claim. *People v. Dupree*, 2018 IL 122307, ¶ 34.

¶ 59 Even taking all of defendant’s allegations as true, it is unclear what “false statements” defendant refers to, since he never identifies them in his petition. See *Morales*, 2019 IL App (1st) 160225, ¶ 18. We surmise from his attached affidavit—in which he claims Renee asserted unspecified statements of Jenny, the mother of N.R.C, and/or unspecified statements of N.R.C. were false—that defendant believes the alleged falsities related to material aspects of the victim impact statement, and they somehow influenced the trial court in imposing the sentence it did. Discerning the false statements, however, requires a logical leap above and beyond what liberal construction should demand. See *supra* ¶¶ 42-43; *Morales*, 2019 IL App (1st) 160225, ¶ 38 (“[W]e can draw no inference from facts that do not appear in the petition’s allegations or supporting evidence.”).

¶ 60 As such, defendant’s petition consisted of nothing more than broad conclusory allegations that (1) the victim impact statement contained certain “false statements”; (2) defendant could have provided counsel with “witness testimony,” *i.e.*, the names of witnesses, yet unidentified, who could have testified as to the falsity of the unknown statements; and (3) his

attorney was ineffective for failing to investigate or pursue these unidentified witnesses and unidentified false statements. See *People v. Delton*, 227 Ill. 2d 247, 258 (2008); *Resendiz*, 2020 IL App (1st) 180821, ¶ 44. Defendant did not detail his conversations with his attorney or claim to identify any witnesses to his attorney (including Renee), nor did defendant adequately explain the absence of corroborative documentation. See *Hodges*, 234 Ill. 2d at 10; *Moore*, 2022 IL App (1st) 192290, ¶ 27. In short, there was nothing in the record to reinforce defendant’s claim in the petition of helpful and available evidence. See *Dupree*, 2018 IL 122307, ¶¶ 34, 36.

¶ 61 Defendant’s own affidavit, moreover, cannot serve as a stand-in for Renee’s where the allegations find no record support and it is clear she was unwilling to provide an affidavit or testify (defendant alleged he could not secure Renee’s affidavit because she “did not want to be in the middle of [him] and her niece like that”). See *Delton*, 227 Ill. 2d at 254; *People v. Alvarez*, 2021 IL App (2d) 180947-U, ¶¶ 31-34; cf. *People v. Allen*, 2015 IL 113135, ¶¶ 34, 41 (finding a contrary inference was possible as to an unnotarized factual statement, styled as an evidentiary affidavit, which supported the petition’s allegations). Even a *pro se* petitioner at the first stage must provide sufficient facts to back his claims. See *People v. Hatter*, 2021 IL 125981, ¶ 24; *Allen*, 2015 IL 113135, ¶ 24. These conclusory allegations therefore cannot suffice under the Act. See *Delton*, 227 Ill. 2d at 258; *Resendiz*, 2020 IL App (1st) 180821, ¶ 44.

¶ 62 Defendant nonetheless insists his petition was adequately supported, where he averred “some” of his conversations with Renee were recorded on the prison phone system, including on June 15, 2024, around 12:40 p.m. He does not say which conversations or what information he had available to corroborate the statements Renee conveyed to him. He did not describe his efforts to obtain these jail records or why they were not attached to his petition. Defendant has failed to establish his petition has objective or independent corroboration and has

failed to appropriately identify the sources, character, and availability of the alleged supporting evidence. See *Moore*, 2022 IL App (1st) 192290, ¶ 25; cf. *People v. Hall*, 217 Ill. 2d 324, 332-33 (2005) (finding section 122-2 satisfied where the defendant supported his petition with the guilty plea transcript, charging instrument, and a detailed affidavit regarding his attorney’s alleged misrepresentations); *People v. Niffen*, 2018 IL App (4th) 150881, ¶¶ 20-24 (reversing summary dismissal where the defendant sufficiently alleged ineffective assistance in his own evidentiary affidavit, and it could be inferred his plea counsel received a letter the defendant claimed to have sent).

¶ 63 C. Defendant’s Postconviction Petition Fails Under *Hodges* and *Strickland*

¶ 64 Even considering defendant’s allegations and alleged supporting evidence, his ineffective assistance claim still fails under the first-stage standards of *Hodges* and under *Strickland*. See *Hodges*, 234 Ill. 2d at 16-17. Defendant’s contention that his trial counsel was arguably deficient is factually and legally meritless for the reasons to follow. First, defendant’s evidentiary affidavit does not state that Renee informed him, or that defense counsel was informed, prior to the sentencing hearing of the allegedly false statements referenced in the affidavit. See *Joiner*, 2024 IL 129784, ¶ 34. As set forth, there is no indication Renee was available or willing to testify then. The jail calls defendant references in his affidavit occurred in June 2024, nearly two years after his sentencing hearing in November 2022.

¶ 65 Moreover, the very content of the allegedly contradictory statements rebuts that they were available to defense counsel in a timely fashion. In one statement purported to have been made by N.R.C. (according to Renee, according to defendant), “[N.R.C] did not mean for ‘all of this to go this far and she did not want [defendant] to get all this time.’ ” This statement would not have occurred until after defendant was sentenced. Regardless, none of the alleged conversations

with Renee, concerning statements now implied to be false, were false *at the time* of the sentencing hearing. These facts do not support defendant's legal theory.

¶ 66 Second, we acknowledge the rules of evidence do not apply to postconviction hearings, and hearsay is generally an insufficient basis to challenge a defendant's affidavit under the Act. See *People v. Robinson*, 2020 IL 123849, ¶ 77-78; Ill. R. Evid. 1101(b)(3) (eff. Sept. 17, 2019); see also *Allen*, 2015 IL 113135, ¶¶ 36-37 (noting a wide range of evidence can satisfy first-stage evidentiary requirements). However, as further delineated below, it would be absurd to conclude counsel was deficient based on the hearsay statements and alleged falsities, whatever they may be, even crediting the affidavit. Defendant's allegation that N.R.C. did not intend for " 'all of this to go this far and she did not want [defendant] to get all this time' " and the allegation that she was unaffected by the sexual abuse are hearsay conclusions about the supposed *mental state* of the victim, as asserted to her aunt, as claimed by the defendant, without corroboration and which supposedly contradict the victim impact impressions of N.R.C.'s mother, Jenny. Just how far removed from any actual evidence are we required to go to find an arguable claim? They also do not refute Jenny's own observations as to her daughter's distraught state or the impact of the crime on Jenny, who qualified as a victim. See 725 ILCS 120/3(a), (c), 6(a) (West 2022). These facts again do not support defendant's legal theory.

¶ 67 Third, defense counsel's opportunity to rebut the victim impact statement is circumscribed by statute and strategy, which renders defendant's claim legally meritless. As set forth, the victim or the person making the oral statement is not under oath at sentencing, and the legislature has prohibited the defense from cross-examining the individual. *Id.* § 6(a). Reading the plain language of this provision, added in 2015, as we must, the legislature clearly intended to protect victims from having to defend their own trauma when the defendant's guilt for the criminal

act has already been established. See Pub. Act 99-413, § 5 (eff. Aug. 20, 2015) (amending 725 ILCS 120/6(a)); *People v. Grant*, 2022 IL 126824, ¶ 24; *People v. Jackson*, 149 Ill. 2d 540, 548 (1992); see also 725 ILCS 120/4(a)(1) (West 2022) (declaring crime victims shall have the “right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process”). This is consistent with *Richardson* having barred most claims of sentencing error relating to victim impact evidence on appeal. See *Richardson*, 196 Ill. 2d at 231; see also Ill. Const. 1970, art. VI, § 6; 725 ILCS 120/9 (West 2022).

¶ 68 While, in a sentencing hearing, a defendant generally may rebut a victim impact statement with his own relevant mitigating evidence, we can imagine few instances in which that would be feasible, prudent, or permitted by the trial court, within its discretion. See 730 ILCS 5/5-4-1 (West 2022); *Payne*, 501 U.S. at 823; *Jackson*, 149 Ill. 2d at 548-49 (noting a trial court must ensure the accuracy of information considered at sentencing); see, e.g., 725 ILCS 120/4.5(c-5)(9) (West 2022) (noting a court’s permission is required where a defendant seeks to subpoena testimony or records concerning a victim that are confidential or privileged). Victim impact statements are not easily susceptible to rebuttal, especially as they convey the thoughts or feelings of a victim. Absent some concrete evidence, such as therapist or medical bills or the lack thereof, defense counsel would be hard-pressed to show that the crime victims have exaggerated the degree of emotional trauma suffered. Rebuttable facts may be the proper subject of attack. We question whether efforts to rebut a victim’s professed emotional impact or thoughts about the offense or offender would ever be.

¶ 69 Here, given the trial evidence and defendant’s postconviction petition’s allegations, we cannot conclude that reasonable assistance by trial counsel encompassed a duty to actively

investigate the truth or falsity of how N.R.C. was *emotionally* impacted by defendant's crimes, even if allegedly known before sentencing. As indicated, we also cannot discern any strategic reason trial counsel would choose to present Renee as a witness or Renee's statements, assuming she was even a willing participant. See *People v. Custer*, 2019 IL 123339, ¶ 39 (“[M]atters of trial strategy are generally immune from claims of ineffective assistance of counsel.” (Internal quotation marks omitted.)); *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79 (decisions concerning which witnesses to call at trial are considered matters of trial strategy). Let us not forget Renee was the subject of defendant's solicitation-of-murder-for-hire case that was ultimately dismissed sometime after his trial here. To hold counsel should have investigated the impact statement here would encourage a minitrial that would only victimize N.R.C. and Jenny further, presenting an end-run around the protections afforded to them as crime victims. See 725 ILCS 120/9 (West 2022); *Richardson*, 196 Ill. 2d at 231.

¶ 70 Dovetailing with those points, there could be no arguable deficiency in counsel's declining to challenge Jenny's victim impact statement, where the record so clearly contradicts the allegations in defendant's petition and affidavit. See *Joiner*, 2024 IL 129784, ¶ 32; *Hodges*, 234 Ill. 2d at 16-17. At trial, N.R.C. had to testify with the aid of a comfort dog by her side. On describing the initial instance of defendant's sexual abuse, N.R.C. began to cry and found it necessary to take a break. N.R.C. also testified that defendant threatened to hurt her if she reported the abuse, and she felt scared. Jenny testified that N.R.C. was crying and shaking when she told her about the abuse. The trial court found N.R.C. and Jenny credible but defendant incredible, while also noting N.R.C. “was extremely nervous” when she started testifying and “timid and somewhat embarrassed” when describing the abuse. Notably, defendant has not challenged the

findings of guilt on appeal. He does not claim to be able to show that the acts did not happen or that they did not happen in the manner or frequency as N.R.C. described.

¶ 71 Defendant's assertion that N.R.C. was unaffected by his crimes is positively rebutted by the record and also, we would venture to say, delusional. See *Resendiz*, 2020 IL App (1st) 180821, ¶ 43; *Hodges*, 234 Ill. 2d at 16-17. The legal theory is contradicted by the record and, thus, meritless. As stated, an offense involving sexual conduct constitutes a crime of violence. See 725 ILCS 120/3(a), (c), 6(a) (West 2022); 720 ILCS 5/11-1.40(a)(1), (b)(1) (West 2016); see also *Hestand*, 362 Ill. App. 3d 272 at 280 (noting an offense involving sexual conduct constitutes a violent crime). We do not have to disregard the actual evidence at trial simply because defendant makes a secondhand hearsay claim he raised in his own affidavit, and neither did the trial court when it dismissed his petition.

¶ 72 On this record, if counsel had attempted to present Renee's statements, there is no indication the evidence would have been permitted. See *supra* ¶¶ 68-69. Practically speaking, defendant now wishes to present his own version of the impact statement, which he is prohibited from doing. See 725 ILCS 120/3(a) (West 2022) ("In no event shall the defendant *** be considered a victim, a crime victim, or a representative of the victim."). There can be no arguable deficiency on these bases.

¶ 73 Last, it is not arguable that the statements would have aided defendant, which also defeats his claim of prejudice under *Strickland*. The trial court imposed the sentence based on a number of factors but found the victim impact statement relevant only insofar as it established defendant had failed to take responsibility for his crimes and his crimes caused serious harm to N.R.C. When discussing defendant's objections to the victim impact statement after it was read, the court said it would "consider all of the evidence for sentencing in the manner in which I am to

consider that,” but it found nothing improper about the statement. As it began explaining why defendant was receiving the sentence the court was about to impose, the court made it clear it had “carefully reviewed and considered the evidence that was offered *** in aggravation and mitigation.” The court understood the highly emotional nature of the proceedings for both sides and recognized

“there’s a lot of things for the Court to take into consideration. My job is to put aside all of that emotional stuff and look at the evidence and the various factors that the *** legislature has directed the Court to take into consideration and fashion a sentence that is appropriate under these particular circumstances.”

See *Richardson*, 196 Ill. 2d at 233 (“[T]he court is presumed to consider only competent and relevant evidence in determining [a] sentence.”); *People v. Walker*, 2021 IL App (4th) 190073, ¶ 75.

¶ 74 Among the factors expressly referenced by the trial court were the rehabilitative potential of the defendant, the need for incarceration to prevent crimes and protect the public, and the serious nature of the offense, considering both the evidence at trial and the fact the legislature classified defendant’s most serious charge as a Class X felony. The court referenced the victim impact statement only three times, twice merely as part of a list of things it had considered (“the presentence investigation report, the financial impact of incarceration, all of the evidence that was offered here, *** the victim impact statement and the defendant’s statement in allocution, obviously the recommendations of counsel,” and “the letters, the victim impact statement [and] the Defendant’s statement in allocution”), and once when discussing defendant’s failure to “tak[e] any responsibility for anything that’s happened in his life to him” or in the lives of the others involved.

¶ 75 Respecting defendant’s right to maintain his innocence, the trial court explained how, once he elected to testify, defendant placed his credibility at issue, and the court found him not to be a credible witness. It must be remembered that the court had taken the matter under advisement at the close of all the evidence and arguments of counsel, entering a detailed 22-page order.

¶ 76 The trial court emphasized the sentence was based on the seriousness of the offense, that the sex crimes occurred repeatedly over the years while defendant was already a convicted sex offender, and that deterrence was “perhaps one of the strongest factors in this case,” because the public needed to be protected from defendant. See *People v. Charles*, 2018 IL App (1st) 153625, ¶ 47. The court stated:

“[G]iven the fact that you are a registered sex offender at the time, given your current record, given that deterrence is perhaps one of the strongest factors in the case, given that you held a position of trust and authority with this young lady and caused very serious harm to her, given the fact that I can’t find one mitigating factor that is present, and given the fact that I do firmly believe that the public needs to be protected from you, I think that a sentence in the higher range is much more appropriate in this case.”

We are thus unable to say, when imposing the sentence, the court relied on the victim impact statement more than the serious nature of the offense and the court’s own credibility findings against defendant following trial and his self-serving statement in allocution, wherein he expressed there was “no aspect” of his “life to reform or rehabilitate.” See *Melgoza*, 2024 IL App (4th) 230659-U, ¶ 58; *Enk*, 2023 IL App (4th) 220580-U, ¶¶ 28-31.

¶ 77 Accordingly, defendant cannot establish it is arguable that but for counsel’s failure to present the secondhand hearsay statements of Renee—an uncooperative witness, who allegedly stated that N.R.C. “has not been so removed from her family, not distanced at all, and has no type of emotional damage that she has suffered”—the trial court would not have imposed the 50-year aggregate sentence. Had his counsel simply presented the court with the hearsay statements by Renee, two years after sentencing, as to N.R.C.’s emotional state during an unidentified period following the sexual abuse, it is not arguable this vague evidence would have made any positive difference in defendant’s sentence. See *People v. Guth*, 2026 IL App (4th) 250635-U, ¶ 24.

¶ 78 But there is more. Fortunately, we have more than just the words of the trial court at the time of sentencing to explain how and why it considered the 50-year sentence appropriate, without any measurable inclusion of the victim impact statement. The court had the opportunity to explain its reasoning *again* at the hearing on the motion to reconsider the sentence. The court reiterated it had considered all relevant statutory factors, including those in aggravation and mitigation. Again, nothing was said about the victim impact statement, other than that it was considered, as well. Against this record, defendant’s claims fail to rise to the level of arguable prejudice. Counsel cannot be considered ineffective for failing to make or pursue what would have been a meritless motion or objection. *Williams*, 2024 IL 127304, ¶ 22. For a multitude of reasons, defendant has failed to meet his burden of establishing an arguable constitutional claim of ineffective assistance of trial counsel under the Act or under *Strickland*. See *Yankaway*, 2025 IL 130207, ¶ 108.

¶ 79 D. Defendant Forfeited a Meritless Due Process Argument

¶ 80 Defendant also appears to argue that his “due process” rights were violated by counsel’s failure to object to certain allegations in the victim impact statement, including that he

choked N.R.C., he had an extensive history as a sexual predator, N.R.C.'s report of abuse prevented him from further abusing other children, and he deserved the maximum sentence. He writes, "Counsel's failure to include these objections at the sentencing hearing were arguably unreasonable where their introduction arguably violated [defendant's] due process rights."

¶ 81 As we explained above, several of these were sentencing objections by counsel, which were addressed after the reading of the victim impact statement and again during the motion for reconsideration. Despite being of record, none were raised on direct appeal. Defendant makes no claim of ineffectiveness against appellate counsel, and although not argued by the State, these objections could have been raised at that time. See *People v. English*, 2013 IL 112890, ¶ 22. (We note, parenthetically, appellate counsel likely declined to assert them because they are barred.) More importantly, they do not appear anywhere in defendant's postconviction petition (see *supra* ¶ 52) and were only raised tangentially in defendant's opening brief, without explication or citation to helpful legal authority. See *Pendleton*, 223 Ill. 2d at 475 (noting a claim not raised in a petition cannot be argued for the first time on appeal); Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *People v. Ivanchuk*, 2025 IL App (4th) 241230, ¶ 43 ("The failure to assert a well-reasoned argument supported by legal authority is a violation of Rule 341(h)(7) resulting in forfeiture."). Accordingly, the claim of error is forfeited.

¶ 82 Regardless, there can be no arguable prejudicial error on these bases; the claim is meritless, to the extent defendant even argues a due process violation. See *Hodges*, 234 Ill. 2d at 16-17; *Richardson*, 196 Ill. 2d at 233. At the time the objections were first raised, the trial court made it clear it understood the victim impact statement was a layperson's and said, "I understand what I'm to consider as far as prior offenses go and the legal terminology of those and the sentencing range based on that." As delineated, the court indicated it considered what was legally

permissible in the victim impact statement. See *Richardson*, 196 Ill. 2d at 233; *Walker*, 2021 IL App (4th) 190073, ¶ 75. The record refutes the assertion that the court gave any, let alone undue, weight to the topics within the victim impact statement to which defendant objected, and defendant cannot now show, based on this record, that the statements he points to were such as to render the sentencing hearing “fundamentally unfair.” See *Guth*, 2026 IL App (4th) 250635-U, ¶ 24 (even assuming that the challenged victim impact evidence was improper, the record showed the trial court’s consideration of it neither rendered the sentencing hearing fundamentally unfair nor led to a greater sentence); *Enk*, 2023 IL App (4th) 220580-U, ¶¶ 28-31 (finding the record failed to support the contention that the trial court improperly considered the victims’ request for a maximum sentence “to impose a greater sentence than it would have otherwise,” in violation of due process, and the ineffective assistance of counsel claim was defeated).

¶ 83 In sum, defendant’s postconviction petition failed to raise the gist of a constitutional claim. As such, the trial court properly dismissed it at the first stage.

84 III. CONCLUSION

¶ 85 For the reasons stated, we affirm the judgment of the trial court.

¶ 86 Affirmed.

People v. Sullivan, 2026 IL App (4th) 250854

Decision Under Review: Appeal from the Circuit Court of Livingston County, No. 20-CF-223; the Hon. Jennifer H. Bauknecht, Judge, presiding.

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