2026 IL App (1st) 241945-U

No. 1-24-1945

Filed August 31, 2026

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JODECI WHITFIELD, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 08 CR 12211 Honorable Angela M. Petrone, Judge, Presiding.

PRESIDING JUSTICE MARTIN delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Second-stage dismissal of postconviction petition affirmed over defendant's contention that postconviction counsel failed to provide reasonable assistance.

¶ 2 Jodeci Whitfield appeals the circuit court's dismissal of his postconviction petition. We affirm.[1]

¶ 3 At age 16, Whitfield fired several shots at two young men during a street gathering on a June 2008 afternoon. *People v. Whitfield*, 2014 IL App (1st) 123135, ¶¶ 9, 14. He struck one in the

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

leg and attempted to shoot the other in the head, "thwarted only by a malfunction of his gun." *Id*. ¶ 41. For his actions, Whitfield was convicted of two counts of attempted murder and other related offenses. The trial court sentenced him to two concurrent 45-year prison terms, inclusive of a mandatory 25-year enhancement for personally discharging a firearm that caused great bodily harm. Pursuant to the truth-in-sentencing statute of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(2)(ii) (West 2008)), Whitfield's earliest opportunity for release will occur once he serves 38 years and 3 months.[2]

¶ 4 This court affirmed Whitfield's conviction. *Whitfield*, 2014 IL App (1st) 123135, ¶ 44. In his direct appeal, Whitfield also challenged his sentence. He argued his sentence was disproportionate to the offense and excessive where he was only 16 and had no history of adult convictions. *Id*. ¶¶ 38, 41. We rejected those arguments and found the sentence "proportionate to the nature of the offense and consistent with the purpose of the law, including balancing the seriousness of the offense with defendant's rehabilitative potential." *Id*. ¶ 42. We further observed that "the trial court gave serious consideration to [Whitfield's] personal history, as well as the mitigating and aggravating factors presented." *Id*.

¶ 5 Whitfield filed a postconviction petition *pro se* in 2015, asserting various claims of ineffective assistance of trial and appellate counsel and a claim of prosecutorial misconduct. One of the claims alleged trial counsel failed to present exculpatory testimony from Wayne Olsen, who claimed to have witnessed a different person commit the shootings for which Whitfield was convicted. An unnotarized affidavit from Olsen was attached, in which Olsen attested to informing Whitfield's trial counsel of this and his willingness to testify before Whitfield's trial began. The petition advanced to second-stage proceedings and the court appointed counsel to assist Whitfield.

[2]Truth-in-sentencing requires Whitfield to serve 85% of his 45-year term, which equates to 38.25 years.

¶ 6 Subsequently, private counsel substituted for Whitfield's appointed counsel and filed an amended petition. The amended petition asserted three claims: (1) Whitfield's 45-year sentence violates the eighth amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution of 1970, (2) trial counsel was ineffective for failing to present Olsen's testimony, and (3) appellate counsel was ineffective for failing to challenge the admission of a victim's recanted prior identification of Whitfield as the shooter. The same unnotarized affidavit from Olsen was also attached.

¶ 7 Whitfield's sentencing claim relied on the Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), where the Court found the eighth amendment barred juvenile offenders from being subject to mandatory life without the possibility of parole. His claim further relied on decisions of our supreme court, which extended *Miller*'s application to *de facto* life sentences and determined a *de facto* life sentence to be a prison term of 40 years or more. *People v. Reyes*, 2016 IL 119271; *People v. Buffer*, 2019 IL 122327.

¶ 8 To further support the claim, a report from developmental psychologist James Garbarino was attached. In his report, Dr. Garbarino explained, "I am offering my developmental analysis in light of the Supreme Court decision in the case of *Miller v. Alabama*." In one section, he listed five grounds discussed in *Miller* for rejecting mandatory life without parole for juveniles and discussed how each of those issues were present with Whitfield. Dr. Garbarino reported that Whitfield suffered "psychologically toxic family experiences" in his childhood and developed a "war zone mentality" from living in a "socially toxic environment." Nevertheless, he found Whitfield did not exhibit the criteria to be considered "permanently incorrigible." Dr. Garbarino opined that Whitfield "appears to be an embodiment of the developmental issues that constitute the focal points of *** *Miller v. Alabama*" and recommended that Whitfield be resentenced to a lesser term.

¶ 9 The State filed a motion to dismiss the petition in part. As to the sentencing claim, the State argued the *Miller* line of cases did not apply to Whitfield, since he is eligible for release before serving 40 years in prison. The State further argued the claim was barred by *res judicata*, since Whitfield challenged his sentence on direct appeal. The State did not request dismissal of the claim related to Olsen and requested to proceed to an evidentiary hearing on that claim.

¶ 10 Whitfield filed a response to the State's motion to dismiss. He asserted that his prison term amounted to a *de facto* life sentence because his opportunity for release before serving 40 years was not meaningful. In response to the State's invocation of *res judicata*, Whitfield argued that his petition made a *prima facie* showing of cause and prejudice to overcome the preclusion.

¶ 11 The court granted the State's motion on the sentencing claim, finding, *inter alia*, (1) Whitfield's 45-year term was not a *de facto* life sentence due to his eligibility for release upon serving 38.25 years and (2) all relevant factors to impose a discretionary sentence in accord with *Miller* were considered at his original sentencing hearing. The court observed that Olsen's affidavit was unnotarized and indicated it would schedule an evidentiary hearing upon production of a notarized affidavit. At a subsequent status hearing, Whitfield's postconviction counsel reported they were still attempting to obtain a notarized affidavit from Olsen and requested additional time. At the next status hearing—three months after the court ruled on the State's motion to dismiss—Whitfield moved to withdraw his ineffective assistance claim related to Olsen. Whitfield provided his own notarized affidavit stating that, after speaking with his postconviction counsel, he was withdrawing the Olsen claim. Upon accepting the motion to withdraw the Olsen claim, the court entered an order denying Whitfield's petition. Whitfield filed a notice of appeal the same day.

¶ 12 On appeal, Whitfield argues his postconviction counsel failed to provide reasonable assistance, preventing the petition from advancing to an evidentiary hearing. He asserts

postconviction counsel "repeatedly demonstrated that they did not understand post-conviction law or how to present [his] claims in proper legal form." Specifically, Whitfield first contends postconviction counsel incorrectly advanced a cause and prejudice argument, which is applicable only when seeking leave to file a successive petition. In addition, postconviction counsel failed to allege trial and appellate counsel were ineffective for failing to raise eighth amendment and proportionate penalties challenges to his sentence. Postconviction counsel's alleged errors, according to Whitfield, resulted in forfeiture of his sentencing claim.

¶ 13 Second, Whitfield asserts postconviction counsel failed to challenge the trial court's *sua sponte* requirement to produce a notarized affidavit from Olsen to advance to an evidentiary hearing on his ineffective assistance claim. Based on the Second District's decision in *People v. Turner*, 2012 IL App (2d) 100819, he insists the State's failure to challenge the affidavit for lack of notarization in its motion to dismiss required the matter to proceed to an evidentiary hearing. For relief, Whitfield asks us to reverse the trial court's dismissal of his petition and remand for new second-stage proceedings with new counsel.

¶ 14 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2024)) provides a mechanism for a criminal defendant to challenge their conviction or sentence for substantial violations of constitutional rights that occurred in their trial proceedings. *People v. Morris*, 236 Ill. 2d 345, 354 (2010). A petition filed under the Act is not a substitute for appeal. *People v. Reed*, 2020 IL 124940, ¶ 18. It is a collateral action for inquiry into issues that were not and could not have been raised on direct appeal. *People v. Clark*, 2023 IL 127273, ¶ 38.

¶ 15 The Act contemplates three stages. *People v. Johnson*, 2021 IL 125738, ¶ 24. At the second stage, counsel may file an amended petition in place of the defendant's *pro se* petition. *People v. Cotto*, 2016 IL 119006, ¶ 27. The State may answer or file a motion to dismiss the petition. *Id*.

When reviewing the State's motion to dismiss, the court determines whether the petition and its accompanying documents make a substantial showing of a constitutional violation. *Id*. ¶ 28. If so, the petition proceeds to the third stage, an evidentiary hearing. *Id*. If not, the petition may be dismissed. *Id*. We review the trial court's dismissal of a postconviction petition at the second stage *de novo*. *People v. Dupree*, 2018 IL 122307, ¶ 29.

¶ 16 The Act affords a defendant the right to a reasonable level of assistance from counsel in postconviction proceedings "to shape their complaints into the proper legal form and to present those complaints to the court." *People v. Addison*, 2023 IL 127119, ¶ 19. A reasonable level of assistance is less than the guarantee of effective assistance of trial counsel. *Cotto*, 2016 IL 119006, ¶ 45. The reasonable assistance standard applies regardless of whether counsel is appointed or retained. *People v. Urzua*, 2023 IL 127789, ¶ 57.

¶ 17 When, as here, a defendant files a *pro se* petition and is later represented by retained counsel, Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) applies. *People v. Richmond*, 188 Ill. 2d 376, 381 (1999). Rule 651(c) requires counsel to (1) consult with the defendant, (2) examine the record of the trial proceedings, and (3) make any amendments to the *pro se* petition necessary for an adequate presentation of those claims. *People v. Custer*, 2019 IL 123339, ¶ 32. Rule 651(c), however, is not the exclusive mechanism for ensuring reasonable assistance. *People v. Smith*, 2022 IL 126940, ¶ 25. The defendant is entitled to reasonable assistance from counsel at all times of their representation, including when responding to the State's motion to dismiss. *Id*. ¶ 38; *Urzua*, 2023 IL 127789, ¶ 57.

¶ 18 We reject Whitfield's contention that his postconviction counsel failed to reasonably assist him by making an incorrect cause-and-prejudice argument. Examination of the amended petition and the response to the State's motion to dismiss do not evince postconviction counsel's

misapprehension that Whitfield needed to satisfy the cause-and-prejudice test. See *People v. Coleman*, 2013 IL 113307, ¶¶ 82, 91 (to file a successive petition alleging trial error, a defendant must first obtain leave of court by demonstrating both cause and prejudice for failing to include the claim in their initial petition). Rather, both filings demonstrate counsel's recognition that Whitfield could have raised constitutional challenges to his sentence in his direct proceedings, thus presenting a procedural barrier to consideration of his sentencing claim under the Act. Indeed, *res judicata* bars issues raised and decided on direct appeal, and forfeiture precludes issues that could have been raised, but were not. *People v. Dorsey*, 2021 IL 123010, ¶ 31. Thus, counsel argued that Whitfield's sentencing claim could be heard in postconviction proceedings despite his failure to raise the issue in his direct appeal. Within their argument, counsel asserted Whitified had cause for not raising it on direct appeal—*Miller* announced a new rule that applied retroactively—and resulting prejudice—he was subject to an unconstitutional *de facto* life sentence. Although it was not necessary to frame an argument addressing procedural barriers in terms of cause and prejudice, we do not find counsel's argument to constitute unreasonable assistance.

¶ 19 In addition, postconviction counsel did not fail to shape Whitfield's petition into proper form by not couching his sentencing claim within allegations of ineffective assistance of trial or appellate counsel. To prevail on claims of ineffective assistance of trial or appellate counsel, a defendant must show prejudice resulting from counsel's alleged error. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). Prejudice in this context means a reasonable probability that the result of the proceeding would have been different. *People v. Cathey*, 2012 IL 111746, ¶ 23. When the alleged error is the failure to raise an issue, we consider the merits of the underlying issue. *People v. Simms*, 192 Ill. 2d 348, 362 (2000).

¶ 20 Here, the trial court determined that Whitfield's 45-year sentence, with eligibility for release upon serving 38.25 years, is not a *de facto* life sentence. We agree. A sentence that affords a defendant an opportunity for release before spending more than 40 years in prison is not a *de facto* life sentence. *Dorsey*, 2021 IL 123010, ¶ 65. This alone defeats Whitfield's *Miller*-based eighth amendment claim. *Id*. (finding opportunity for release with good conduct credit upon serving 38 years was not a *de facto* life sentence); *People v. Spencer*, 2025 IL 130015, ¶ 40 (finding 100-year term was not a *de facto* life sentence when defendant was eligible for parole review after serving 20 years).

¶ 21 Yet, even if a defendant did not receive a *de facto* life sentence, they may assert a proportionate penalties claim. *Spencer*, 2025 IL 130015, ¶ 42. Such a claim challenges a sentence within statutory bounds when "the judge failed to set the sentence 'according to the seriousness of the offense and with the objective of restoring the [defendant] to useful citizenship.' " *Id*. (quoting Ill. Const. 1970, art. I, § 11).

¶ 22 Here, Whitfield's appellate counsel argued his sentence was disproportionate to the offense and excessive considering his age and personal history. Whitfield acknowledges this on appeal but contends the argument did not amount to a proportionate penalties challenge because appellate counsel failed to specifically assert that the sentence violated the proportionate penalties clause. We disagree. Regardless of whether the constitutional provision was explicitly invoked, its language and substantive principles were raised on direct appeal and this court decided the issue, finding the sentence "proportionate to the nature of the offense and consistent with the purpose of the law, including balancing the seriousness of the offense with [Whitfield's] rehabilitative potential." *Whitfield*, 2014 IL App (1st) 123135, ¶ 42. Thus, the issue is barred by *res judicata*.

¶ 23 Apart from that, the proportionate penalties claim in Whitfield's amended postconviction petition is indistinguishable from his *Miller*-based eighth amendment claim. Both rely on Dr. Garbarino's report to assert, "[h]ad this brain science and information been available at the time of Whitfield's sentencing hearing, the judge would have taken this extensive mitigation into account and likely would have fashioned a shorter sentence." Dr. Garbarino's report itself is explicitly crafted to support a *Miller* claim. Thus, Whitfield's petition fails to assert an independent proportionate penalties claim. It merely contains a *Miller* claim with a proportionate penalties label. With no substantive difference, Whitfield cannot transform his eighth amendment claim into a viable proportionate penalties claim just by changing the label. "[I]t is the substance of a pleading, not its label, that controls its identity." *People v. Currey*, 2024 IL App (2d) 230099, ¶ 15; see *People v. Bishop*, 2022 IL App (1st) 201015-U, ¶ 13 ("We do not believe that defendants who are serving less than a *de facto* life sentence and, therefore, cannot establish a *Miller* claim, can simply repackage the same youth-related arguments stemming from *Miller* to establish a viable proportionate penalties claim.").

¶ 24 For these reasons, Whitfield's sentencing claim lacks merit and he, therefore, could not have established prejudice had postconviction counsel presented it within a claim of ineffective assistance of trial or appellate counsel. Whitfield's sentencing claim, however framed, simply would not have made a substantial showing of a constitutional violation. Thus, we cannot find that postconviction counsel failed to shape Whitfield's sentencing claim into proper form or prevented the claim from advancing to an evidentiary hearing.

¶ 25 Next, Whitfield argues his postconviction counsel's assistance was unreasonable when they failed to challenge the trial court's *sua sponte* requirement to produce a notarized affidavit from Olsen for an evidentiary hearing. Relying on *Turner*, 2012 IL App (2d) 100819, he contends the

trial court erred in conditioning the evidentiary hearing on a notarized affidavit when the State failed to challenge the affidavit in its motion to dismiss and agreed to an evidentiary hearing on the claim.

¶ 26 The State argues Whitfield is estopped from raising this issue on appeal since he agreed to withdraw the ineffective assistance claim. See, *e.g.*, *People v. Harvey*, 211 Ill. 2d 368, 385 (2004) (observing that a defendant is estopped from challenging a procedure they agreed to). We need not decide this question, however, because we disagree that the trial court erred in requiring Whitfield to produce a notarized affidavit from Olsen.

¶ 27 Whitfield acknowledges his postconviction counsel attempted to procure a notarized affidavit from Olsen but was unable to do so. A notarized affidavit from such a crucial witness is essential for a claim to proceed to an evidentiary hearing. So, "where postconviction counsel is unable to remedy the lack of notarization of an attached statement, dismissal at the second stage is appropriate." *People v. Allen*, 2015 IL 113135, ¶ 38.

¶ 28 We disagree that *Turner* required the trial court to advance the claim to an evidentiary hearing. In *Turner*, the defendant field a *pro se* postconviction petition following his conviction for several sex offenses. 2012 IL App (2d) 100819, ¶¶ 5-6, 9. His petition alleged various claims of ineffective assistance of counsel and attached a document in which he stated the contents of the petition were true. *Id*. ¶¶ 9-10. The document was signed but not notarized. *Id*. ¶ 10. After advancing to second-stage proceedings, the defendant elected to proceed *pro se* and filed an amended petition. *Id*. ¶ 11. The amended petition included another unnotarized statement from the defendant. *Id*. The State filed a motion to dismiss, arguing the claims were barred by *res judicata* or lacked substantive merit *Id*. The State did not challenge the lack of notarization. The trial court dismissed the petition without an evidentiary hearing and defendant appealed. *Id*. ¶ 13.

¶ 29 On appeal, the State argued the defendant's petition was properly dismissed since it lacked a notarized affidavit. *Id*. ¶ 15. The court found that the State forfeited the issue by failing to raise it in its motion to dismiss. *Id*. ¶¶ 15, 39. Nevertheless, the court affirmed the dismissal of the defendant's petition, finding the defendant's claims failed to make a substantial showing of a constitutional violation. *Id*. ¶ 57.

¶ 30 The circumstances of this case differ. This is not an instance where the State is arguing for the first time on appeal that we affirm dismissal based on lack of a notarized affidavit. Forfeiture is appropriate in those circumstances because the State's failure to raise the issue in a motion to dismiss also fails to apprise the defendant and postconviction counsel of the defect if they were not already aware. Thus, it deprives the defendant of an opportunity to remedy the lack of notarization before the trial court makes a second stage ruling. See *People v. Cruz*, 2013 IL 113399, ¶ 21 ("[T]he State should not be allowed to raise for the first time on appeal a procedural matter that the defendant could have attempted to remedy if the issue had been raised in the trial court."). But here, Whitfield had ample opportunity to remedy Olsen's deficient affidavit after being apprised of its lack of notarization. The court rendered its ruling in June 2024. Postconviction counsel attempted to obtain a notarized affidavit from Olsen but was unsuccessful. Whitfield withdrew his claim in September 2024, three months after the court's ruling.[3]

¶ 31 Further, just because failure to raise this issue would result in forfeiture from arguing it on appeal, it does not follow that the trial court was compelled to overlook the affidavit's defect and advance to an evidentiary hearing. Unnotarized affidavits do not prevent a petition from advancing to the second stage because the lack of notarization can be remedied with the assistance of counsel during the second stage. *Allen*, 2015 IL 113135, ¶ 38. Indeed, it is not clear that the defendant in

[3]Whitfield had counsel, appointed or retained, for eight years between the filing of his petition and its dismissal.

Turner would have been permitted to proceed to an evidentiary hearing without first remedying his affidavit if the appellate court had not affirmed dismissal of his petition on other grounds. The lack of a notarized affidavit supporting a postconviction claim is not a mere formality. It is a requirement of the Act. 725 ILCS 5/122-1(b), 122-2 (West 2024). Evidentiary affidavits are required to show the petition's allegations are " 'capable of objective or independent corroboration.' " *Allen*, 2015 IL 113135, ¶ 32 (quoting *People v. Collins*, 202 Ill. 2d 59, 67 (2002)). Affidavits must also " 'identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations.' " *Id*. (quoting *People v. Delton*, 227 Ill. 2d 247 254 (2008)). When, as here, postconviction counsel unsuccessfully attempts to procure an affidavit, the petitioner fails to demonstrate that objective or independent evidence is available to corroborate their claims. Thus, the claim lacks merit, and an evidentiary hearing would be a waste of judicial resources.

¶ 32 It is of no moment that the court required a notarized affidavit *sua sponte*. "[T]he court, not counsel, is the ultimate arbiter of whether 'the claims in the petition are meritorious.' " *People v. Huff*, 2024 IL 128492, ¶ 29 (quoting *Urzua*, 2023 IL 127789, ¶ 41)).

¶ 33 For these reasons, we find Whitfield has not established that his postconviction counsel failed to provide reasonable assistance and affirm the dismissal of his postconviction petition.

¶ 34 Affirmed.