

NOTICE  
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2026 IL App (5th) 240308-U  
NO. 5-24-0308  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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).

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the      |
|                                      | ) | Circuit Court of     |
| Plaintiff-Appellee,                  | ) | Williamson County.   |
|                                      | ) |                      |
| v.                                   | ) | No. 99-CF-288        |
|                                      | ) |                      |
| BRYAN TAYLOR,                        | ) | Honorable            |
|                                      | ) | Michelle M. Schafer, |
| Defendant-Appellant.                 | ) | Judge, presiding.    |

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JUSTICE BOIE delivered the judgment of the court.  
Justice McHaney concurred in the judgment.\*

**ORDER**

¶ 1 *Held:* We affirm the judgment of the circuit court denying the defendant’s amended postconviction petition where postconviction counsel did not render unreasonable assistance of counsel at the third stage evidentiary hearing.

¶ 2 For the second time, the defendant, Bryan Taylor, appeals the circuit court’s ruling on his amended postconviction petition filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2004)). In *People v. Taylor*, 2021 IL App (5th) 180273-U, ¶ 38, we reversed and remanded this matter to the circuit court for a third stage evidentiary hearing on the defendant’s claim of ineffective assistance of appellate counsel for failing to raise ineffective

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\*Justice Moore fully participated in this case prior to his retirement. See *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6 (1992).

assistance of trial counsel for failure to challenge the foundation of the DNA evidence or expert opinion testimony. The circuit court conducted the evidentiary hearing on January 11, 2024, and subsequently denied the defendant's amended petition. The defendant now appeals the denial of his amended petition alleging that postconviction counsel rendered unreasonable assistance of counsel at the third stage evidentiary hearing by failing to follow this court's analysis and opinion concerning the defendant's claim. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

### I. BACKGROUND

¶ 4 In 1999, the defendant was charged by information with three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 1994)), related to the physical attack on a woman that occurred in 1995. He was convicted of all three counts after a jury trial in 2002, and in 2003, was sentenced to three consecutive 30-year terms of imprisonment. The background narrating the defendant's jury trial and sentencing is set forth in *People v. Taylor*, 357 Ill. App. 3d 220, 221-25 (2005). The background relating to the initial postconviction proceedings and the second stage dismissal of the defendant's amended postconviction petition is set forth in *Taylor*, 2021 IL App (5th) 180273-U, ¶¶ 5-13. Thus, the background information here will be limited to the events subsequent to the remand and include only such background information as needed to properly address the issue appealed.

¶ 5 We begin with a brief review of the foundation of the defendant's convictions. At trial, the victim testified that she was walking with her infant child when she was dragged into a wooded area, her hands tied to a tree, and was sexually assaulted. Her infant child was placed next to her and was unharmed. The victim was not able to identify her attacker because he had approached her from behind, wore a ski mask, and had removed her glasses during the sexual assault. Almost

five years later, the defendant became a potential suspect based on a DNA profile that was deemed consistent with the DNA recovered from the victim in this matter.

¶ 6 Three forensic witnesses testified for the State at the defendant's trial regarding the DNA evidence. Prior to trial, the defendant's expert, Dr. Thomas R. Breen, pointed out a discrepancy between the three DNA experts' reports. One report indicated that an allelic profile was prepared at four loci<sup>1</sup> while the other two reports indicated five loci. As such, defense counsel's trial strategy for the DNA evidence was based on his understanding that the State's experts' reports were inconsistent. After the cross-examination of one of the State's experts, however, defense counsel made an oral motion to strike the testimony of two of the State's expert witnesses, a motion for directed verdict, and a request for a mistrial based on the State's failure to produce a DNA-related document in discovery and the inconsistency of one of the expert's testimony regarding her report and number of loci tested. The trial court conducted an extensive hearing, including receiving testimony from one of the experts regarding the testing of the fifth locus, to determine whether a discovery violation had occurred. Ultimately, the trial court determined that the State had produced all reports that had been generated regarding the DNA testing since there was no report generated regarding the fifth locus until the interpretation of the locus had been conducted.

¶ 7 On direct appeal, the defendant argued that the State failed to lay an adequate foundation for the DNA evidence and that without the DNA evidence, there was insufficient evidence to convict the defendant of aggravated criminal sexual assault. *Taylor*, 357 Ill. App. 3d at 220. This court determined that the defendant had failed to make a proper objection at trial and failed to

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<sup>1</sup>A locus (plural loci) in genetics, is a specific, fixed position on a chromosome where a particular gene or genetic marker is located. <http://www.genome.gov/genetics-glossary/locus> (last visited Apr. 19, 2021).

attack the deficient foundation of the DNA evidence in his written posttrial motion. As such, we held that the defendant had forfeited the issue on appeal. We further noted that:

“[Defendant’s] counsel pursued a trial strategy where he deliberately refrained from examining the State’s witnesses regarding their procedures, analyses, and methodologies in hopes that the witnesses’ testimony would appear inconsistent. The defendant cannot be heard now on this issue.” *Id.* at 227.

¶ 8 On March 30, 2006, the defendant filed his *pro se* petition for postconviction relief pursuant to the Act (725 ILCS 5/122-1 *et seq.* (West 2004)). Postconviction counsel was appointed and 12 years after the appointment of counsel, an amended postconviction petition was filed on February 5, 2018. The amended petition alleged, *inter alia*, ineffective assistance of appellate counsel for failing to raise the issue of ineffective assistance of trial counsel for trial counsel’s failure to object to the lack of foundation for the DNA evidence and expert opinion testimony. The amended petition acknowledged that the DNA issue was raised on direct appeal, but argued that appellate counsel should have presented the issue under a theory of ineffective assistance of counsel in order to avoid forfeiture of the issue. The circuit court denied the amended petition at the second stage on April 20, 2018, and the defendant appealed.

¶ 9 On appeal, the defendant argued that the circuit court erred in denying his amended petition at the second stage without an evidentiary hearing because he had made a substantial showing of a constitutional violation within his claim of ineffective assistance of appellate counsel. *Taylor*, 2021 IL App (5th) 180273-U, ¶ 3. The defendant argued that the forfeiture of the DNA issue on direct appeal could have been avoided if appellate counsel had presented the issue within a claim of ineffective assistance of trial counsel. *Id.* ¶ 19.

¶ 10 We found that the defendant had made a substantial showing of a constitutional violation within his claim of ineffective assistance of appellate counsel since the underlying claim of ineffective assistance of trial counsel met both prongs of the *Strickland* analysis “at this stage.” *Id.* ¶ 36. We specifically noted that this court was not making any actual findings concerning trial counsel’s strategy or performance at trial since allegations not affirmatively refuted by the record must be taken as true at the second stage of postconviction proceedings. *Id.* ¶ 37. Because a claim of ineffective assistance of trial counsel would have avoided the operation of waiver and may have been meritorious on appeal, we found that the defendant had made a substantial showing of a constitutional violation sufficient to warrant an evidentiary hearing concerning the defendant’s claim of ineffective assistance of appellate counsel. *Id.* ¶ 38. Accordingly, we reversed the circuit court’s dismissal of the defendant’s amended petition at the second stage and remanded for a third stage evidentiary hearing. *Id.* ¶ 47.

¶ 11 The circuit court reviewed the decision of this court on May 11, 2021, and on June 7, 2021, appointed new postconviction counsel. A year later, on June 17, 2022, postconviction counsel filed a motion for leave to file a second amended postconviction petition adding a claim of ineffective assistance of trial, appellate, and prior postconviction counsel for failing to assert a claim that the defendant had received a sentence that exceeded the maximum allowable sentence. The circuit court granted the defendant’s motion on June 21, 2022, and on July 14, 2022, the State filed a motion to dismiss the second amended petition. Although a proposed copy of the second amended petition was attached to the defendant’s motion for leave, the second amended petition was not properly filed until December 20, 2022.

¶ 12 The second amended petition incorporated the amended petition and added an additional claim that the defendant had received an excessive sentence. The State’s motion to dismiss

incorporated its previous motion to dismiss and added an argument that the second amended petition sought relief outside the scope of the mandate of this court.

¶ 13 The circuit court issued a written order on February 14, 2023, agreeing with the State that the excessive sentence issue was outside the mandate of the remand. The circuit court further noted that, regardless of the mandate, the defendant's sentencing claim would still fail since the maximum penalty was 120 years of incarceration, and the defendant had received a sentence of 90 years' incarceration. As such, the circuit court granted the State's motion to dismiss, but noted that the third stage evidentiary hearing pursuant to the mandate remained set for April 13, 2023.

¶ 14 The third stage evidentiary hearing was eventually conducted on January 11, 2024. The defense called Larry Broeking, the defendant's trial counsel. Broeking appeared remotely since he no longer resided in Illinois. Broeking stated that he had retired in 2012, after serving as a public defender for over 29 years. He did not recognize the defendant and further stated that there were very few specific details that he could recall from the trial since it was conducted over 20 years ago. Broeking did recall that it was a sexual assault case and that DNA evidence was involved. Broeking also stated that he had no basis to dispute anything reflected in the record, such as exact dates, whether specific pleadings were filed, or whether certain objections were made at trial.

¶ 15 Broeking went on to state that he believed that he had obtained the defendant's expert, Dr. Thomas R. Breen, from the attorney who represented the defendant in a case in Saline County, *People v. Taylor*, No. 99-CF-110 (Cir. Ct. Saline County, Dec. 19, 1999), since both cases had involved DNA evidence. Broeking testified that it was a fair statement to say that he had access to the appellate court's decision in the Saline County case, and the admissibility of the DNA evidence in that matter prior to the defendant's trial in this matter. Broeking also stated that he could not recall a case where DNA evidence had not been admitted. Broeking stated that he knew the

prosecutor, Lisa Beaty, in the defendant's case and that she was a very good attorney and very knowledgeable regarding DNA evidence.

¶ 16 During the State's examination of Broeking, the defense made an objection to the relevancy of the questions regarding Broeking's standard practices. The State responded as follows:

“[T]he reason I am approaching this line of testimony is because there are many factors that go into decision making when you're getting ready for trial, when you are determining what strategy, what defense you're going to present. And I don't know that when this case went up on appeal that the appellate court considered those factors as well. All the steps that Mr. Broeking did take and how he did make a valiant effort on [the defendant's] behalf, I don't think they considered any of those things, but I think it's important for the Court to know exactly what did Mr. Broeking do and how \*\*\*.”

¶ 17 The circuit court stated that the “purpose of the third-stage hearing is to develop why [Broeking] didn't object, why he established a defense from the information that he had.” The circuit court further stated that it was required to determine whether Broeking's representation of the defendant was ineffective. Thus, the circuit court found that the line of questioning was relevant and overruled the objection.

¶ 18 At this point, defense counsel moved to admit “select transcripts from the official record in Saline County,” which had previously been admitted in a prior hearing. The transcript reflected the proceedings held on December 14, 1999, in the matter of *People v. Taylor*, No. 99-CF-110 (Cir. Ct. Saline County, Dec. 19, 1999), and documented the testimony of Donna Rees, a forensic scientist that had conducted the DNA analysis in that case. Rees was also one of the State's experts regarding DNA in this matter. There was no objection and the circuit court admitted the transcripts.

¶ 19 The State then moved to admit the decision of this court in the appeal of the defendant's Saline County case, *People v. Taylor*, No. 5-00-0119 (Ill. 2002) (unpublished order under Illinois Supreme Court Rule 23).<sup>2</sup> The decision stated that the defendant had been convicted of five counts of aggravated criminal sexual assault, three counts of aggravated sexual abuse, two counts of aggravated unlawful restraint, and five counts of aggravated battery in connection with the sexual assault of two females on March 2, 1999. *Id.* at 1. The defendant appealed his Saline County convictions arguing, *inter alia*, that the DNA testing was unreliable since the testimony of the expert, Stacie Speith, was given through an evidence deposition over the defense's objection. *Id.* at 4-6. The defendant also challenged the DNA evidence as unreliable. *Id.* at 7.

¶ 20 In resolving that appeal, this court determined that the defendant was not deprived of his right to confront the expert witness (*id.* at 6), that the DNA evidence was not so unreliable as to require the exclusion of the results (*id.* at 8), and that it was ultimately for the jury to make the final decision as to the evidence's weight and credibility (*id.*). Accordingly, the defendant's convictions were affirmed on direct appeal. *Id.* at 9. At the third stage hearing in this case, the State noted that it was submitting that appellate court decision since Broeking had reviewed and considered the decision prior to conducting the trial in this matter.

¶ 21 The State then called Lisa Irvin, previously Lisa Beaty, who represented the State at the defendant's trial. Irvin testified that she had worked for the state's attorney's office for 35 years and retired in 2022. Irvin stated that by the time of the defendant's trial, she had been dealing with DNA evidence for approximately 10 years, that she had received training in DNA in several ways, and that DNA evidence had become her specialty.

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<sup>2</sup>The public-domain citation of *People v. Taylor*, 329 Ill. App. 3d 1255 (2002), provides a synopsis that the matter was affirmed, but does not include a copy of the decision. A complete copy of the decision was submitted at the hearing and is contained within the record on appeal.

¶ 22 Irvin testified that the defendant had become a suspect in both the Saline County case and the case at bar through a DNA database match. Since the Saline County case was on appeal, at the defendant's request, the case at bar was not tried until a decision on that appeal was issued. At the defendant's trial, Irvin recalled that the judge had ruled, based on a motion by the defense, that the State could not bring in any of the Saline County case evidence or results.

¶ 23 Irvin testified that she knew Broeking and had tried hundreds of cases against him over the years that they had been in practice. Irvin stated that she had also tried several cases involving DNA evidence against Broeking, that she thought he was an excellent attorney, and that she would recommend him over private counsel in criminal cases. Irvin testified that Broeking "always gave me a run for my money." According to Irvin, Broeking would go through the evidence with "a fine-tooth comb." Irvin stated that there came a point when there was no need to put on all the basis of DNA evidence because the juries would not understand or want to hear it.

¶ 24 Over the years, Irvin stated that DNA technology had evolved and that she had laid the foundation for DNA evidence "many, many times." Irvin testified that, at the time of the defendant's trial, she had the ability and the evidence to lay a more complete foundation for the DNA evidence if the defense had challenged it. Irvin acknowledged that the DNA evidence was the only evidence linking the defendant to the crimes and there was no other physical evidence or eyewitness testimony.

¶ 25 No further witnesses were called at the hearing. After arguments, the circuit court took the matter under advisement. On February 28, 2024, the circuit court entered a 10-page written order setting forth its findings and denying the amended petition. The defendant filed a timely notice of appeal on February 29, 2024.

¶ 27 The defendant's sole issue on appeal is whether postconviction counsel's failure to follow this court's order and analysis upon remand denied the defendant his right to reasonable assistance of counsel at the third stage evidentiary hearing. The defendant argues that postconviction counsel rendered unreasonable assistance by focusing on the discovery violation claim instead of whether trial counsel was ineffective for failing to object to the State's lack of foundation for the DNA evidence at trial. The defendant states that this court remanded this matter for an evidentiary hearing on the specific claim that the defendant's trial and appellate counsels were ineffective for failing to properly argue the State's lack of foundation for the DNA evidence and that postconviction counsel's failure to understand this court's direction upon remand was unreasonable assistance.

¶ 28 The Act (725 ILCS 5/122-1 *et seq.* (West 2022)) sets forth a three-stage process for postconviction proceedings. *People v. Little*, 2012 IL App (5th) 100547, ¶ 12. At the first stage, the circuit court independently assesses a defendant's *pro se* petition and may summarily dismiss the petition if the court determines that it is frivolous or patently without merit. *Id.* If not dismissed at the first stage, the petition advances to the second stage where counsel may be appointed, and the State may move to dismiss the petition. *Id.* At the second stage, the circuit court must determine whether the petition contains sufficient allegations of a constitutional violation, and if a substantial showing is made, the petition proceeds to the third stage for an evidentiary hearing. *Id.*

¶ 29 As stated in the background section, the defendant's amended petition was initially dismissed at the second stage, and on appeal, remanded for a third stage evidentiary hearing that was conducted on January 11, 2024. A defendant has the burden of proving a substantial constitutional violation at the third stage. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). The

circuit court “may receive evidentiary proof via affidavits, depositions, testimony, or other evidence,” at the third stage evidentiary hearing. *People v. Gerow*, 388 Ill. App. 3d 524, 527 (2009). The evidentiary hearing allows the parties to “develop matters not contained in the trial record and, thus, not before the appellate court.” *People v. Lester*, 261 Ill. App. 3d 1075, 1078 (1994).

¶ 30 The defendant does not challenge the circuit court’s denial of the amended petition nor does he challenge whether the circuit court complied with our mandate to conduct an evidentiary hearing. Instead, the defendant is alleging that postconviction counsel rendered unreasonable assistance of counsel during that hearing. Whether postconviction counsel provided a reasonable level of assistance is subject to a *de novo* review. *People v. Jones*, 2017 IL App (4th) 140594, ¶ 31.

¶ 31 The right to postconviction counsel is not constitutionally required and as such, the level of assistance at a postconviction proceeding does not rise to the level which is guaranteed to a criminal defendant at trial. *People v. Pabello*, 2019 IL App (2d) 170867, ¶ 36. At postconviction proceedings, a defendant is only entitled to a reasonable level of assistance. *People v. Simpson*, 204 Ill. 2d 536, 550 (2001); *People v. Thomas*, 2013 IL App (2d) 120646, ¶ 6. Our supreme court has not prescribed by rule any specific duties that postconviction counsel must perform at the third stage, nor has it specifically addressed how to measure the level of reasonableness of counsel’s performance at a third stage evidentiary hearing. See *People v. Addison*, 2023 IL 127119, ¶ 38. As such, this and other courts have utilized the well-known *Strickland* standard to measure postconviction counsel’s performance at a third stage evidentiary hearing. See *People v. Watson*, 2022 IL App (5th) 190427, ¶ 48; *Pabello*, 2019 IL App (2d) 170867, ¶ 36; *People v. Zareski*, 2017 IL App (1st) 150836, ¶ 59; *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 37. In doing so, we

reasoned that if counsel's performance passed the higher *Strickland* standard, then it necessarily met the lesser reasonableness standard. *Hotwagner*, 2015 IL App (5th) 130525, ¶ 37.

¶ 32 Under *Strickland*, to prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). For counsel's performance to be deficient, the defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms. *Id.* Effective assistance of counsel refers to competent, not perfect, representation. *People v. Palmer*, 162 Ill. 2d 465, 476 (1994). "To establish deficiency, [a] defendant must overcome [a] strong presumption that the challenged action or inaction may have been the product of sound trial strategy." *People v. Evans*, 186 Ill. 2d 83, 93 (1999).

¶ 33 "Establishing prejudice under the *Strickland* inquiry requires a defendant to 'show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *People v. Barrow*, 195 Ill. 2d 506, 520 (2001) (quoting *Strickland*, 466 U.S. at 694). The prejudice prong of *Strickland* entails more than an "outcome-determinative" test and requires a defendant to show that counsel's deficient performance rendered the result of the trial unreliable or the proceedings fundamentally unfair. *Evans*, 186 Ill. 2d at 93. A defendant must satisfy both prongs of the *Strickland* test to prevail, and the failure to establish either prong precludes a finding of ineffective assistance of counsel. *People v. Henderson*, 2013 IL 114040, ¶ 11.

¶ 34 The defendant makes numerous references to the analysis in our remand decision regarding trial counsel's performance and alleges that postconviction counsel failed to fully understand this

court's direction upon remand. At this point, we find it necessary to stress that the only direction given within our remand decision was directed to the circuit court and that this direction was to conduct an evidentiary hearing on the defendant's claim of ineffective assistance of appellate counsel for failure to raise ineffective assistance of trial counsel on direct appeal. *Taylor*, 2021 IL App (5th) 180273-U, ¶ 38. We specifically stated that this court was not making any actual findings "concerning trial counsel's strategy or performance at trial" since all allegations in the defendant's amended petition, not affirmatively refuted by the record, were required to be taken as true. *Id.* ¶ 37. Our prior analysis was based on the information before this court at the time and related to the specific issue appealed, *i.e.*, whether appellate counsel should have presented a claim of ineffective assistance of trial counsel to avoid the procedural operation of forfeiture on direct appeal. *Id.* ¶ 3.

¶ 35 We further stated that:

"Trial counsel may well have had a valid strategic reason for not providing the additional discovery or requesting any additional input from defendant's DNA expert. We cannot, however, speculate whether the additional discovery may have altered the defendant's DNA expert's findings or changed trial counsel's strategy since any fact-finding or credibility determinations must be made at the evidentiary stage and requires the trial court to conduct an evidentiary hearing." *Id.* ¶ 30.

¶ 36 Thus, contrary to the defendant's assertions that this court found the discovery violation claim to be an unsound trial strategy, we made no such determination. Although we found that the defendant had overcome the presumption that trial counsel's failure to challenge the lack of foundation of the DNA evidence was the product of sound trial strategy, that finding was based upon the record before this court. *Id.* ¶ 34. The defendant states that this court, "specifically

remanded for a third-stage evidentiary hearing on whether Broeking was ineffective for failing to challenge the foundation of the DNA evidence at trial, and *not* to determine whether the discovery violation was a sound trial strategy.” (Emphasis in original.) This is an incorrect statement. The purpose of the remand for an evidentiary hearing was to allow the circuit court to make fact-finding and credibility determinations at a point where it was no longer required to take the defendant’s allegations as true and had obtained additional evidence on which to base its determination.

¶ 37 Postconviction counsel could not fail to follow the guidance of this court on the foundation issue since no specific guidance was provided. In the defendant’s direct appeal, this court found that the defendant had forfeited the DNA foundation issue. The law-of-the-case doctrine prohibits the reconsideration of issues that have been decided by a reviewing court in a prior appeal as long as the facts remain the same. *People v. Gliniewicz*, 2020 IL App (2d) 190412, ¶ 36; *People v. Patterson*, 154 Ill. 2d 414, 468 (1992). Thus, the issue at the evidentiary hearing was whether trial counsel’s strategy to challenge the DNA evidence through a discovery violation rather than foundation was professionally reasonable. Our decision stated that the State’s ability to cure foundational defects was “an issue outside of the record on appeal that must be developed through an evidentiary hearing and not adjudicated on the pleadings” (*Taylor*, 2021 IL App (5th) 180273-U, ¶ 35), and that we were making no determination “concerning trial counsel’s strategy or performance at trial” (*id.* ¶ 37). As the circuit court correctly stated, “the purpose of the third-stage hearing is to develop why [Broeking] didn’t object, why he established a defense from the information that he had.”

¶ 38 Decisions as to what witnesses to present, what evidence to present to those witnesses, and how to examine those witnesses fall into the category of trial strategy. *People v. Demus*, 2016 IL App (1st) 140420, ¶ 30; *People v. Patterson*, 347 Ill. App. 3d 1044, 1054 (2004). Thus,

postconviction counsel was free to present and support the defendant's claim at the hearing in a manner that included both the foundation and discovery issues regarding the DNA evidence at trial so that the circuit court could make fact-finding and credibility determinations.

¶ 39 “An attorney at the evidentiary hearing stage must argue the merits of the postconviction petitioner's claims as presented in the petition following review by counsel at the second stage.” *People v. Marshall*, 375 Ill. App. 3d 670, 683 (2007). In doing so, there is a strong presumption that counsel's action or inaction was the product of sound strategy. See *Palmer*, 162 Ill. 2d at 476 (action or inaction is presumed to be product of sound trial strategy). Here, postconviction counsel may have inquired more into the challenge of the DNA evidence at trial through a discovery violation instead of completely focusing on the lack of an objection to the foundation; however, the defendant has not overcome the presumption that doing so was the product of sound strategy.

¶ 40 We find nothing in our *de novo* review of postconviction counsel's performance at the evidentiary hearing to indicate that she was unfamiliar with the record or misunderstood the mandate of this court. Accordingly, we find that the defendant has failed to demonstrate that postconviction counsel's performance at the third stage evidentiary hearing was objectively unreasonable under prevailing professional norms. The defendant's failure to establish the first prong of the *Strickland* analysis now precludes a finding of ineffective assistance of counsel.

¶ 41 A lower court must follow the specific directions of the appellate court's mandate to the letter to ensure that its order and decree is in accord with the mandate of the appellate court. *People v. Murray*, 2023 IL App (4th) 220330, ¶ 11. In this matter, the circuit court fully complied with the mandate of this court, conducted an evidentiary hearing, entered findings, and denied the defendant's amended postconviction petition. Since the defendant has not challenged the circuit court's findings, we need not address those findings.

¶ 42

### III. CONCLUSION

¶ 43 For the foregoing reasons, the circuit court's denial of the defendant's amended postconviction petition after a third stage evidentiary hearing is affirmed where postconviction counsel did not render unreasonable assistance of counsel.

¶ 44 Affirmed.