NOTICE
Decision filed 11/18/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 241045-U

NOS. 5-24-1045, 5-24-1046 cons.

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	Nos. 15-CF-61, 15-CF-91
	)	
	)	
JAMES R. BLAIR,	)	Honorable
	)	Joshua C. Morrison,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: We reverse the judgment of the trial court dismissing the defendant's postconviction petition at the second stage where the trial court assumed or presumed that trial counsel's performance constituted sound trial strategy without an evidentiary basis for that conclusion.

¶ 2 On March 1, 2021, the defendant, James R. Blair, filed a *pro se* postconviction petition for relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). On August 30, 2024, the trial court dismissed the defendant's petition at the second stage. The postconviction petition was filed in his two joined criminal cases and appealed in both cases.

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

Subsequently, the appeals were consolidated for decision by this court on March 20, 2025. For the following reasons, we reverse the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 In *People v. Blair*, 2020 IL App (5th) 160469-U, ¶¶ 4-37, which addressed the defendant's direct appeal, this court set forth a complete factual and procedural background of these consolidated cases. As such, we will only restate the background information that is relevant and necessary to the appeal at bar.

¶ 5 On April 27, 2015, the defendant was charged by information in case No. 15-CF-61 for the unlawful possession of oxycodone, a controlled substance (720 ILCS 570/402 (West 2012)), and the unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5 (West 2012)). The defendant was later charged on June 22, 2015, by indictment in case No. 15-CF-91, with one count of armed robbery with a 20-year gun enhancement (720 ILCS 5/18-2(a)(3) (West 2014)); one count of aggravated battery with a firearm (*id.* § 12-3.05(e)(1)); two counts of attempted aggravated battery (*id.* § 8-4(a)); two counts of reckless conduct (*id.* § 12-5(a)(1)); and one count of aggravated assault (*id.* § 12-1(a)). Upon motion from the State, and over the objection of the defense, the cases were joined on January 12, 2016.

¶ 6 All of the alleged offenses occurred on April 25, 2015, when the defendant was 21 years old. The charges asserted that the defendant had entered a residence in Clinton County; shot a male victim in the leg; pistol-whipped the male victim in the face; and stole money, a pair of designer jeans, and a box containing cannabis. Later that day, in the adjoining county of St. Clair, the vehicle that the defendant had been driving was found wrecked. The vehicle was towed to an automobile garage in Clinton County where law enforcement conducted a search pursuant to a search warrant. During the search, law enforcement recovered four bags of cannabis and two pills of oxycodone.

¶ 7 On August 26, 2016, after a three-day jury trial, the defendant was convicted of all counts. He was sentenced on October 6, 2016, to concurrent sentences resulting in an aggregate of 35 years' incarceration. The defendant appealed his convictions, and this court affirmed the judgment of the trial court on June 2, 2020. *Blair*, 2020 IL App (5th) 160469-U, ¶ 65.

¶ 8 On March 1, 2021, the defendant filed a *pro se* postconviction petition for relief pursuant to the Act (725 ILCS 5/122-1 *et seq.* (West 2018)). The *pro se* petition alleged ineffective assistance of trial counsel for 1) failing to explain the sentencing range of the plea deal offered by the State; 2) failing to file a motion to either dismiss or transfer case No. 15-CF-61 for lack of proper venue; 3) failing to file a motion to suppress evidence seized from the defendant's vehicle; 4) failing to file a motion to suppress identification evidence; and 5) failing to object to the State's vouching for the witnesses' credibility. The trial court found that the defendant's petition was not frivolous or patently without merit and appointed counsel to represent the defendant on March 25, 2021. On November 22, 2021, the defendant filed a *pro se* motion to supplement the record with additional argument and evidence in support of his postconviction petition.

¶ 9 Postconviction counsel filed a motion to withdraw on January 24, 2022, stating that a conflict of interest had been discovered. On June 16, 2022, the defendant filed a second *pro se* motion to supplement his petition. The record is not clear concerning when postconviction counsel's motion to withdraw was heard and/or granted, however, new postconviction counsel appeared at a hearing conducted on August 25, 2023. On September 12, 2023, new postconviction counsel filed an Illinois Supreme Court Rule 651(c) (eff. Jul. 1, 2017) certificate.

¶ 10 The State filed a motion to dismiss the petition and a motion to strike the defendant's *pro se* pleadings on December 11, 2023. At a hearing on May 31, 2024, the trial court granted the State's motion to strike. The defendant's motion to supplement and second motion to supplement were

consequently stricken from the record. The State informed the trial court that its motion to dismiss addressed the supplemental issues raised by the defendant in his *pro se* filings. As such, the trial court continued the motion hearing and granted postconviction counsel leave to refile or incorporate the issues and/or arguments in the *pro se* filings.

¶ 11 On June 27, 2024, postconviction counsel filed a motion to supplement and a second motion to supplement the record with additional argument and evidence in support of the defendant's petition. The motion to supplement added an as-applied constitutional challenge to the defendant's sentence based on his age at the time of his arrest, and a claim that the sentencing judge failed to consider certain mitigating factors before imposing sentence. The motion also sought to submit evidence that the defendant's conduct during his incarceration demonstrated that he was not irretrievably depraved, permanently incorrigible, or irreparably corrupt beyond the possibility of rehabilitation. The second motion to supplement added two proportionate penalties clause claims, an excessive sentence claim, a claim that trial counsel provided ineffective assistance at sentencing, and a claim of ineffective assistance of appellate counsel for failing to raise any of the noted ineffective assistance of trial counsel claims on direct appeal.

¶ 12 The trial court conducted a hearing on the State's motion to dismiss on August 30, 2024. Upon completion of the arguments, the trial court discussed the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), the strong presumption that trial counsel's performance was competent, that trial counsel was an experienced trial attorney, and that trial strategy was largely "sacrosanct." The trial court then stated as follows:

> "I don't find that the motion to suppress, or that lack thereof, was prejudicial. I do find it to be trial strategy. That is something that I have seen lots of attorneys file. And whether to do that or not could have been based on a number of reasons,

and only [trial counsel] knows what those are. Could have filed one for change of venue. He did not do that. He knows how to do that too, I'm sure. He didn't do that. I don't find that to be prejudicial. I find that to be trial strategy.

I don't find that [trial counsel's] performance in this case was—fell below the necessary objective standard. And furthermore, the only evidence as—as presented from defense sounds like it's going to be testimony of the defendant. That is a problem because everything that you say I would expect to be on your own side.

I would expect that evidence to be what you want it to be. And unless you have [trial counsel] testify that he, in fact, was ineffective in your case, I think you have a real problem with that it is not a self-serving statement, whatever your evidence or your testimony would be."

¶ 13 Thereafter, the trial court granted the State's motion to dismiss stating that the State had met its burden and that trial counsel had not rendered ineffective assistance of counsel. The trial court made no comments or specific findings on the defendant's other claims, and it issued no written order. On September 16, 2024, the defendant filed a timely notice of appeal bringing this matter before our court.

¶ 14 II. ANALYSIS

¶ 15 The Act provides a remedy for a criminal defendant who's federal or state constitutional rights were substantially violated in his or her original trial or sentencing hearing. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002). A postconviction proceeding is not an appeal from an underlying judgment, but rather a collateral attack on the judgment. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). As a collateral proceeding, a postconviction proceeding allows inquiry only into

constitutional issues that were not and could not have been adjudicated in an appeal of the underlying judgment. *Id.*

¶ 16 The Act provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Lacy*, 407 Ill. App. 3d 442, 455 (2011). At the first stage, the trial court independently assesses the defendant's petition and if the trial court determines that the petition is "frivolous" or "patently without merit," the trial court can summarily dismiss it. 725 ILCS 5/122-2.1(a)(2) (West 2018); *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). To survive the first stage, "a petition need only present the gist of a constitutional claim." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996).

¶ 17 If a petition is not dismissed at the first stage, it advances to the second stage where an indigent petitioner can obtain appointed counsel, and the State can move to dismiss it. 725 ILCS 5/122-2.1(b), 122-4, 122-5 (West 2018); *Edwards*, 197 Ill. 2d at 245-46. At the second stage, the trial court is "foreclosed from engaging in any fact-finding because all well-pleaded facts not rebutted by the record are to be taken as true." *People v. Phyfiher*, 361 Ill. App. 3d 881, 884 (2005). At the second stage, if the defendant makes a substantial showing of a constitutional violation, the petition advances to the third stage where the trial court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2018); *Edwards*, 197 Ill. 2d at 246. A substantial showing is a measure of the legal sufficiency of the petition's allegations, which, if proven at an evidentiary hearing, would entitle the defendant to relief. *People v. Domagala*, 2013 IL 113688, ¶ 35.

¶ 18 In this matter, the trial court dismissed the defendant's petition at the second stage. We review *de novo* a trial court's dismissal of a postconviction petition at the second stage. *People v. Velasco*, 2018 IL App (1st) 161683, ¶ 91. *De novo* review means that this court owes no deference

to the trial court and performs the same analysis that a trial judge would perform. *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 88; *People v. Williams*, 2013 IL App (1st) 111116, ¶ 75.

¶ 19 On appeal, the defendant argues that his postconviction pleadings made a substantial showing that 1) trial counsel was ineffective for advising the defendant to reject an open plea offer without informing him of the sentencing range; 2) appellate counsel was ineffective for failing to argue ineffective assistance of trial counsel for failing to file a motion to suppress the drugs recovered from the defendant's vehicle; 3) appellate counsel was ineffective for failing to argue ineffective assistance of trial counsel for failing to file a motion to dismiss case No. 15-CF-61, which was tried in the wrong county; 4) that the defendant's 35-year sentence violated the proportionate penalties clause; and 5) appellate counsel was ineffective for failing to argue ineffective assistance of trial counsel where trial counsel made a woefully sparse mitigation argument which led the trial court to impose an excessive 35-year sentence on an emerging adult with a long history of substance abuse. In the alternative, the defendant argues that postconviction counsel rendered unreasonable assistance of counsel by failing to amend the petition to adequately present the defendant's claims so as to clarify that the claims were based on appellate counsel's failure to argue trial counsel's ineffectiveness.

¶ 20 We will begin our analysis with issues two and three since they are closely related and are dispositive to this appeal. Both issues related to the drugs that were recovered from the defendant's vehicle, and both allege ineffective assistance of appellate counsel for failing to allege on direct appeal that trial counsel was ineffective for failing to file either a motion to suppress or a motion to dismiss. The trial court found both these issues to be a matter of trial strategy.

¶ 21 While the trial court is correct that these issues generally fall within the parameters of trial strategy, a trial court may not simply assume or presume that trial counsel's conduct constituted

sound trial strategy without an evidentiary basis for that conclusion. *People v. Porter*, 2026 IL App (1st) 242105-U, ¶ 68 (citing *People v. Popoca*, 245 Ill. App. 3d 948, 959 (1993)). Here, the trial court stated that "whether to [file a motion to suppress] or not could have been based on a number of reasons, and only [trial counsel] knows what those are." By conceding its belief that only trial counsel could possibly know the reason for filing or not filing the motion to suppress, the trial court admitted that it could not discover an evidentiary basis for its conclusion that it was trial strategy. If the trial court had no evidentiary basis that it was trial strategy, it follows that it could not make a determination at the second stage that foregoing the filing of these motions was sound trial strategy.

¶ 22 Postconviction proceedings, unlike direct appeals, exist precisely to develop a record outside of the trial transcript that can demonstrate whether trial counsel's decisions were truly strategic or were, instead, incompetent or negligent. See *People v. Gunn*, 2020 IL App (4th) 170653, ¶ 38; *People v. Cabrera*, 326 Ill. App. 3d 555, 564-65 (2001). If we were to permit a trial court in these circumstances to assume that any challenged conduct at the second stage could be dismissed as trial strategy, it would effectively foreclose a defendant's ability to present any actual evidentiary basis, even where the defendant has made a substantial showing in his pleadings that counsel's conduct may have been deficient. Further, it would foreclose a defendant's ability to develop a record outside of the trial transcript regarding such performance.

¶ 23 At the second stage, the trial court may dismiss a postconviction petition if its allegations, taken as true and liberally construed in favor of the defendant, fail to warrant relief under the Act. *People v. Sanders*, 2016 IL 118123, ¶ 31. Here, the defendant made a substantial showing of ineffective assistance of appellate counsel for failing to raise several claims of ineffective assistance of trial counsel. Those claims were not rebutted by the record, yet the trial court made

a factual determination that the failure to file these motions was trial strategy and that trial counsel's performance therefore did not fall "below the necessary objective standard." Accordingly, we find that the trial court erred in dismissing the defendant's petition at the second stage and find that remand for a third stage evidentiary hearing is warranted.

¶ 24 We note that the defendant argues that an evidentiary hearing is neither required nor helpful for this court to determine that the defendant was deprived of a constitutional right and asks this court to reverse outright the defendant's convictions. We decline to do so. The Act allocates the trial court, as fact finder, to make determination at an evidentiary hearing that could not properly be made at the earlier pleading stages. 725 ILCS 5/122-6 (West 2018); see *People v. Domagala*, 2013 IL 113688, ¶ 34. As stated in *People v. Murray*, 2025 IL App (1st) 232338, ¶ 121:

> "[T]he very point of an evidentiary hearing is to allow the circuit court to do what cannot be properly done on the papers alone—determine who is credible and who is not, what evidence deserves more weight and which deserves less, and ultimately decide whether the [defendant] has carried the burden of proof."

Thus, we will not bypass the trial court and instead, permit the trial court to fulfil its function as trier of fact at an evidentiary hearing.

¶ 25 Since we have determined that remand is required, we need not address the defendant's remaining issues on appeal. We do, however, need to address the defendant's request that upon remand, this court direct that the evidentiary hearing be conducted by a different judge. The defendant argues that the trial court improperly based its determination on its personal knowledge of the trial counsel and speculation concerning what evidence would be presented at the hearing.

¶ 26 The defendant cites *People v. Steidl*, 177 Ill. 2d 239 (1997) in support of his argument. In *Steidl*, our supreme court stated that due process precludes a trial court from considering

information outside the record, unless the information is a matter of which a trial court may take judicial notice. *Id.* at 265-66. "While all judges come to the courtroom influenced, either consciously or unconsciously, by the experiences, associations, and prejudices developed over a lifetime, they are expected to make an effort to put those predilections aside and make determinations based only upon the evidence presented." *Id.* at 266. Thus, in *Steidl*, our supreme court found that the trial court had relied on personal knowledge of the trial counsel's performance in previous cases to determine his competency in the instant case and directed that the trial judge should be recused from any further consideration of the case. *Id.*

¶ 27 Here, the trial court stated that it knew trial counsel for many years, knew him to be a good attorney, and knew him to be an experienced trial attorney. The trial court also speculated regarding what evidence the defendant would present at an evidentiary hearing and then found the evidence to be self-serving. As in *Steidl*, it appears that the trial court relied on personal knowledge outside of the record in making its determination of trial counsel's performance. While a defendant does not have an absolute right to a substitution of judge at a post-conviction proceeding, on the record before us, we find that the trial court considered information outside of the record and direct that the trial judge be recused from any further consideration of this case.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we reverse the judgment of the trial court of Clinton County dismissing the defendant's petition for postconviction relief at the second stage, and remand for a third stage evidentiary hearing presided by a different judge.

¶ 30 Reversed and remanded with directions.