

NOTICE

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

2026 IL App (4th) 251240-U

NO. 4-25-1240

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 2, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
CLARICE HAWKINS,	)	No. 07CF160
Defendant-Appellant.	)	
	)	Honorable
	)	Stephen A. Kouri,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices DeArmond and Grischow concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the Office of the State Appellate Defender’s motion to withdraw as appellate counsel and affirmed the trial court’s dismissal of defendant’s amended postconviction petition, as the appeal presents no potentially meritorious issue for review.

¶ 2 Defendant, Clarice Hawkins, appeals the trial court’s dismissal of her postconviction petition, filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)), at the second stage of postconviction proceedings. On appeal, the Office of the State Appellate Defender (OSAD) moves to withdraw on the basis the appeal presents no potentially meritorious issues for review. We grant OSAD’s motion to withdraw and affirm the court’s judgment.

¶ 3 I. BACKGROUND

¶ 4 Because much of the factual background of this case has been detailed in

defendant's previous appeals (see *People v. Hawkins*, No. 3-08-0008 (2009) (unpublished order under Illinois Supreme Court Rule 23), *People v. Hawkins*, 2014 IL App (3d) 120139-U, and *People v. Hawkins*, 2017 IL App (3d) 140435-U), we address only those facts necessary for the disposition of this appeal.

¶ 5 A. The Charges and Jury Trial

¶ 6 In February 2007, the State charged defendant with first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2006)) and unlawful sale of a firearm (720 ILCS 5/24-3(A)(a) (West 2006)). The charges alleged that on November 8, 2006, defendant shot Semeeka Cotton to death with a firearm either intending to cause death or great bodily harm to Cotton or knowing her acts created a strong probability of those outcomes and that on November 10, 2006, defendant transferred a concealable firearm to Timothy Scott, who was then under 18 years old.

¶ 7 The matter proceeded to a jury trial in October 2007. At that time, defendant was represented by private counsel. The evidence at trial established, *inter alia*, that in the morning hours of November 8, 2006, defendant purchased crack cocaine from Cotton, consumed it with her in the garage where Cotton and Phillip Leggins were living, and, at approximately 8:15 a.m., shot Cotton, causing her death. Although there were no eyewitnesses to the shooting, Sharon Stimage testified she had encountered defendant at approximately 2 a.m. on the day of the incident, at which time defendant was wearing a cap backward, a white polo shirt, gray jogging pants, and a gray jacket that was tied around her neck. Another witness, Arthur Bradford, testified that after hearing five gunshots, he observed a woman trying to lock or unlock the door to the garage. He noted the woman he saw was of similar height to defendant, with whom he previously worked, and was wearing a hat backward and a plain gray sweatshirt. Another witness, Walter McCall, testified that on the morning of November 8, 2006, he heard a woman "hollering pretty loud" in

the direction of the garage, and the screaming stopped after he heard three shots fired. After approximately 15 seconds, he heard two more gunshots, then saw a woman in a “black sweatsuit” walking in the alley outside the garage, but he could not see her face.

¶ 8 Scott testified that during the wintertime, defendant called him and told him she had a gun for sale and that she shot someone with it. According to Scott, defendant gave him a magazine with ammunition in it for \$100 and later provided him with the remainder of the firearm, with Scott agreeing to owe her \$200. Scott then provided the firearm to his brother, Clifton Blakely, who testified that after receiving the firearm, defendant told him to bury it because she did not want the police to obtain it. The police subsequently recovered the firearm from Blakely.

¶ 9 Following the shooting, the police went to defendant’s home, where she resided with her husband, Frank Hawkins, and received permission to look in Frank’s gun case. The police recovered ammunition for a 9-millimeter firearm that had distinctive stamps on them that matched those on cartridge cases recovered from the crime scene. Frank testified he normally kept a 9-millimeter Taurus handgun with the magazine full in the nightstand beside the bed where defendant was sleeping in November 2006. However, Frank noted the last time he saw the firearm was in the first week of October. During Frank’s testimony, he identified the firearm recovered by police as the one he kept in the nightstand.

¶ 10 Linda Yborra, a forensic scientist specializing in firearm and toolmark identification, testified that after the firearm sold to Scott had been recovered by the police, she conducted test-firings and comparative microscopy. According to Yborra, the cartridge cases that were recovered from the garage in which Cotton had been killed were fired from the firearm recovered by police.

¶ 11 The State also presented evidence regarding defendant’s prior interactions with

Cotton and her previous use of cocaine. Specifically, David Williams testified defendant told him in the early summer of 2006 that she got into an argument with Cotton and that Cotton “[didn’t] know who she [was] messing with.” Larry Jones testified Scott had previously come to his house and given defendant crack cocaine in October 2006.

¶ 12 Defendant testified she did not kill Cotton. She claimed she first met Cotton on the morning of November 8, 2006, when she went to the garage to buy cocaine from Leggins, but she went home at 2:40 a.m., where she had a beer, took pills, and went to sleep. Defendant acknowledged she used a significant amount of cocaine and would spend approximately \$1,000 on crack cocaine per month. However, she did not “consider [her]self a crack addict,” but simply a “crack user” whose usage increased in 2005. Defendant also testified she sold Scott a firearm in September 2006, prior to Cotton’s death, not in November 2006.

¶ 13 During closing argument, defendant’s counsel, *inter alia*, noted defendant had an addiction to crack cocaine but argued she did not kill Cotton. Counsel argued there was scant evidence of motive, unreliable testimony placing defendant near the scene after the shooting, and evidence suggesting defendant did not have the firearm used in the shooting because she sold it long before Cotton’s death.

¶ 14 The jury found defendant guilty of both first degree murder and unlawful sale of a firearm. Defendant filed a motion for a new trial, asserting, *inter alia*, the State failed to prove her guilty beyond a reasonable doubt and the trial court erred in admitting certain evidence, including testimony from Williams that defendant and Cotton had argued in the summer of 2006. The court denied the motion for a new trial.

¶ 15 B. Sentencing and Direct Appeals

¶ 16 At defendant’s sentencing hearing, defendant informed the trial court that her trial

counsel never told her that she faced a minimum 45-year prison sentence if convicted of murder and that her counsel should have called her treating psychiatrists, who would have testified she had been addicted to psychiatric medication. Defendant also explained she told her attorney she wanted to plead guilty to the charge for unlawful sale of a firearm rather than go to trial.

¶ 17 The trial court questioned defendant's counsel about defendant's claims, and counsel explained she strategically presented no psychiatric testimony to avoid giving the jury the impression defendant was "so out of it [that she did not] know what she had done." Counsel further explained she went "through with everything" with defendant about possible sentences and that evidence of the gun sale would have been present at trial regardless of whether defendant pleaded guilty to that charge because it was relevant to the murder charge in that the defense's position was the firearm had been sold prior to the time testified to by Scott. The court did not appoint new counsel.

¶ 18 Following counsel's explanations, the trial court proceeded to sentencing. The court noted defendant engaged in a "premeditated, cold-blooded killing" and that, while she "may have had some crack in her system, *** she knew what she was doing" and killed Cotton in an "animalistic manner." The court sentenced defendant to 65 years' imprisonment for first degree murder and a consecutive term of 7 years' imprisonment for unlawful sale of a firearm.

¶ 19 The same attorney defendant claimed at sentencing had provided deficient assistance, filed a motion to reconsider defendant's sentence and represented her at the hearing on that motion. The trial court denied defendant's motion to reconsider her sentence.

¶ 20 Defendant appealed her conviction and sentence. On appeal, she argued (1) the State failed to prove her guilty beyond a reasonable doubt of first degree murder, (2) the trial court improperly questioned prospective jurors during *voir dire*, (3) the court erroneously failed to

appoint her new counsel after she raised posttrial allegations of ineffective assistance of counsel, and (4) the court abused its discretion in sentencing her. *Hawkins*, No. 3-08-0008. The Appellate Court, Third District, vacated defendant's sentence for unlawful sale of a firearm on the basis the trial court erroneously believed that sentence could run concurrent with the sentence imposed for first degree murder, and upon realizing it could not, failed to address the appropriateness of the sentence in light of its mandatorily consecutive nature. *Id.* The Third District otherwise rejected defendant's remaining arguments and affirmed. *Id.*

¶ 21 On remand, the trial court held a new sentencing hearing for defendant's conviction for unlawful sale of a firearm, at which defendant was represented by new counsel. The court sentenced defendant to an identical seven years' imprisonment for unlawful sale of a firearm. Defendant appealed this sentence, claiming her new sentencing counsel provided ineffective assistance during the sentencing phase, but the Third District rejected her contentions and affirmed on the basis she suffered no prejudice. *Hawkins*, 2014 IL App (3d) 120139-U, ¶ 18.

¶ 22 C. Postconviction Proceedings

¶ 23 In December 2010, defendant filed a *pro se* postconviction petition pursuant to the Act, asserting she received ineffective assistance of counsel because counsel (1) failed to present evidence of her history of mental illness, psychiatric care, and medication; (2) failed to allow her to plead guilty to unlawful sale of a firearm, depriving her of the opportunity to admit to the guilty plea at her murder trial to bolster the jury's perception of her truthfulness; (3) failed to adequately question Jones and compel Frank to produce his calendar, which would have supported her alibi by showing the time she was at home; (4) claimed defendant was a heavy user of crack cocaine; (5) failed to subpoena defendant's psychiatrist and psychologist; (6) failed to suppress a videotaped statement defendant had given to police; (7) failed to contest in posttrial motions

testimony from Williams that defendant and Cotton had argued with each other in the summer of 2006; (8) required defendant to pay \$10,000 for representation; and (9) failed to speak with certain witnesses counsel claimed she had spoken with.

¶ 24 Defendant's petition also alleged her right to due process was violated where the trial court (1) allowed her trial counsel to represent her on her motion to reconsider sentence despite having made allegations of ineffective assistance of counsel, (2) improperly weighed mitigating factors at sentencing, and (3) prejudicially remarked that defendant killed Cotton in a "deadly, cold-blooded, animalistic manner" and knew what she was doing where there was no direct evidence she was the perpetrator.

¶ 25 Finally, defendant's petition asserted her right to be free from illegal searches and seizures was violated where no form showing Frank's consent to search his and defendant's home was produced.

¶ 26 As supporting documentation for her claim counsel failed to present evidence of her mental illness, defendant attached records of psychiatric treatment indicating she reported experiencing auditory hallucinations between 2008 and 2010, and bipolar disorder with psychotic features, depression, and anxiety. However, the documentation also noted that there were periods during which defendant stopped experiencing auditory hallucinations, and the records showed she had clear thought processes. Defendant also attached an affidavit from Frank, in which he attested that throughout their marriage, defendant "had severe mental bipolar disorders," was depressed, and "would become very angry" if she did not take her medication. Many of defendant's remaining claims were supported mainly by portions of transcripts, without reference as to what day or proceeding the transcripts pertained.

¶ 27 In April 2011, the trial court docketed defendant's postconviction petition for

further consideration and appointed postconviction counsel. The State filed a motion to dismiss the petition, arguing, *inter alia*, defendant's ineffective-assistance claims were meritless, and other issues were either waived or barred by *res judicata*, given the appellate court's rulings in defendant's prior appeals.

¶ 28 In February 2014, postconviction counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013), in which he affirmed he consulted with defendant to ascertain her contentions of deprivation of constitutional rights, examined the trial record, and made any amendments to the petition necessary for the adequate presentation of defendant's contentions. At the hearing on the petition, counsel affirmed he complied with the Rule 651(c) requirements and indicated he would stand on the *pro se* petition. The trial court dismissed defendant's petition. In its order, the court noted the petition was "not well developed in terms of explanation" and concluded defendant failed to make a substantial showing of a constitutional violation. Defendant appealed, and the Third District reversed and remanded for further second-stage proceedings, concluding postconviction counsel provided unreasonable assistance in failing to amend the petition to adequately explain defendant's *pro se* contentions. *Hawkins*, 2017 IL App (3d) 140435-U, ¶¶ 34-35.

¶ 29 On remand, new postconviction counsel filed an amended petition for postconviction relief in August 2020. The petition raised the following claims: (1) trial counsel was ineffective for failing to investigate witnesses and present evidence regarding defendant's history of mental health concerns, treatment, and medication, (2) the trial court violated defendant's right to due process by failing to appoint new counsel to represent her on her motion to reconsider her sentence after she had alleged ineffective assistance of her trial counsel, (3) the court improperly weighed the factors in mitigation at sentencing, (4) counsel was ineffective for

portraying defendant as an “addict” during closing argument, (5) counsel was ineffective for failing to adequately question Frank and Jones at trial, and (6) counsel was ineffective for failing to allow defendant to plead guilty to unlawful sale of a firearm. No new evidence was attached to the amended petition. In February 2021, counsel filed a certificate of compliance with Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), but in February 2023, the matter was subsequently reassigned to yet another attorney.

¶ 30 In October 2024, this new postconviction counsel orally informed the trial court that he was adopting both the previously filed amended postconviction petition and the Rule 651(c) certificate.

¶ 31 In July 2025, the State filed a motion to dismiss the amended postconviction petition, asserting defendant’s claims were either waived because she did not raise them on direct appeal or meritless.

¶ 32 At the hearing on the motion, the parties predominantly reiterated the arguments raised in their respective filings. Defendant further argued trial counsel’s failure to present evidence of her mental health history was unreasonable because the evidence would have allowed for the presentation of a defense at trial, such that the failure to introduce the evidence prejudiced her by depriving her of that defense.

¶ 33 In October 2025, the trial court granted the State’s motion to dismiss, concluding there was “nothing in the most recent petition that is either new, or could not have been known previously, that suggests the conviction should be overturned.”

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 OSAD was appointed to represent defendant on appeal. Thereafter, it filed a motion

for leave to withdraw as defendant's counsel, contending defendant's appeal presents no meritorious issues for review. In the supporting memorandum of law, OSAD sets forth the potential issues that could be raised on appeal and the reasons those issues are without merit. A copy of the motion was mailed to defendant, and defendant filed no response.

¶ 37 “The [Act] provides a procedural mechanism through which criminal defendants can assert that their federal or state constitutional rights were substantially violated in their original trials or sentencing hearings.” *People v. Buffer*, 2019 IL 122327, ¶ 12. A postconviction petition must clearly set forth the ways in which a defendant claims her constitutional rights were violated. 725 ILCS 5/122-2 (West 2020). “The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” *Id.*

¶ 38 The Act contemplates a three-stage process for the adjudication of postconviction petitions. *Buffer*, 2019 IL 122327, ¶ 45. When a petition advances from the first to the second stage, the trial court may appoint counsel to represent the defendant, and the State may file responsive pleadings. 725 ILCS 5/122-4, 122-5 (West 2020); *People v. Johnson*, 2018 IL 122227, ¶ 15. At the second stage, the court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. *Johnson*, 2018 IL 122227, ¶ 15. If a defendant fails to make a substantial showing of a constitutional violation, the postconviction claims are subject to dismissal. *Id.*

¶ 39 We review the trial court's dismissal of a defendant's claims at the second stage of postconviction proceedings *de novo*. *People v. Johnson*, 2017 IL 120310, ¶ 14. For clarity, we will address the arguments considered by OSAD in a different order than presented in its supporting memorandum of law.

¶ 40 A. Ineffective-Assistance-of-Counsel Claims

¶ 41 OSAD notes, although it considered raising several arguments that defendant's trial counsel provided ineffective assistance, no meritorious argument can be made that any purported errors by counsel constituted ineffective assistance. We agree and discuss below why each claim lacks arguable merit.

¶ 42 To establish ineffective assistance of counsel, a defendant must demonstrate that her counsel's performance was deficient and that the deficient performance prejudiced her. *People v. Domagala*, 2013 IL 113688, ¶ 36; *Strickland v. Washington*, 466 U.S. 668, 694 (1984). To show that counsel's performance was deficient, a defendant must demonstrate the performance was objectively unreasonable under prevailing professional norms. *Strickland*, 466 U.S. at 694. To establish prejudice, the defendant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* Judicial review of counsel's performance is highly deferential, and a reviewing court must indulge a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. *People v. Manning*, 241 Ill. 2d 319, 334 (2011). It is the defendant's burden to overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. *Id.* A defendant is required to establish both prongs of the *Strickland* test, and the failure to establish either prong precludes a finding of ineffective assistance of counsel. *People v. Cherry*, 2016 IL 118728, ¶ 24.

¶ 43 1. *Whether Trial Counsel Was Ineffective for Failing to Present Evidence of Defendant's Past Psychiatric Treatment*

¶ 44 OSAD asserts it considered claiming defendant's trial counsel was ineffective in failing to present evidence relating to her mental health and psychiatric treatment during trial or at sentencing because the failure to do so deprived her of an insanity defense at trial and mitigating

evidence at sentencing. OSAD claims, however, that no meritorious argument can be made defendant suffered prejudice. We agree.

¶ 45 Putting aside whether counsel's performance was unreasonable, even if trial counsel had presented the evidence appended to defendant's motion describing defendant's mental health history of bipolar disorder, depression, anxiety, psychiatric treatment, and the medications she took, there is no reasonable probability that the result of either defendant's trial or sentencing would have been different.

¶ 46 A defendant "is not relieved of criminal responsibility for his conduct" if, "at the time of the commission of a criminal offense, [he] was not insane but was suffering from a mental illness." 720 ILCS 5/6-2(c) (West 2006). Instead, "[a] person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct." *Id.* § 6-2(a). The defendant bears the burden of proving insanity, and mere bizarre behavior or delusional statements do not compel an insanity finding since a defendant may suffer mental illness without being legally insane. *People v. Plackowska*, 2020 IL App (2d) 171015, ¶ 49.

¶ 47 Here, although the evidence appended to defendant's petition indicated she suffered from mental illness, including potentially at the time of the offense, none of the evidence suggested she lacked the capacity to appreciate the criminality of her conduct. Certainly, the documentation showed defendant had reported auditory hallucinations after the shooting, but none of defendant's evidence indicated either that any such hallucinations occurred at the time of the offense or that, even if they did, they were the reason for Cotton's killing or that they prevented defendant from appreciating the criminality of her conduct. See *People v. Cundiff*, 322 Ill. App. 3d 426, 434 (2001) (the defendant could not establish he was legally insane at the time of the crime where "[n]o

evidence was produced to explain what the voices [he was hearing] said or if the voices were the reason [the] defendant stabbed” the victim). At best, Frank’s affidavit could be interpreted to suggest that around the time of the murder, defendant suffered from bipolar disorder, was depressed, and became angry when she did not take her medication. However, none of this evidence is sufficient to establish legal insanity because, as previously noted, a defendant may suffer mental illness without being legally insane. *Plackowska*, 2020 IL App (2d) 171015, ¶ 49.

¶ 48 Moreover, the evidence at trial suggested defendant *did* comprehend the criminality of her conduct, as it showed that after the shooting, defendant, *inter alia*, locked the door of the garage where the shooting occurred, sold the firearm used in the shooting to Scott, and told Blakely, who subsequently obtained the firearm, to bury it to prevent the police from obtaining it. “[O]ne of the factors to consider in determining a defendant’s capacity to appreciate the criminality of her conduct are efforts to avoid detection.” *Id.* ¶ 51. Thus, even assuming trial counsel presented evidence of defendant’s mental illness at trial, an insanity defense would have been unlikely to succeed since there was ample evidence showing defendant comprehended the criminality of her conduct. Therefore, there is no reasonable probability that the result of the trial would have been different.

¶ 49 Similarly, there is no reasonable probability evidence of defendant’s mental health issues would have resulted in any difference at sentencing. The fact that a defendant suffers from a mental illness is not an inherently mitigating sentencing factor. See *People v. Prather*, 2022 IL App (4th) 210609, ¶¶ 38, 44 (determining there was no reasonable probability of a lighter sentence had the defendant’s counsel presented defendant’s bipolar disorder and depression at sentencing, thereby precluding a finding of ineffective assistance of counsel). Defendant presented nothing to suggest that even if counsel presented evidence of her mental illness and treatment, the trial court

would have imposed a lighter sentence. Beyond that, the record shows the trial court based defendant's sentence primarily on the seriousness of the crime, which involved a brutal murder and repeated efforts by defendant to cover it up. The seriousness of the offense is the most important factor in sentencing, and the court would have been free to prioritize the aggravating nature of that factor over any potentially mitigating effect related to defendant's mental health. See *People v. Charles*, 2018 IL App (1st) 153625, ¶ 45 (stating the seriousness of the offense is the most important sentencing factor, and the sentencing court need not give greater weight to mitigating factors).

¶ 50 Because defendant would be unable to show that there is a reasonable probability that the result of her trial or sentencing would have been different had her trial counsel presented evidence of her mental illness and treatment, no meritorious argument can be made her counsel was ineffective for failing to present such evidence.

¶ 51 2. *Whether Trial Counsel Was Ineffective for Stating Defendant Was Addicted to Crack Cocaine During Closing Argument*

¶ 52 OSAD notes it also considered arguing defendant's trial counsel was ineffective for claiming defendant was addicted to crack cocaine during closing argument, despite defendant testifying she was not addicted. OSAD contends no meritorious argument can be made counsel's admission amounted to unreasonable performance. We agree.

¶ 53 "Attorneys enjoy wide latitude in the content of their closing argument." *People v. Neal*, 2020 IL App (4th) 170869, ¶ 166. "The content of a closing argument is generally a matter of trial strategy." *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 83. Thus, " 'deference to counsel's tactical decisions in his closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage.' " *Id.* (quoting *Yarborough v. Gentry*, 540

U.S. 1, 5-6 (2003)). Closing arguments are meant to “ ‘sharpen and clarify the issues for resolution by the trier of fact [citation], but which issues to sharpen and how best to clarify them are questions with many reasonable answers.’ ” *Id.* (quoting *Yarborough*, 540 U.S. at 5-6). Accordingly, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 8. As an example, while “confessing a client’s shortcomings” may draw the jury’s attention to distasteful facts that might otherwise have been forgotten, “it might also convince them to put aside facts they would have remembered in any event.” *Id.* In “candidly acknowledging” those facts, counsel may “buil[d] credibility with the jury and persuade[] it to focus on the relevant issues in the case.” *Id.* “This is precisely the sort of calculated risk that lies at the heart of an advocate’s discretion.” *Id.*

¶ 54 Here, while defendant testified she was not addicted to cocaine, she also conceded that she used a significant amount of cocaine and would spend approximately \$1,000 on crack cocaine per month. The jury could have regarded this evidence as indicative of a possible motive or explanation for Cotton’s killing, namely, to obtain more cocaine from Cotton, who sold her some earlier that morning, or because defendant was intoxicated at the time of the shooting. By “acknowledging [her] client’s shortcomings” and referring to defendant as having an “addiction” to cocaine rather than arguing the nuances and subtleties of her desire for the drug, counsel could reasonably have been seeking to “buil[d] credibility with the jury and persuade[] it to focus on the relevant issues,” such as the lack of definitive evidence of identification or evidence suggesting defendant could not have had the firearm because it was sold long before the shooting. *Id.*

¶ 55 Accordingly, we conclude no reasonable argument can be made to establish counsel’s reference to defendant being addicted to crack cocaine during closing argument

amounted to unreasonable performance. Consequently, we agree with OSAD no meritorious argument can be made her counsel thereby provided ineffective assistance.

¶ 56 3. *Whether Trial Counsel Was Ineffective for Failing to More Thoroughly*

Investigate and Question Jones and Frank at Trial

¶ 57 OSAD contends it considered claiming trial counsel was ineffective in failing to investigate and more thoroughly question Jones and Frank at trial. Specifically, defendant argued counsel should have asked certain unspecified questions that counsel refused to ask on the basis they would have elicited hearsay testimony. She further claimed counsel should have presented Frank’s calendar, which would have supported her alibi that she was at home at the time of the shooting. However, OSAD argues these claims would fail because they were not properly supported with appropriate records or evidence. We agree.

¶ 58 As we previously explained, the Act requires an allegation of a constitutional violation in a postconviction petition to be supported by “affidavits, records, or other evidence.” 725 ILCS 5/122-2 (West 2020); *People v Dupree*, 2018 IL 122307, ¶ 32.

¶ 59 Here, the only evidence included to support her claim counsel should have more thoroughly questioned Jones was portions of the trial transcript of Jones’s testimony. The transcripts showed counsel asked Jones several questions about whether he knew why Scott planned to meet with defendant, but the State objected on the grounds of hearsay and lack of foundation where Jones testified defendant and Scott “had dealt [sic] on [something] I don’t know about.” The trial court sustained the State’s objections. The evidence attached to the petition does not indicate what additional questions counsel should have asked, and defendant otherwise provides no explanation or evidence indicating what testimony would have been elicited with further questioning.

¶ 60 Similarly, although defendant claimed counsel should have introduced a portion of Frank's calendar that apparently would have supported her claim she was at home at the time of the shooting, no copy of the relevant document was attached to the postconviction petition, and defendant provided no explanation for why such document was not provided.

¶ 61 Given the foregoing, defendant's claim that her trial counsel's failure to more thoroughly investigate and question Jones and Frank is unsupported by documentary evidence, as required by section 122-2 of the Act, which would justify the dismissal of her postconviction petition. See *Dupree*, 2018 IL 122307, ¶ 40 (noting a claim of ineffective assistance of counsel in a postconviction petition may be dismissed at the second stage if the evidence presented in support of the claim fails to make a substantial showing that counsel was ineffective); *People v. Harris*, 2019 IL App (4th) 170261 ¶ 13 (stating the failure to attach the necessary supporting material to a postconviction petition or explain its absence is fatal and justifies the petition's dismissal). Accordingly, we agree with OSAD no reasonable argument can be advanced that trial counsel was ineffective in failing to present additional evidence from Jones and Frank. See *People v. Carter*, 2026 IL App (4th) 250723-U, ¶ 38 (concluding no nonfrivolous argument could be raised relating to trial counsel's failure to submit evidence at trial where no supporting documentation for such evidence was attached to the postconviction petition).

¶ 62 4. *Whether Trial Counsel Was Ineffective for Failing to Allow Defendant to Plead Guilty to Unlawful Sale of a Firearm*

¶ 63 OSAD next argues it considered asserting trial counsel was ineffective for failing to allow defendant to plead guilty to unlawful sale of a firearm. Defendant argued that had she pleaded guilty to that charge, she would have had the opportunity to present evidence of that plea at her murder trial, which in turn would have established she had a character for truthfulness before

the jury, resulting in a different outcome. However, OSAD argues there is no reasonable probability the result of the proceeding would have been different. We agree.

¶ 64 “Evidence of a defendant’s reputation for truth and veracity is admissible under two circumstances: When it relates to some issue involved in the crime charged [citation], or when the defendant’s reputation has first been attacked as being bad.” *People v. Colclasure*, 200 Ill. App. 3d 1038, 1044-45 (1990). Such evidence is “not admissible merely because [the] defendant chooses to testify at trial or his testimony is contradicted by others.” *Id.* at 1045; see Illinois Rule of Evidence 608 (eff. Jan. 6, 2015) (providing “evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise”); see also *People v. Falls*, 387 Ill. App. 3d 533, 539 (2008) (“This attack on the defendant’s truthfulness entitled her to present witnesses who would testify to her reputation in the community for truthfulness.”). The “proper procedure to introduce evidence of truthfulness is to ask the witness whether he knows the general reputation of the defendant’s truthfulness in the neighborhood in which the defendant lives or at his workplace.” *People v. Williams*, 139 Ill. 2d 1, 21 (1990). A person’s reputation for truthfulness, in turn, cannot be based upon the personal opinion of a character witness “or specific instances of the person’s alleged acts.” *People v. Fuller*, 117 Ill. App. 3d 1026, 1038 (1983).

¶ 65 Here, defendant would be unable to present evidence she pleaded guilty to unlawful sale of a firearm for the purpose of showing she had a reputation or character for truthfulness. Initially, we note defendant presented no argument establishing the State first attacked her truthfulness, which would permit her to present evidence of her reputation for being truthful. However, even assuming the State had done so, defendant’s act of pleading guilty to unlawful sale of a firearm would constitute a “specific instance” of her acts that would not be admissible to

establish she had a reputation for telling the truth. *Id.*

¶ 66 Beyond that, defendant's counsel explained her theory at trial was that defendant had sold the firearm used to kill Cotton to Scott long before the date of Cotton's killing, such that defendant could not have committed the murder. To that end, defendant testified she sold Scott the firearm in September 2006. Had defendant pleaded guilty to unlawful sale of a firearm, which charged her with selling the firearm to Scott after Cotton's murder, she would have been unable to claim she did not possess the gun at the time of the killing, thereby *depriving* her of her defense to murder.

¶ 67 Because evidence of defendant's guilty plea would have been inadmissible to establish she had a reputation for truthfulness, and because pleading guilty to unlawful sale of a firearm would have deprived her of her defense for murder, defendant would be unable to establish there is a reasonable likelihood the result of the proceedings would have been different. Defendant, therefore, cannot show that she suffered prejudice. Accordingly, we agree with OSAD no meritorious argument can be raised that her counsel provided ineffective assistance in failing to allow her to plead guilty to unlawful sale of a firearm.

¶ 68 B. The Trial Court's Failure to Appoint New Counsel to Litigate

Defendant's Motion to Reconsider Her Sentence

¶ 69 OSAD next states it considered claiming the trial court erred in permitting trial counsel to represent defendant on her motion to reconsider her sentence after defendant had alleged counsel provided ineffective assistance at trial. However, OSAD concluded no meritorious argument can be raised with respect to that claim, as it is barred by collateral estoppel. We agree.

¶ 70 "The doctrine of collateral estoppel bars a party from relitigating an issue decided in a prior proceeding." *People v. Pawlaczyk*, 189 Ill. 2d 177, 189 (2000).

“A party is collaterally estopped from litigating an issue when ‘(1) the issue decided in the prior litigation is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication.’ ” *Id.* (quoting *Talarico v. Dunlap*, 177 Ill. 2d 185, 191 (2000)).

¶ 71 Here, defendant argued in her *pro se* and amended petitions that because she raised claims of ineffective assistance against her trial counsel, she was entitled to the appointment of a different attorney for purposes of her motion to reconsider her sentence. However, this issue was raised in defendant’s direct appeal and rejected by the appellate court. *Hawkins*, No. 3-08-0008. Specifically, the Third District decided the issue of whether “the trial court erred in refusing to appoint [defendant] new counsel after she raised claims of ineffective assistance of trial counsel.” *Id.* The Third District determined the trial court properly denied appointing new counsel because the record established that after defendant alleged ineffective assistance, the court considered her claims, allowed trial counsel to respond to the allegations, and determined the claims were unfounded, such that new counsel was unnecessary. *Id.* The resolution of that issue collaterally estops defendant from raising it in her postconviction petition. See *People v. Wright*, 2013 IL App (4th) 110822, ¶ 31 (concluding the defendant was collaterally estopped from arguing in a postconviction petition prejudice from trial counsel’s failure to preserve an error for review where the appellate court considered the issue on direct appeal and found no error occurred).

¶ 72 Accordingly, we agree with OSAD no meritorious argument can be raised the trial court erred in failing to appoint defendant new counsel to litigate her motion to reconsider her sentence.

¶ 73 C. Whether Defendant’s Right to Due Process Was Violated Because

the Trial Court Abused Its Discretion When Sentencing Her for Murder

¶ 74 OSAD next claims it considered arguing the trial court violated defendant's right to due process by abusing its discretion in sentencing defendant to 65 years' imprisonment for murder. However, OSAD notes no meritorious argument can be raised with respect to this claim because defendant is prohibited from relitigating the issue of whether the court abused its discretion in considering the factors at sentencing, and defendant cannot otherwise show that her sentence was constitutionally infirm. We agree.

¶ 75 The doctrine of *res judicata* bars a party from relitigating issues that were raised and adjudicated in a prior proceeding. *People v. Poole*, 2022 IL App (4th) 210347, ¶ 81. Under *res judicata*, “ ‘[(1)] a final judgment on the merits rendered by a court of competent jurisdiction operates to bar a subsequent suit between [(2)] the same parties and involving [(3)] the same cause of action.’ ” *Id.* (quoting *People v. Klines*, 2015 IL App (2d) 140518, ¶ 21). The doctrine bars the litigation of both what was actually decided in the first action and whatever could have been decided at that time. *Id.*

¶ 76 On direct appeal, defendant argued, *inter alia*, the trial court abused its discretion in sentencing her for murder and unlawful sale of a firearm because it considered improper factors in aggravation. *Hawkins*, No. 3-08-0008. Specifically, she argued the court improperly considered as a factor in aggravation her posttrial claims of ineffective assistance of counsel, as evidenced by its comments that defendant was “selfish and blame[d] everybody else for her problems.” *Id.* The Third District rejected defendant's argument, concluding the court's comments were references to the evidence at trial, which was proper, and not indications it was punishing defendant for raising claims of ineffective assistance. *Id.* The Third District thus concluded the court committed no error when sentencing her for murder. *Id.*

¶ 77 Now, in these postconviction proceedings, defendant claims the trial court's improper weighing of the sentencing factors when deciding her sentence for murder—again evidenced by the court's comments at sentencing—amounted to an abuse of its discretion that violated her right to due process. However, the issue of whether the court abused its discretion in weighing sentencing factors was considered and rejected by the Third District. By concluding the court's comments about defendant's selfishness and blaming of others was a proper consideration of the evidence at trial, such that no error occurred, the Third District resolved the issue of whether the court abused its discretion. As a result, this issue is barred by *res judicata*. See *Poole*, 2022 IL App (4th) 210347, ¶¶ 89-91. Defendant, in turn, advanced no other basis to support her claim her sentence for murder violated her right to due process. Accordingly, absent any viable claim the court erred in sentencing her for murder, defendant's due process claim is meritless.

¶ 78 We further note, although defendant could have raised the issue of whether the trial court violated her right to due process in sentencing her for murder on direct appeal, she did not do so. Accordingly, this issue is defaulted in any event. See *People v. Tenner*, 206 Ill. 2d 381, 392 (2002) (“Any issues which were decided on direct appeal are barred by *res judicata*; any issues which could have been raised on direct appeal are defaulted.”).

¶ 79 Consequently, we agree with OSAD no meritorious argument can be raised the trial court violated defendant's right to due process when sentencing her for murder.

¶ 80 D. Whether Postconviction Counsel Complied with Rule 651(c)

¶ 81 OSAD contends it considered arguing defendant's postconviction counsel failed to comply with Rule 651(c) by merely orally informing the trial court in October 2024 he adopted the prior attorney's Rule 651(c) certificate but failed to file one himself. However, OSAD notes this argument would be meritless because counsel complied with Rule 651(c). We agree.

¶ 82 Rule 651(c) provides the record

“shall contain a showing, which may be made by the certificate of petitioner’s attorney, that the attorney has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner’s contentions.” Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 83 Here, the attorney who represented defendant at the time of the filing of her amended postconviction petition also filed a certificate pursuant to Rule 651(c) in February 2021. Therein, counsel stated she consulted with defendant by mail and phone to ascertain her contentions of the deprivation of her constitutional rights, examined the record, and made any necessary amendments to the *pro se* postconviction petition. The certificate, therefore, complied with the text of Rule 651(c).

¶ 84 Defendant was subsequently assigned new postconviction counsel, who adopted both the previously filed amended postconviction petition and Rule 651(c) certificate. Although counsel did not himself file a Rule 651(c) certificate, he was not required to do so. Our supreme court has clarified Rule 651(c) does not require “that every attorney who represents a postconviction petitioner at ‘the dispositive hearing’ must show compliance” with the Rule. *People v. Smith*, 2022 IL 126940, ¶ 19. Rather, only one attorney must certify compliance, and it need not be the attorney who represents the defendant at the motion-to-dismiss stage. *Id.* ¶ 32. Because a compliant Rule 651(c) certificate had been filed in February 2021, defendant cannot establish her subsequent postconviction counsel failed to comply with Rule 651(c).

¶ 85 Accordingly, we agree with OSAD no meritorious argument can be raised that defendant's postconviction counsel violated Rule 651(c) by adopting prior counsel's compliant certificate without filing his own.

¶ 86 E. Whether Postconviction Counsel Provided Unreasonable Assistance
by Abandoning Claims Defendant Raised in Her *Pro Se* Petition

¶ 87 Finally, OSAD states it considered claiming defendant's postconviction counsel failed to provide reasonable assistance of counsel because he failed to include several claims from the *pro se* petition in the amended petition. However, it concluded no meritorious argument could be raised on this basis because none of the claims omitted from the amended petition had merit. We agree.

¶ 88 In postconviction proceedings, there is no constitutional right to the assistance of counsel. *People v. Frey*, 2024 IL 128644, ¶ 23. Instead, a postconviction petitioner is entitled only to the level of assistance granted by the Act, which is a reasonable level of assistance. *Id.* Reasonable assistance is less than that afforded by the federal and state constitutions. *Id.*

¶ 89 To ensure postconviction petitioners receive a reasonable assistance of counsel, Rule 651(c), as we previously explained, requires counsel to file a certificate showing the attorney consulted with the petitioner to ascertain his or her contentions of deprivation of constitutional rights, examined the record of proceedings at trial, and made any amendments necessary for an adequate presentation of the petitioner's contentions. *Id.* ¶ 24; Ill S. Ct. R. 651(c) (eff. July 1, 2017). "If counsel files a certificate pursuant to Rule 651(c), a rebuttable presumption arises that the petitioner received the reasonable assistance of counsel." *Frey*, 2024 IL 128644, ¶ 24. Fulfillment of Rule 651(c) "does not require postconviction counsel to advance frivolous or spurious claims on [the] defendant's behalf." *People v. Greer*, 212 Ill. 2d 192, 205 (2004). This is

because amendments to a *pro se* postconviction petition that advance nonmeritorious claims are not necessary within the meaning of the rule. *Id.*

¶ 90 Here, although postconviction counsel failed to include in the amended petition several claims defendant had raised in her *pro se* petition, counsel did not provide unreasonable assistance because, as we explain below, none of the abandoned claims had merit.

¶ 91 Defendant's *pro se* petition claimed trial counsel was ineffective for failing to file a motion to suppress a videorecorded statement she made to police. This argument fails for two reasons. First, to the extent defendant's claim solely relates to counsel's failure to prevent the introduction of the video containing her statement, that claim is meritless because the video was not entered into evidence or presented to the jury in any event. Accordingly, defendant cannot show she suffered prejudice on that basis to establish ineffective assistance of counsel. Second, to the extent defendant complains more broadly about counsel's failure to suppress her statement itself, that argument also fails because counsel's failure to do so was based on sound trial strategy. Specifically, defendant contested her statement to police that Cotton and Leggins had "beat me out of my money" because she was given "three small crumbs of crack for [\$15]." During trial, counsel informed the trial court that if the video of defendant's police interview containing defendant's statement were introduced, she had "questions with respect to where that should start" because there were "some things" that should not be played for the jury. Counsel explained, however, she "never filed a Motion to Suppress" because defendant's statement was made after she was informed of her rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and there was nothing indicating defendant's statement was anything other than "a free statement, you know, freely given or so forth." See *People v. Loewenstein*, 378 Ill. App. 3d 984, 993 (2008) (noting *Miranda* does not require suppression of a defendant's statement where it is voluntarily given after being

informed of his or her rights). We see nothing in the record indicating counsel's assessment of the viability of a motion to suppress defendant's statement was anything but reasonable trial strategy. Consequently, defendant would be unable to establish counsel's performance fell below an objective standard of reasonableness to support a finding of ineffective assistance. See *People v. Rowell*, 2021 IL App (4th) 180819, ¶ 21 (stating a court will not conclude a defendant's counsel was ineffective for failing to file a meritless motion to suppress).

¶ 92 Defendant's *pro se* petition also alleged her trial counsel was ineffective for failing to file a motion to suppress evidence obtained from Frank and defendant's home on the basis Frank did not sign a consent-to-search form. Notably, defendant did not allege Frank did not consent to the search; she argued only that because Frank did not sign a consent form, her right to be free from illegal searches and seizures was violated. However, law enforcement officers may conduct a warrantless search when they obtain consent to the search from either the person whose property is being searched or from a third party who possesses common authority over the premises. *People v. Ivanchuk*, 2025 IL App (4th) 241230, ¶ 59. The voluntariness of consent is viewed in light of all the circumstances under which the consent was given, and therefore, consent can be given orally or even "by nonverbal conduct." *Id.* ¶ 60 (concluding the third party with common authority over the truck with the defendant voluntarily consented to the search where the third party nodded their head and responded " 'yeah' " after the officer asked if he could search the truck). Because defendant does not contest that Frank consented to the search of the home, a motion to suppress evidence obtained therefrom would have been meritless. Defendant, therefore, would be unable to establish counsel was ineffective for failing to file such a motion. *Rowell*, 2021 IL App (4th) 180819, ¶ 21.

¶ 93 Defendant's petition further contended her counsel was ineffective for failing to

contest in a motion for a new trial testimony from Williams that defendant and Cotton got into an argument in the summer of 2006. However, the record establishes counsel did raise that issue in the motion for a new trial, and thus, defendant would fail to show her counsel's performance was deficient. Beyond that, defendant's *pro se* petition presented no argument explaining how the introduction of Williams's testimony prejudiced her. In turn, we discern no reasonable probability that the outcome of defendant's trial or direct appeal would have been different had the testimony been challenged, considering the record revealed no more than a tenuous potential connection between any argument defendant and Cotton might have had in the summer of 2006 and Cotton's killing later in the year. This is especially so in light of the significant evidence connecting defendant to the scene of the crime and the weapon used to kill Cotton.

¶ 94 Further, defendant would be unable to succeed on her claim the trial court erred in permitting McCall to testify he heard gunshots despite being unable to identify the person who fired them. A trial court's evidentiary ruling is reviewed for an abuse of discretion, which occurs only where the trial court's decision is so arbitrary, fanciful, or unreasonable that no reasonable person would agree with it. *People v. Martin*, 2017 IL App (4th) 150021, ¶ 14. Evidence is relevant if it has any tendency to make the existence of a fact consequential to the determination of the action more or less probable than without the evidence, and relevant evidence is generally admissible. *Id.* ¶ 19. Here, although McCall could not explicitly identify defendant as the shooter after hearing gunshots, he testified he observed a woman near the scene of the shooting in clothing that was similar to what other witnesses had described defendant wearing around the time of the shooting. McCall's testimony, therefore, was relevant in that it tended to show defendant was present at the scene of the shooting and the perpetrator of Cotton's murder. See *id.* ¶ 20 (concluding testimony about the trooper's belief about who was driving vehicle was relevant to assist the jury

in determining whether the defendant was driving). Accordingly, this claim would also be meritless, as defendant would be unable to establish the court's admission of McCall's testimony was so arbitrary, fanciful, or unreasonable as to constitute an abuse of discretion.

¶ 95 Moreover, defendant would be warranted no relief in arguing the State failed to prove her guilty beyond a reasonable doubt because that claim was raised and rejected on direct appeal, and therefore, barred by *res judicata*. See *People v. Blair*, 215 Ill. 2d 427, 452-53 (2005); *Hawkins*, No. 3-08-0008.

¶ 96 Finally, defendant's claim she did not receive a fair trial because the public defender who defended her at trial stated she would represent her only if she paid counsel \$10,000 is baseless. The record shows defendant's trial attorney was a private attorney defendant had retained, such that the record refutes her claim. See *People v. Jefferson*, 345 Ill. App. 3d 60, 76 (2003) ("If the claims made in a petition are positively rebutted by the record, they should not be taken as true.").

¶ 97 Because each of the foregoing claims are without merit, postconviction counsel was not obligated to raise them in defendant's amended postconviction petition. *Greer*, 212 Ill. 2d at 205. Accordingly, we agree with OSAD no meritorious argument can be made counsel provided unreasonable assistance in failing to include those claims in the amended petition.

¶ 98 III. CONCLUSION

¶ 99 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 100 Affirmed.