

FIRST DIVISION
September 21, 2026

No. 1-25-0355

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 14145 02
	)	
ERIK ANDERSON,	)	Honorable
	)	James Bryan Novy,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's summary dismissal of the petitioner's *pro se* postconviction petition is affirmed where the petitioner failed to make an arguable claim of ineffective assistance of counsel.

¶ 2 Following a bench trial in the circuit court of Cook County, the petitioner, Erik Anderson, was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2016)) and mob action (720 ILCS 5/25-1(a)(1) (West 2016)) and sentenced to concurrent terms of 29- and 3-years

imprisonment. The petitioner now appeals from the summary dismissal of his *pro se* postconviction petition filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)). On appeal, the petitioner solely asserts that the circuit court erred in dismissing his petition, where he made an arguable claim that his trial counsel was ineffective for failing to subpoena two forensic scientists whose testing he alleges produced favorable results to his defense. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 In September 2016, the petitioner was charged together with codefendant, Eddie Howlett, with three counts of first degree murder and one count of mob action, for his involvement in the April 12, 2016, beating death of the victim, Kimberly Shnackenberg. The petitioner and Howlett were tried in simultaneous but separate bench trials. Because the evidence adduced therein is already set forth in detail in our decision affirming the petitioner's conviction on direct appeal (See *People v. Anderson*, 2022 IL App (1st) 181963-U), we only summarize those facts relevant to the resolution of the issues raised herein.

¶ 5 The State's evidence established that on April 22, 2016, the victim's badly beaten body was found in a pool of blood in an alley behind the coach house located at 2039 West 51st Street, in which she had resided. Prior to her death, for four years, the victim, who had worked as a prostitute, was a confidential informant for the police. An autopsy revealed that the victim was bludgeoned to death, and photographs of the crime scene revealed blood spatter several feet up the exterior wall of her residence and on the ground where she was found. The assault itself was captured on video surveillance footage of the alley taken from a camera mounted on a nearby building.

¶ 6 That video showed five men entering and exiting the frame at about 8:02 p.m. Three of the

five men, including one wearing a distinctive letterman jacket and light boots positioned themselves behind a building closest to the camera, with one leaning in to look into the alley. At about 8:05 p.m., codefendant Howlett¹ emerged from the coach house with the victim and the two walked towards the three hidden men. Once they were close to the corner, Howlett turned around and punched the victim in the face. As she fell to the ground, the three men emerged from behind the building, and the man in the letterman jacket struck the victim multiple times with a club, while another one kicked her. After the assault, the group fled together down the alley.

¶ 7 Chicago Police Detective Andrew Burns Jr. identified the petitioner as the attacker with the distinctive letterman jacket by analyzing a chronological compilation of surveillance footage from the alley and the nearby area on the night of the murder. He testified that less than half an hour prior to the assault, at 7:33 p.m. video footage of the alley captured two vehicles, including a dark SUV registered to the petitioner, pull up and stop in front of the victim's residence. Five men, including codefendant Howlett and the petitioner, who subsequently identified himself to police from a still-frame photo of this footage, exited the vehicles. The petitioner wore a two-toned top (with dark shoulders and elbow patches) and light boots. After the five men exited the vehicles, the petitioner entered a gate, reemerged, and walked toward the building closest to the camera, where the three men who subsequently attacked the victim would hide. The petitioner stood behind the building, looked around, urinated and pointed to the left. The four other men looked, and then everyone drove away. Additional surveillance footage from the area, immediately prior to the assault, showed four men walking out of an alley followed by a fifth man, wearing a letterman jacket and light boots and carrying a baseball bat, the top of which was visible behind his shoulder.

¹At trial, Howlett was identified by two witnesses: (1) Daniel Gonzalez, who had purchased narcotics from him on an "almost daily" basis; and (2) Chicago Police Officer Kevin Killen, for whom the victim had acted as a confidential informant, and who was familiar with Howlett from some 30 to 40 prior narcotics investigations.

According to Detective Burns, in surveillance footage of the area taken after the assault, at around 8:32 p.m., an individual in the same letterman jacket was captured walking down the street, with the jacket unzipped and open in the front, displaying a two-toned shirt matching the one worn by the petitioner in the alley prior to the murder, and a chain around his neck. Subsequently, at 8:51 p.m., surveillance footage captured the petitioner inside a liquor store with codefendant Howlett, wearing a gold chain and the same two-toned shirt, but not the letterman jacket. The petitioner identified himself to police from a still-frame photo of that liquor store footage. Based on the above, Detective Burns concluded that the petitioner's distinctive clothing, facial features and gait inside the liquor store and in the alley prior to the murder matched those of the attacker in the letterman jacket, who had bludgeoned the victim to death.

¶ 8 Additional evidence at trial established that when the petitioner was first questioned by the police about a month after the murder on May 21, 2016, he wore a chain and light-colored boots, photographs of which were admitted at trial.² In addition, while the petitioner never incriminated himself to police and maintained that he was in the alley prior to the murder because he was “nosy” about an unrelated shooting that had taken place there earlier, his statements regarding his relationship with codefendant Howlett continued to change over the course of the investigation. In May 2026, the petitioner first denied knowing Howlett, but after being confronted with photographs of the two of them in the alley prior to the murder, he stated that he met Howlett on the day of the offense. In August 2016, however, the petitioner declared that he did not know Howlett at all and claimed that his presence inside the liquor store with Howlett was accidental and that he was there with someone else.

¶ 9 After the State rested, the petitioner presented no evidence on his own behalf.

² No evidence whatsoever was presented regarding any blood testing or forensic analysis of these boots.

¶ 10 In closing, the State argued that the petitioner was the attacker in the letterman jacket and that he had planned the assault together with codefendant Howlett. The State pointed out that the petitioner had admitted to being in the alley prior to the murder, and that surveillance footage showed him in the alley about 15 minutes prior to the murder pointing to a building where the attackers would subsequently hide. In addition, the State argued that the petitioner's clothing was distinctive and made him identifiable on the video of the assault, particularly when considered in the context of his association with the remaining individuals, including codefendant Howlett, seen on surveillance footage immediately prior to and after the attack.

¶ 11 In response, defense counsel argued, *inter alia*, that the State failed to prove beyond a reasonable doubt that the petitioner was the attacker in the letterman jacket because the video of the attack was too grainy to identify any of the perpetrators, including the petitioner. Defense counsel further pointed out that from that grainy footage it was impossible to tell that the perpetrator in the letterman jacket was wearing the two-toned top seen on the petitioner prior to and after the murder. With respect to the petitioner's light-colored boots, counsel argued that "they [are] a common article of choice" for young men, and that the petitioner's specific boots had been "taken [by the police] and submitted for DNA testing" but revealed "no victim's DNA despite the fact that this man in [light-colored] boots, maybe the same ones, was beating some woman and he doesn't get a drop of anything on his boot."

¶ 12 The circuit court found the petitioner guilty of all charges and sentenced him to concurrent terms of 29-years imprisonment for murder and 3-years imprisonment for mob action.

¶ 13 On direct appeal, the petitioner argued that: (1) the video identification evidence was insufficient to prove his guilt; (2) his mob action conviction violated the one-act, one-crime rule; and (3) his sentence was excessive. This court affirmed the petitioner's conviction and sentence.

See *People v. Anderson*, 2022 IL App (1st) 181963-U.

¶ 14 On December 5, 2024, the petitioner filed a *pro se* postconviction petition alleging ineffective assistance of both trial and appellate counsels. Specifically, the petitioner asserted that trial counsel was ineffective for failing: (1) to request a severance from codefendant Howlett’s bench trial; (2) to object to certain alleged misstatements made by the trial court during sentencing; and (3) to subpoena the following individuals and evidence: forensic scientist Veronica Jackson and Cindy C. Lee to testify about the lack of blood evidence on his clothing, boots and jewelry; “various alibi witnesses”; the four individuals he alleged were in the alley with him prior to the attack (Terrel Jones, Elze Williams, Demetrius Jones, and D’Nell Coleman); and video footage from various locations around the crime scene. The petitioner also alleged that appellate counsel was ineffective for not raising any of these claims on direct appeal.

¶ 15 In support, the petitioner attached: (1) two Illinois State Police crime laboratory reports (prepared on June 15, 2016, by forensic scientist Vernoica Jackson, and on August 2, 2016, by forensic scientist Cindy C. Lee); and (2) two Chicago Police Department evidence submission forms. Together these documents show that on May 10, 2016, the Illinois State Police crime lab received a blood sample from the victim and tested it to create her DNA profile. Thereafter, on May 21, 2016, the police recovered the petitioner’s boots and requested that they be tested for blood. The evidence submission form for these boots, which was sent to the crime lab by Detective Burns states in relevant part:

“The offender while wearing his tan boots beat the victim, with a baseball bat splattering blood on his boots. The offender attempted to wipe off the boots but R/d observed what looked like blood stains on the top of the boots. R/d would like the victim’s blood card under inventory # 13672192 which is currently at ISP compared with blood stains from the

offender boots for direct comparison.”

The crime lab received the boots on May 31, 2016, and tested them. The results showed “no blood indicated.”

¶ 16 On January 21, 2025, the circuit court summarily dismissed the petitioner’s *pro se* petition finding that all his claims were patently without merit. The petitioner now appeals from that dismissal.

¶ 17 II. ANALYSIS

¶ 18 The Act provides a three-stage process by which criminal defendants may challenge their convictions based on a substantial denial of federal or state constitutional rights. See 725 ILCS 5/122-1 *et seq.* (West 2020); *People v. Johnson*, 2017 IL 120310, ¶ 14; *People v. Cotto*, 2016 IL 119006, ¶ 26; *People v. Tate*, 2012 IL 112214, ¶ 8; *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); *People v. Peeples*, 205 Ill. 2d 480, 509 (2002). At the first stage of the proceedings, such as here, the circuit court must independently review the petition and determine whether the allegations demonstrate a constitutional violation or whether they are frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2020); *Cotto*, 2016 IL 119006, ¶ 26; *Tate*, 2012 IL 112214, ¶ 9. The first stage of postconviction proceedings presents a “low threshold,” and the petitioner is only required to plead sufficient facts to assert an arguably constitutional claim. *People v. Johnson*, 2021 IL 125738, ¶ 25. At this stage, the court must accept as true and liberally construe all the allegations in the petition unless contradicted by the record. *Id.* A petition may be dismissed as frivolous or patently without merit only if it has no arguable basis in either law or fact, *i.e.*, it “is based on an indisputably meritless legal theory or a fanciful factual allegation.” *Hodges*, 234 Ill. 2d at 13, 16; see also *Tate*, 2012 IL 112214, ¶ 9; See *People v. Ross*, 2015 IL App (1st) 120089, ¶ 30. We review the summary dismissal of a petition *de novo*. *Tate*, 2012 IL 112214, ¶ 10.

¶ 19 In the present case, on appeal, the petitioner abandons the majority of his claims and solely argues that he should have been permitted to proceed to the second stage of postconviction proceedings where his petition made an arguable claim that his trial counsel was ineffective for failing to introduce exculpatory forensic evidence at his trial. Specifically, the petitioner argues that because the State's evidence identifying him as the perpetrator in the letterman jacket rested largely on the perpetrator's distinctive clothing, including light-colored boots, counsel acted unreasonably when he failed to present testimony from the forensic scientists, whose lab reports are attached to his petition, establishing that the petitioner's boots had no blood on them. For the following reasons, we disagree.

¶ 20 It is axiomatic that claims of ineffective assistance of counsel are resolved under the two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lacy*, 407 Ill. App. 3d 442, 456 (2011); see also *People v. Colon*, 225 Ill. 2d 125, 135 (2007) (citing *People v. Albanese*, 104 Ill. 2d 504 (1984) (adopting *Strickland*)). Under *Strickland*, to succeed on a claim of ineffective assistance of counsel, a petitioner must establish both: (1) that counsel's performance was deficient; and (2) that counsel's conduct resulted in prejudice to the petitioner. See *Lacy*, 407 Ill. App. 3d at 456; see also *People v. Ward*, 371 Ill. App. 3d 382, 434 (2007) (citing *Strickland*, 466 U.S. at 687-94)).

¶ 21 Under the first *Strickland* prong, the petitioner must demonstrate that his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 220 (2024). In doing so, the petitioner must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 327 (2011). Matters of trial strategy are generally immune from claims of ineffective assistance of counsel. *Id.* Under the second prong of *Strickland*, prejudice is shown where there is

a reasonable probability that the result of the petitioner's trial would have been different but for counsel's alleged deficiency. *Id.* Failure to satisfy either prong of *Strickland* precludes a finding of ineffective assistance of counsel. *Strickland*, 466 U.S. at 697.

¶ 22 In the context of a first stage postconviction proceeding, such as here, a petitioner need only show that he can arguably meet both *Strickland* prongs, *i.e.*, he must show that it is *arguable*: (1) that counsel's performance was deficient; and (2) that he suffered prejudice as a result of it. See *Tate*, 2012 IL 112214, ¶ 19; *People v. Wilson*, 2013 IL (1st) 112303, ¶ 20; see also *Hodges*, 234 Ill. 2d at 17.

¶ 23 In the present case, the petitioner first contends that it is arguable that counsel acted unreasonably by failing to present forensic evidence showing that his boots had no blood on them. The petitioner asserts that such evidence would have helped discredit the State's identification of him as the assailant who bludgeoned the victim to death and that no trial strategy could excuse counsel's failure to introduce it at trial.

¶ 24 The State, on the other hand, argues that the record affirmatively shows that counsel knew of the forensic evidence but that, for strategic reasons, he chose not to present it. The State speculates that counsel likely chose not to present this evidence because the police did not recover the petitioner's boots until 30 days after the murder. As such, the State asserts, the introduction of the forensic evidence would not have strengthened the petitioner's case, and counsel reasonably chose not to highlight it but instead focused on discrediting the State's video evidence. On this point, we disagree with the State.

¶ 25 We have repeatedly held that arguments regarding trial strategy, such as the one raised here by the State, are "inappropriate" for the first stage of postconviction proceedings where the petitioner must only show that counsel's decision was not *arguably* strategic. *Tate*, 2012 IL

112214, ¶ 22. This is so because questions involving whether an attorney’s action was a matter of trial strategy require looking into matters outside the record or evaluating professional judgment, which is impermissible at the first stage where the court is confined to the pleadings and the trial record. *Id.*; *People v. Burns*, 2015 IL App (1st) 121928, ¶¶ 31-32.

¶ 26 In the present case, the record affirmatively establishes only that counsel knew of the forensic evidence. The crime lab report showing no blood on the petitioner’s boots was completed on June 15, 2016, nearly two years prior to the petitioner’s trial. Moreover, trial counsel commented on this evidence in closing argument, explicitly telling the court that after the police obtained the petitioner’s boots, they tested them for DNA but found “nothing.” Contrary to the State’s contention, however, this does not mean that counsel intended to forgo presenting this evidence at trial, let alone that his decision was strategic. If anything, it further supports the petitioner’s position that counsel’s conduct was arguably unreasonable. Closing arguments are not evidence and the trial court may not rely on comments made in closing that are not based on evidence presented at trial. See *People v. Crawford*, 343 Ill. App. 3d 1050, 1058 (2003) (Only “[a]rguments and statements that are based upon the facts in evidence, or upon reasonable inferences drawn therefrom, are within the scope of proper closing argument.”) When counsel here noted that the petitioner’s boots had no DNA on them, without first calling the forensic scientists to testify about their findings, he left the trial court without an evidentiary basis upon which to consider his remarks. Because the trial judge, who is presumed to know the law, therefore would not have considered these remarks, there would have been no strategic reason for counsel to forgo presenting the forensic evidence in the first place. *People v. Taylor*, 334 Ill. App. 3d 929, 937 (2003) (“In a bench trial, the trial judge is presumed to know the law[.]”)

¶ 27 Ultimately, however, because the record before us is silent as to why counsel chose not to

present any testimony from the forensic scientists, and we are not permitted to delve into trial strategy at this stage of postconviction proceedings, taking the allegations in the petition as true, we conclude that counsel was at least arguably constitutionally deficient. See *Tate*, 2012 IL 112214, ¶ 22.

¶ 28 Nonetheless, for the following reasons, we find that the petitioner has failed to make an arguable claim that counsel's failure to call the forensic scientists as witnesses prejudiced the outcome of his trial.

¶ 29 As previously noted, to show prejudice under *Strickland*, the petitioner was required to show that it was arguable that "but for" counsel's conduct, there was a reasonable probability that the result of his proceeding would have been different. *Lacy*, 407 Ill. App. 3d at 457; see also *Colon*, 225 Ill. 2d at 135. "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome—or put another way, that counsel's deficient performance rendered the result of [the proceedings] unreliable or fundamentally unfair." *Evans*, 209 Ill. 2d at 220.

¶ 30 In the present case, the petitioner argues that because the State presented photographs of the petitioner's boots at trial in order to link him to the perpetrator in the letterman jacket, as well as photographs of the crime scene, which showed a pool of blood on the ground and blood spatter on the wall of the building next to where the victim was found, it is arguable that but for counsel's failure to present forensic evidence of no blood on his boots there is a reasonable probability that he would have been acquitted. We disagree.

¶ 31 Contrary to the petitioner's contention, the evidence at trial, while entirely circumstantial, was not closely balanced. See *e.g.*, *People v. Ehlert*, 211 Ill. 2d 192, 231 (2004) (Even purely circumstantial evidence can be overwhelming). By his own admission the petitioner was present

at the crime scene 15 minutes prior to the attack with several individuals, including codefendant Howlett. It is undisputed that, at that time, the petitioner, wearing a distinctive two-toned top and light-colored boots, was videotaped standing next to and pointing at the building where the four assailants would subsequently lie in wait for codefendant Howlett to lure the victim outside before the perpetrator in the letterman jacket bludgeoned her to death. The perpetrator in the letterman jacket was also captured on video footage minutes before the murder walking down an alley with a baseball bat behind his back. By his own admission, about half an hour after the murder, the petitioner was also videotaped in a nearby liquor store with codefendant Howlett wearing the same two-toned top and light-colored boots he wore in the alley prior to the murder. At trial, Detective Burns testified that from a chronological compilation of video footage of the area near the crime scene, he identified the petitioner as the perpetrator in the letterman jacket based on his gait, facial features and distinctive clothing. In particular, the detective noted that video footage from after the murder captured the perpetrator in the letterman jacket walking down the street with that jacket unzipped revealing the same distinct two-toned top that the petitioner admitted he was wearing immediately prior to and after the murder. In contrast to this evidence, neither the petitioner nor codefendant Howlett testified at trial nor provided any testimony in their own defense.

¶ 32 Under this record, we do not believe that the introduction of forensic evidence about the lack of blood on the petitioner's boots, which were obtained 30 days after the murder, during which, the petitioner had more than ample time to clean or dispose of them entirely, even arguably could have changed the outcome of the petitioner's trial. As such, we find that the petitioner has failed to establish the requisite prejudice prong of *Strickland*.

¶ 33 III. CONCLUSION

¶ 34 For these reasons, we affirm the judgment of the circuit court.

No. 1-25-0355

¶ 35 Affirmed.