No. 131360

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. ROGER CARROLL, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, Fourth District, No. 4-23-1207 There on Appeal from the Circuit Court for the Seventh Judicial Circuit, Jersey County, Illinois, No. 2018 CF 68 The Honorable Allison S. Lorton, Judge Presiding.

BRIEF AND SUPPLEMENTAL APPENDIX OF RESPONDENT-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE ACTION

After the appellate court affirmed petitioner's conviction for first degree murder on direct appeal, *see* A004-17,[1] petitioner filed a postconviction petition alleging ineffective assistance of trial counsel, C887-1094.[2] The circuit court dismissed the petition at the second stage, A020-22, and the appellate court both affirmed the petition's dismissal and rejected claims that postconviction counsel provided unreasonable assistance, SA2 ¶ 2. This appeal raises a claim concerning the sufficiency of the postconviction petition.

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit and appellate courts correctly held that petitioner's postconviction petition failed to make a substantial showing that his trial counsel provided ineffective assistance for declining to file a motion to suppress and to pursue radiocarbon dating of recovered bone fragments.

2. Whether the appellate court correctly held that retained postconviction counsel provided reasonable assistance in presenting petitioner's ineffective-assistance claims.

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[1] Because petitioner omitted the decision under review from his appendix, respondent includes that decision in a supplemental appendix to this brief, denoted as "SA."

[2] "C" denotes the common law record; "R" the report of proceedings; "Pet'r Br." petitioner's opening brief; and "A" petitioner's appendix. Petitioner's opening and reply briefs in the appellate court below, which were filed in this Court pursuant to Rule 318(c), are cited as "App. Br." and "Reply Br.," respectively.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a) and 604(a). This Court allowed petitioner's petition for leave to appeal on May 28, 2025.

BACKGROUND

I. Investigation, Trial, and Direct Appeal

A. Petitioner was investigated as a suspect in Bonnie Woodward's disappearance and charged eight years later.

Bonnie Woodward was last seen alive at about 3:00 P.M. on June 25, 2010, in the parking lot of the nursing home where she worked in Alton, Illinois. R329-30. Several coworkers saw her after work in the nursing home's parking lot speaking with a white male in his 40s; they also saw an unfamiliar silver or grey Chevrolet Malibu in the lot. R336, 468-69, 490. Bonnie's truck was abandoned in the parking lot. R330-31.

When Bonnie disappeared on June 25, her teenaged stepdaughter, Heather Woodward, had already been missing for a week. R646. On July 3, Heather showed up alone at the East Alton library and told police that she had been staying with petitioner and his wife, Monica Carroll, and their 16-year-old son, Nathan Carroll. R648. When police interviewed petitioner two days later, he admitted that Heather had stayed with them during this period but denied ever having contact with Bonnie. R337-39. Petitioner allowed police to search his car — a grey Chevrolet Malibu — and his property. *Id.*; R345.

Analysts matched a fingerprint and palm print collected from the exterior driver's door of Bonnie's truck to petitioner. R563-68, 603. Police then conducted an extensive search of petitioner's home and 60-acre property on September 29, 2010. R337, 341. They seized ammunition and 28 guns, including a Stoeger handgun, but found no evidence on the property that linked petitioner to Bonnie's disappearance. R341-42, 585-86. Police provided *Miranda* warnings and took petitioner to the station. R668-70. In the subsequent video-recorded interview, petitioner described his actions on the day that Bonnie disappeared. R670. Petitioner stated that he, his family, and Heather had been at Monica's parents' home three hours away in Goreville, Illinois, but he and Nathan drove home early that morning. R670, 681-82. Petitioner did yardwork before going out to dinner with Nathan. R682-83, 686.

Petitioner explained that his family knew Heather through church, and they had taken her in after she left Bonnie's house and needed a place to stay for a couple of weeks until she turned 18. R674-82. On Heather's 18th birthday, petitioner and Nathan told her about Bonnie's disappearance, then dropped Heather off at the library. R690. Petitioner denied ever speaking with or confronting Bonnie at any time before Bonnie disappeared. R671-72, 674, 694, 698-99. He also denied touching her truck, R672, and said there was "no way" his fingerprints were on the door of Bonnie's truck, R705.

Police showed a photo array of six white men in their 40s — including petitioner — to four witnesses who saw Bonnie speaking with the man in the parking lot, but none identified the man they had seen that day. R852-54. The witnesses were also shown a photograph of petitioner's car, but none identified it as the car they saw in the parking lot. R854.

The case went cold for nearly eight years. R342. Then, in January 2018, Monica filed for divorce from petitioner. R531-32. Two months later, petitioner attacked her with a Taser. R520-23. Monica reported the attack, R524, and police later found petitioner in the woods where he had attempted to commit suicide by overdosing on insulin, R359-63. Monica also discussed Bonnie's 2010 disappearance and revealed that during his 2018 attack on her, petitioner told her, "I have killed for you," and "I'm a monster." R539.

Soon after, Nathan was subpoenaed to testify before a grand jury and granted immunity from prosecution if he testified truthfully. R402, 410. Based on Nathan's testimony, petitioner was indicted for Bonnie's murder.

B. A jury hears Nathan Carroll's testimony that petitioner murdered Bonnie and burned her body and the People's corroborating evidence.

At petitioner's 2020 jury trial, Nathan testified — in exchange for immunity — about what happened to Bonnie. R410. Nathan explained that when Heather ran away from home in June 2010, it was petitioner's idea to take her in. R377. Petitioner told him that Bonnie was "a bad person," and she was "mean and aggressive and abusive" to Heather. R378-79. Petitioner also said Bonnie "needed to go away and never come back." R379. While in

Goreville, petitioner told Nathan that Bonnie "needed to die," and the night before petitioner and Nathan left Goreville, petitioner said they were leaving earlier than planned because Bonnie's death "still needed to happen." R381.

Petitioner and Nathan left Goreville in the early morning of June 25, 2010; when they reached Alton, petitioner drove by the nursing home, pointed out Bonnie's truck, and noted that she was working that day. R382-83. They then drove home, where petitioner showered, shaved, loaded a gun, and picked out clothes before telling Nathan, "This has gotta happen whether you like it or not," and leaving in petitioner's grey Malibu around 1:30 or 2:00 P.M. R383-84. Petitioner took his Stoeger handgun and planned to lure Bonnie to come with him by telling her Heather was staying at their home. R395. Nathan set up a tent on the property so petitioner could tell Bonnie that Heather was staying in the tent, and petitioner could kill Bonnie away from the house. *Id.*

Nathan was in the kitchen eating a sandwich when he heard eight or nine gunshots. R386. He went outside, and as he rounded the corner of the garage, he saw feet clad in white sneakers and lower legs in tan scrub pants. R386-76. But he saw no more of the body because petitioner told him "not to go back there because it's ugly." R387. Petitioner told Nathan to light a fire in the pit where they burned brush, then petitioner picked up Bonnie's body in his front-loader tractor and put her body on the fire. R388-90. Nathan smashed Bonnie's phone with a hammer, and petitioner threw the pieces in

the fire along with Bonnie's wallet. R390-91. Petitioner mowed the grass where Bonnie's body had laid, Nathan mowed the path the tractor had taken to the burn pit, and they both burned their clothes. R392-93. Petitioner and Nathan kept the large fire burning for several days. *Id.* After it burned out, petitioner scooped up the ashes with the tractor and dumped them in the creek on the property. R396. Petitioner talked with Nathan about what had happened almost every night for a couple of years and told Nathan what to say when questioned by police. R399. Nathan kept the truth a secret for nearly eight years because he did not want his father to go to prison. R410.

Additional evidence introduced at trial corroborated Nathan's account. First, the People's fingerprint expert matched eight prints collected from the driver's side door of Bonnie's truck with petitioner's fingerprints. R604. In addition, two of Bonnie's coworkers described the man they saw in the parking lot the day she disappeared. April Cathers had seen Bonnie that afternoon sitting in her truck and talking to an unknown man who stood close to the driver's side with his hands on the door. R464-66, 469. He was in his 40s with sandy brown hair and stood around 5 foot 6 or 7 inches tall. R467. Cathers also saw a silver Malibu in the parking lot. R469. Wanda Bausily saw Bonnie standing outside her truck with an unknown man, then saw them walk toward a silver four-door car that Bausily assumed belonged to the man. R489-90. Bausily identified petitioner in the courtroom as the man she saw with Bonnie that day. R490-91. Bausily acknowledged that she

had viewed a photo array (which included petitioner's picture) soon after Bonnie disappeared and had failed to identify anyone; she explained that she thought the men in the photos had too much facial hair, and the man she saw in the parking lot was clean shaven. R491. Bausily also acknowledged that prosecutors had shown her petitioner's photo a month earlier in preparation for trial, R499, and she testified that this photo of petitioner "was definitely the man" in the parking lot because she "would never forget his face," R500. Further, she "kn[e]w for a fact" that the man sitting at the defense table — petitioner — was the man she saw in the parking lot. *Id.*

Police returned to petitioner's property in 2018 to excavate the sites where Nathan said petitioner shot Bonnie, burned her body, and dumped the remains. R719-20. They recovered several discharged shell casings from the area where Nathan said Bonnie was shot, R727-28, which matched spent cartridges fired from petitioner's Stoeger handgun, R761. Investigators divided the burn site into quadrants, R733, and found 10 bone fragments in quadrant one, 15 bone fragments in quadrant two, one bone fragment and a bullet fired from the Stoeger pistol in quadrant three, R759-61, and one bone fragment in quadrant four, R733-34, 765. The bones had been exposed to a fire of "significant heat and duration." R781-82. The parties then stipulated that all 27 recovered fragments were sent to the FBI for analysis and determined to be "thermally altered bone fragments." R765. Analysts could not exclude the 10 bone fragments from quadrant one as having human

origin, and anthropological testing was not performed on the remaining fragments. R766. All but two bone fragments were either too small or too burnt to be DNA tested, and Bonnie was excluded as a contributor to those two DNA-tested fragments. *Id.*

Additionally, an expert testified that a tree next to the burn pit showed evidence of damage consistent with a significant fire during its growth cycle in summer 2010. R796-800, 806, 809-10. Monica also remembered that the day she returned from Goreville, there was a larger-than-normal brush fire on the property that petitioner and Nathan kept burning for six or seven days. R517. After the fire burned out, she saw them use the tractor to take the ashes to the creek. R518. Finally, police seized petitioner's computer, and "Bonnie" had been typed into search engines several hundred times after — but never before — the day of Bonnie's disappearance. R829-30.

C. The defense pursued a strategy of discrediting Nathan's testimony and the corroborating evidence.

Throughout trial, defense counsel pursued a strategy of pointing out "holes" in the corroborating evidence and impeaching Nathan's credibility with his immunity agreement. R914. After unsuccessfully moving pretrial to prevent the People's fingerprint expert from testifying, *see* R56-62, defense counsel extensively cross-examined the expert on the reliability of her conclusions, R607-29; *see also* R919-20. Defense counsel emphasized that no witnesses identified petitioner from the photo array as the man they saw in the parking lot the day Bonnie disappeared. R853-54, 916, 918-19, 927.

Additionally, counsel argued that Bausily's in-court identification was unreliable nearly 10 years later, particularly because she failed at the time to pick out petitioner's photo, and both Bausily and Cathers described the unknown man as being shorter than petitioner, who is over six feet tall. R914-16, 927. Moreover, petitioner cooperated with police during the early investigation of Bonnie's disappearance, R845-47, and no search yielded physical evidence — much less DNA evidence — proving that Bonnie was ever on petitioner's property or in his car, R923-24. Counsel stressed that the two DNA-tested bones had not come from Bonnie, R924, and presented expert testimony that cremated remains are sometimes found among historic Native American burial grounds in Illinois, R834-35.

Because the People's case turned largely on Nathan's testimony, defense counsel relied heavily on the immunity deal as evidence of Nathan's bias and motivation to lie to avoid prosecution for his part in Bonnie's death. *See* R411-14, 424, 431-32, 916-18, 922-23, 926. Nathan admitted at trial that he had begun his prior grand jury testimony by denying his father's involvement, and he only testified that petitioner killed Bonnie after a 20-minute break during which the prosecutors had told him that "the deal was off if he didn't tell the truth." R414-15. Nathan also admitted at trial that he had the same access to the Malibu and weapons as petitioner had, R421-22; that he cooperated to avoid jail, R424; and that he had kept the secret to protect both his father and himself, R424-25.

D. The jury found petitioner guilty, and the appellate court affirmed petitioner's conviction on direct appeal.

The jury found petitioner guilty of first degree murder and further found that he personally discharged the firearm that killed Bonnie. R941; C684-85. The circuit court sentenced petitioner to 65 years in prison: 40 years for murder, plus a 25-year firearm enhancement. C827-29.

Petitioner retained new counsel — Clyde Kuehn — to represent him in posttrial motions and on direct appeal. *See* C687 (entry of appearance). As relevant here, petitioner argued on direct appeal that his trial counsel provided ineffective assistance by (a) stipulating to the bone fragments' DNA test results; (b) failing to move to strike Bausily's in-court identification; and (c) failing to redact "damaging passages" from petitioner's recorded interview with police, among other claims. *See* A014-17. The appellate court rejected the claims and affirmed petitioner's conviction. A017.

II. Postconviction Proceedings

A. The circuit court dismissed petitioner's postconviction petition at the second stage.

Petitioner — through retained counsel Kuehn — then filed a postconviction petition raising seven additional ineffective-assistance claims. C887-912. Petitioner claimed that trial counsel had provided ineffective assistance by failing to (1) move to suppress petitioner's statements to, and recorded interview with, police on September 29, 2010, C895-902; (2) test the bone fragments for their age or presence of human DNA before stipulating to their admission, C902-06; (3) interview the four eyewitnesses from the

parking lot, C906-09; (4) center the defense strategy around the absence of a positive DNA match with petitioner, C909; (5) seek a change of venue, C910; (6) retain an independent fingerprint expert to counter the People's expert, C910-11; and (7) track down a journalist's anonymous source who identified the suspect as "a smoker" in a 2013 news article, C911.

As to all claims, petitioner argued that "the asserted constitutionally infirm representation of trial counsel involves . . . various shortcomings which were not a part of the trial record and have not been forfeited." C895. Petitioner attached extra-record evidence to support all his claims, including his own affidavit, which made assertions about his interactions with trial counsel that were relevant to all seven issues, *see* C1033-43, and an affidavit from petitioner's mother, which made further assertions about discussions with trial counsel relevant to claims 2, 5, and 6, *see* C1016-18. In further support of claim 1, petitioner attached an Alton Police Department policy manual, C989-1005, and an affidavit from Curtis Dawson, the attorney petitioner had retained before the September 29, 2010 interview with police, C1006-08. To further support claim 2, petitioner submitted a copy of the deed to his property, C1014-15, and a report and affidavit from Dr. Alexander Cherkinsky, who attempted to radiocarbon date the bone fragments after petitioner's direct appeal concluded, found that two bone fragments (of the original 27) were suitable for radiocarbon dating, and showed that each came from a "species" that died before 1994 and 1998, respectively, C1009-13.

In support of claim 3, petitioner submitted the photo lineup shown to the parking lot witnesses, C1028, and an affidavit from one of those witnesses, April Cathers, C1019-20. Petitioner attached multiple newspaper articles in support of claim 5. *See* C1029-30, 1044-56, 1060-72, 1076-93. He also attached a copy of a $2,000 check payable to purported fingerprint expert "Luci Kohn" in support of claim 6, C1094, *see also* C1017, and the 2013 news article that referred to the unknown suspect in Bonnie's murder as "a smoker" in support of Claim 7, C1029-30.

The circuit court advanced the petition to the second stage, and the People moved to dismiss, arguing both that waiver and *res judicata* barred his claims, C1104-05, and that the claims were meritless, C1105-15. In reply, petitioner argued — through Kuehn — that no procedural bar applied because his ineffective-assistance claims relied on evidence outside the trial record and so could not have been raised on direct appeal, C1123-28, which point he also emphasized in oral argument on the motion, R954-55. The circuit court found claims 1 and 2 meritless, A021-22, and claims 3 through 7 forfeited, A021, and dismissed the petition, A022. Petitioner moved the court to reconsider the dismissal of claims 1 and 2, *see* C1136-48, which the court denied, *see* C1150-51; R967-79.

B. The appellate court affirmed the petition's dismissal.

On postconviction appeal, petitioner — through new retained counsel (not Kuehn) — argued that the circuit court had erred in finding that claims 1 and 2 lacked merit and asked the appellate court to remand for third-stage

proceedings on those claims. App. Br. 16-36. In the alternative, petitioner argued that Kuehn provided unreasonable assistance and, as an alternative remedy, asked the appellate court to remand for appointment of new postconviction counsel and new second-stage proceedings. *Id.* at 43, 50. Specifically, petitioner claimed that Kuehn performed unreasonably by (1) failing to "adequately present" claims 1 and 2 with additional factual support and legal argument, and (2) laboring under an actual conflict of interest as evidenced by his failure to allege his own ineffectiveness on direct appeal to avoid the forfeiture bar that the circuit court found precluded review of claims 3 through 7. *Id.* at 36-50.

The appellate court affirmed the circuit court's judgment, albeit on different grounds, and rejected the unreasonable-assistance claims. SA2 ¶ 2. The appellate court held that claims 1 and 2 were procedurally barred, SA10-11 ¶¶ 50-56, that petitioner had also failed to make a substantial showing of a constitutional violation with respect to those claims, SA11 ¶ 57, and that he forfeited any argument on the merits of his remaining claims by failing to raise them on direct appeal, SA20 ¶¶ 102-03. The appellate court also rejected his unreasonable-assistance claims. SA2 ¶ 2. The appellate court reasoned that petitioner's underlying claims would have failed even if Kuehn had argued them differently, SA12 ¶ 65, or alleged his own ineffectiveness on direct appeal to overcome the procedural bar that the court found precluded review, because the underlying claims were meritless, SA16-22 ¶¶ 81-114.

STANDARDS OF REVIEW

The Court reviews de novo both the circuit court's judgment dismissing a postconviction petition and whether postconviction counsel provided reasonable assistance. *People v. Williams*, 2025 IL 129718, ¶ 41.

ARGUMENT

Petitioner failed to make a substantial showing in second-stage postconviction proceedings that trial counsel provided constitutionally ineffective assistance. As both the circuit and appellate courts held, trial counsel was not ineffective either for deciding not to move to suppress petitioner's September 29, 2010 recorded interview with police (claim 1), or for not seeking radiocarbon dating of the bone fragments before stipulating to the admission of the DNA test results (claim 2). And petitioner forfeited any argument on the merits of his remaining ineffective-assistance claims. This Court should therefore affirm the judgment of dismissal.

Furthermore, petitioner's retained postconviction counsel (Kuehn) provided reasonable assistance in presenting petitioner's ineffective-assistance-of-trial-counsel claims in the postconviction petition. To avoid forfeiture, Kuehn presented claims that relied on evidence outside the trial record and thus could not have been raised on direct appeal — a reasonable strategy that Kuehn competently executed. Moreover, petitioner fails to establish that any claim would have succeeded had Kuehn taken another approach. Accordingly, this Court should also affirm the appellate court's judgment that Kuehn provided reasonable assistance.

I. The Postconviction Petition Failed to Make a Substantial Showing that Trial Counsel Was Ineffective.

Petitioner's postconviction petition failed to make a substantial showing that trial counsel provided constitutionally ineffective assistance.[3]

The Post-Conviction Hearing Act (Act), 725 ILCS 5/122-1 *et seq.*, provides a three-stage process for adjudicating postconviction petitions, with each stage demanding a progressively higher showing of a constitutional deprivation for claims to advance. *Williams*, 2025 IL 129718, ¶ 42. At the first stage, the circuit court independently reviews the petition to screen out frivolous petitions and advances only arguable constitutional claims. *Id.* (citing 725 ILCS 5/122-2.1(a)(2)). In the second stage, the People respond, and the circuit court determines "whether the petition and supporting documentation make a substantial showing of a constitutional violation." *Id.* "If so, the petition advances to the third stage for an evidentiary hearing," but "[i]f not, the petition should be dismissed." *Id.*

The standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), governs claims of ineffective assistance of counsel. *People v. Williams*, 2024 IL 127304, ¶ 22. To prove that trial counsel was so ineffective as to violate the Sixth Amendment right to counsel, petitioner must demonstrate that counsel's performance (1) was "deficient" in that it "fell below an

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[3] Petitioner was represented at trial by two retained attorneys: Scott Snider, *see* C24, and David Fahrenkamp, *see* C66; *see also* R123. The petition does not distinguish between the attorneys, so respondent refers to them collectively as "counsel."

objective standard of reasonableness" and (2) "prejudiced the defense." *Strickland*, 466 U.S. at 687-88. Courts must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" as "'sound trial strategy.'" *Id.* at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). And to establish prejudice, petitioner "must show that there is a reasonable probability" that, but for counsel's errors, the trial's result would have been different. *Id.* at 694. Petitioner's claims 1 and 2 fail both *Strickland* prongs, and, as the appellate court held, he forfeited any argument to support his remaining claims. SA20 ¶ 103.

A. Petitioner's claims 1 and 2 lack merit.

1. Trial counsel did not provide ineffective assistance by not moving to suppress petitioner's interview.

Trial counsel did not provide ineffective assistance by declining to move to suppress petitioner's recorded interview with police, as both the circuit and appellate courts correctly concluded. *See* C1134-35; SA16-18.

The decision whether to file a suppression motion is generally "a matter of trial strategy entitled to great deference." *People v. Webb*, 2023 IL 128957, ¶ 23 (citing *People v. White*, 221 Ill. 2d 1, 21 (2006), *abrogated on other grounds by People v. Luedemann*, 222 Ill. 2d 530, 548 (2006)). In his petition, petitioner fails even to contest — much less overcome — the strong presumption that his counsel's decision was reasonable trial strategy. *See* SA18 ¶ 92 ("[Petitioner] did not address trial strategy in his postconviction petition, nor does he address it in his brief on appeal."); *Strickland*, 466 U.S.

at 689. Petitioner's affidavit avers that trial counsel told him that grounds existed for a motion to suppress but that "without explanation," counsel did not file a motion. *See* C1036 ¶¶ 9-10. But petitioner's mere failure to understand why counsel made this decision fails to overcome the strong presumption that it was nevertheless a reasonable strategy. *See Webb*, 2023 IL 128957, ¶ 23.

Moreover, the record makes clear that counsel's decision was strategic and reasonable: Playing the recorded interview allowed the jury to see and hear petitioner deny his involvement in Bonnie's disappearance without requiring him to take the witness stand and open himself up to cross-examination. In the recorded interview, petitioner repeatedly denied any contact with Bonnie before she disappeared. R671-72, 674, 694, 698-99. He made no inculpatory statements, nor did police refer to any prior, unrecorded statements by petitioner that suggested his guilt. *See* R669-700, 704-12. Indeed, petitioner fails in his petition — just as he fails in this Court, *see* Pet'r Br. 22-23 — to point to any statement from the interview that harmed his defense, *see* C890-93, 895-902. Counsel thus reasonably calculated that the relative benefit of the jury hearing petitioner's exculpatory declarations outweighed the minimal risk of admitting the interview. *See People v. Perry*, 224 Ill. 2d 312, 354-55 (2007) (reasonable defense strategy involved weighing value of testimony against risk of calling certain witnesses to testify).

To be sure, petitioner's statements denying that his fingerprints were on Bonnie's truck may have damaged his credibility after the People's fingerprint expert testified that eight fingerprints collected from the truck matched petitioner's prints. *See* R704-05. But these statements also fit with counsel's strategy of trying to undermine the fingerprint expert's conclusions. *See* R318, 919-20. Counsel had tried and failed to exclude the expert's testimony altogether, *see* C70-389; R56-62, and so resorted instead to challenging her methodology on cross-examination, *see* R607-29. It was thus reasonable for counsel to want the jury to hear petitioner deny leaving fingerprints on Bonnie's truck because that denial might have cast further doubt on the fingerprint matches — the only physical evidence linking petitioner to Bonnie. Admitting petitioner's recorded interview further supported this strategy because, right after denying that his fingerprints or DNA were on Bonnie's truck, petitioner agreed to give a DNA sample, R705, suggesting confidence in his statements' truth. Counsel's strategy failed, but it was nevertheless reasonable. *See Strickland*, 466 U.S. at 687-88.

Petitioner argues that "questions of counsel's strategy should generally be addressed at the third, and not the second, stage of post-conviction proceedings." Pet'r Br. 23 (citing *People v. Cabrera*, 326 Ill. App. 3d 555, 564-65 (3d Dist. 2001)). But he is mistaken, *see People v. Tate*, 2012 IL 112214, ¶ 19 (petitioner must make a substantial showing of both *Strickland* prongs in second-stage proceedings to obtain evidentiary hearing), and the appellate

court opinion he cites for this proposition is neither persuasive nor applicable here. The petitioner in *Cabrera* provided affidavits from two witnesses who would have testified to his innocence had counsel called them at trial. 326 Ill. App. 3d at 564. The appellate court held that "[w]hen the record is unclear concerning whether trial counsel's decision not to call exculpatory witnesses was a matter of counsel's strategy or counsel's incompetence, the defendant is entitled to a postconviction evidentiary hearing on that issue." *Id.* at 564-65. Here, by contrast, the jury heard petitioner's own exculpatory statements, so the reason counsel decided not to suppress them is clear from the record and requires no evidentiary hearing.

Even if petitioner could show his counsel performed deficiently, he fails to show that the decision prejudiced him. To establish prejudice from not moving to suppress his recorded interview, petitioner must show both that (1) the motion would have succeeded, and (2) there is a reasonable probability that the trial's outcome would have differed. *Webb*, 2023 IL 128957, ¶ 23 (citing *People v. Henderson*, 2013 IL 114040, ¶ 15). In his petition, petitioner focuses solely on the unargued motion's viability, *see* C895-902, and so forfeits any argument that it would have changed the outcome, *see People v. Dorsey*, 2021 IL 123010, ¶ 70 (argument forfeited when not raised in postconviction petition). Similarly, in this Court, petitioner ignores prejudice altogether, *see* Pet'r Br. 22-23, and so likewise forfeits it, *see People v.*

Aljohani, 2022 IL 127037, ¶ 61 (citing Ill. S. Ct. R. 341(h)(7)) (points not argued or inadequately developed are forfeited).

Forfeiture aside, and even assuming the unargued suppression motion would have succeeded, petitioner cannot demonstrate a reasonable probability that suppressing his recorded interview that contained no inculpatory statements would have changed the trial's outcome. *See* C895-902. If the recording had been suppressed, the jury still would have heard Nathan's testimony, albeit without petitioner's self-serving counternarrative. The jury also would have heard the corroborating evidence, including, among other things: that eight fingerprints from the door of Bonnie's truck matched petitioner's prints; Cathers's description of the man in the parking lot with a silver Chevrolet Malibu who touched Bonnie's truck; Bausily's in-court identification of petitioner; the shell casings and bullet from the Stoeger handgun recovered from petitioner's home; burnt bone fragments from the burn pit area on petitioner's property; and the damage to the tree next to the burn pit consistent with a large fire dating to summer 2010. Considering this overwhelming evidence, there is no reasonable probability that suppressing the recorded interview would have changed the trial's outcome. *See Strickland*, 466 U.S. at 694; *Webb*, 2023 IL 128957, ¶ 23; *see also People v. Keys*, 2025 IL 130110, ¶ 59 (no prejudice for failing to seek suppression of video-recorded police interview when, even if excluded, remaining direct and circumstantial evidence overwhelmingly established the defendant's guilt).

2. Trial counsel did not provide ineffective assistance by not seeking carbon dating of the bone fragments before stipulating to their admission.

Additionally, trial counsel did not provide ineffective assistance by not pursuing radiocarbon dating of the bone fragments found in the burn pit on petitioner's property before stipulating to the admission of their DNA test results. The radiocarbon test results would not have changed the outcome, for they proved only that two of the 25 non-DNA-tested bone fragments did not come from Bonnie but proved nothing about the remaining 23 fragments, which were not suitable for either DNA testing or radiocarbon dating.

Whether trial counsel's failure to investigate and present certain evidence amounts to deficient performance depends on the value of that evidence to the case. *People v. Steidl*, 177 Ill. 2d 239, 256 (1997). Here, trial counsel knew — even without radiocarbon testing the bone fragments — that the results could not exonerate petitioner. *See Perry*, 224 Ill. 2d at 344 (counsel's performance evaluated based on his perspective at the time). At worst, if counsel sought radiocarbon testing and found that any bones dated close to 2010, the prosecution could use the results against petitioner. *See People v. Wheeler*, 151 Ill. 2d 298, 312 (1992) (report generated by defense expert is discoverable by prosecution) (citing Ill. S. Ct. R. 413(c)). And at best, the results would weaken evidence that held only limited value to the State's case. *See* R765-66. The stipulation stated that the only two bone fragments suitable for DNA testing *were not* Bonnie's, R766, which counsel highlighted in cross-examination, R787, and in closing, R927. The

stipulation further suggested that 10 of the bone fragments recovered from petitioner's property might have been — but were not conclusively determined to be — human, only partially corroborating Nathan's testimony. R766. Even petitioner acknowledges this evidence's limited probative value to the People's case. *See* C902-03.

Defense counsel thus reasonably declined to investigate this weak evidence further and, instead, emphasized its inconclusiveness by suggesting alternative explanations for the presence of burnt bone fragments on petitioner's property. Nathan testified that his father had killed at least two dogs on the property, R406, and petitioner also stated in his interview that he had buried a couple of dogs and a cat on the property, R695. The People's forensic anthropologist testified that bones could have been dug up and spread by wildlife or human activity. R790. And Nathan and Monica both testified that their family regularly burned brush on the property. R422, 517. Together, this testimony allowed jurors to infer that the bone fragments might have come from buried pets. Counsel also presented expert testimony that Native American cremated remains are sometimes found in Illinois, R834-35, which could have explained the presence of human bones. And counsel highlighted these alternative explanations in closing. *See* R922, 927.

Moreover, even if the failure to seek radiocarbon testing constituted deficient performance, petitioner fails to show prejudice. Petitioner again entirely ignores the issue of prejudice, *see* Pet'r Br. 24-25, and so forfeits the

argument, *see Aljohani*, 2022 IL 127037, ¶ 61. But any such argument would fail because the results of the radiocarbon dating were just as inconclusive as the DNA test results. According to petitioner's expert, only two bone fragments (of the original 27) were suitable for radiocarbon dating, which showed that each came from a "species" that died before 1994 and 1998, respectively. C903-04, 1010-11. The expert did not state whether that "species" was human. *See id.* So, like the DNA testing, the radiocarbon testing failed to prove whether most of the recovered bone fragments originated from Bonnie, from another human, or from an animal. Petitioner's additional testing simply excludes two more fragments from the group of 25 non-DNA-tested bone fragments, leaving 23 remaining fragments that may or may not have come from Bonnie. And as explained above, *see* Section I.A.1 *supra*, even without the stipulation concerning the bone fragments, the jury still would have heard Nathan's testimony and the remaining corroborating evidence. Accordingly, given the other strong evidence of petitioner's guilt and the limited probative value of petitioner's additional evidence, he fails to demonstrate a reasonable probability of a different outcome at trial. *See Strickland*, 466 U.S. at 694; *Keys*, 2025 IL 130110, ¶ 59.

In sum, the postconviction petition fails to make a substantial showing that petitioner's trial counsel provided ineffective assistance by not moving to suppress the recorded interview (claim 1) or pursuing radiocarbon testing of the recovered bone fragments (claim 2).

B. Petitioner forfeited any argument that his remaining claims have merit.

Petitioner failed to argue, both in the appellate court and in this Court, that claims 3 through 7 in his postconviction petition have merit. Instead, with respect to those issues, petitioner has argued solely that postconviction counsel performed unreasonably, a choice that forfeits his challenge to the underlying issues. *See People v. Cotto*, 2016 IL 119006, ¶ 49 (postconviction petitioner who claimed only unreasonable assistance on appeal forfeited challenge to merits of dismissal). Petitioner has thus twice forfeited any argument that his trial counsel was ineffective for not interviewing witnesses (claim 3), emphasizing the lack of DNA evidence against petitioner (claim 4), moving for a venue change (claim 5), consulting an independent fingerprint expert (claim 6), and tracking down a journalist's source (claim 7).

A reviewing court is "not simply a depository into which a party may dump the burden of argument and research." *People ex rel. Ill. Dep't of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. Rather, this Court's Rule 341(h)(7) requires both argument and citation to pertinent authority to support each point. *Id.* (citing Ill. S. Ct. R. 341(h)(7)). Accordingly, points not argued or supported by citation to relevant authority fail to satisfy the Rule's requirements and are forfeited. *Id.* (citing *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010)); *see also Kopf v. Kelly*, 2024 IL 127464, ¶ 99 (same).

Petitioner first forfeited the merits of claims 3 through 7 in the appellate court. Petitioner argued below that he made a substantial showing

of a constitutional violation with respect to claims 1 and 2 of his petition and so was entitled to an evidentiary hearing on those claims, *see* App. Br. 17-36; Reply Br. 1-15, but failed to argue the merits of his other claims, *see* App. Br. 36-50; Reply Br. 15-20. He requested a remand for new counsel to amend the petition for further second-stage proceedings but failed to explain why — even if amended — these claims had merit. App. Br. 49-50; Reply Br. 18-20. As the appellate court recognized, *see* SA20 ¶ 103, petitioner thus forfeited the merits of these claims in the appellate court, *see People v. Dabbs*, 239 Ill. 2d 277, 294 (2010) (defendant abandoned claim when opening and reply briefs failed to address it); *see also People v. Conick*, 232 Ill. 2d 132, 144 (2008) (issues not raised by petitioner in appellate court are forfeited).

Petitioner has also forfeited in this Court any argument on the merits of claims 3 through 7. Although he asserts that the appellate court erred by affirming the circuit court's judgment dismissing these claims in second-stage proceedings, he challenges only the reasonableness of postconviction counsel's representation, and fails to argue the merits of these claims, *see* Pet'r Br. 26, and so has forfeited them, *see Cotto*, 2016 IL 119006, ¶ 49. Nor does petitioner cite any authority for his contention that the appellate court erred by affirming the petition's dismissal on forfeiture grounds. Pet'r Br. 26. His underdeveloped, unsupported argument thus fails to conform to Rule 341(h)(7) and is forfeited. *See Ill. Dep't of Labor*, 2013 IL 115106, ¶ 56; *Kopf*, 2024 IL 127464, ¶ 99.

II. Petitioner's Postconviction Counsel Performed Reasonably.

Petitioner fails to demonstrate that retained postconviction counsel Kuehn provided unreasonable assistance. To the contrary, Kuehn performed competently by pursuing a reasonable postconviction strategy: He raised ineffective-assistance-of-trial-counsel claims that could not have been raised on direct appeal, and he supported each claim with evidence outside the record. Moreover, petitioner fails to show that he had any meritorious claim that would have advanced had Kuehn pursued a different postconviction strategy.

A. To prevail on an unreasonable-assistance claim, petitioner must demonstrate that he lost a meritorious claim due to postconviction counsel's deficiencies.

As the appellate court correctly reasoned, to prevail on a claim that postconviction counsel provided unreasonable assistance and obtain remand for further proceedings or other relief, a postconviction petitioner must demonstrate that he lost a meritorious claim due to postconviction counsel's deficient performance. This Court has not articulated the precise showing required to establish that postconviction counsel provided unreasonable assistance, aside from failure to comply with Rule 651(c) when it applies. Here, the parties agree that Rule 651(c) does not apply because petitioner retained Kuehn for first-stage proceedings. Pet'r Br. 21; *see also Cotto*, 2016

IL 119006, ¶ 41.[4] Accordingly, the general reasonable-assistance standard applies, which standard this Court should now clarify.

The Act entitles petitioners to reasonable assistance of postconviction counsel. *Williams*, 2025 IL 129718, ¶ 43; *Cotto*, 2016 IL 119006, ¶ 42. This standard is "'less than that afforded by the federal or state constitutions,'" *Cotto*, 2016 IL 119006, ¶ 45 (quoting *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006)), because no constitutional right to counsel attaches in postconviction proceedings, *Williams*, 2025 IL 129718, ¶ 43. In other words, the minimum level of performance required for postconviction counsel to meet his or her obligations under the Act is lower than *Strickland*'s standard. *See Cotto*, 2016 IL 119006, ¶ 45; *see also People v. Custer*, 2019 IL 123339, ¶ 30 ("required quantum of assistance" in postconviction proceedings "is significantly lower than the one mandated at trial by our state and federal constitutions"). Consequently, a postconviction petitioner bears a greater burden to show he received unreasonable assistance in postconviction proceedings than to show he received constitutionally ineffective assistance at trial or on direct appeal. *See Cotto*, 2016 IL 119006, ¶ 45; *see also People v. Zareski*, 2017 IL App (1st) 150836, ¶ 50 ("defendant is entitled to less from

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[4] Rule 651(c) requires counsel appointed or retained at the second stage to "consult[ ] with petitioner," identify his "contentions of deprivation of constitutional rights," "examine[ ] the record of the proceedings at the trial," and "make any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions." *People v. Perkins*, 229 Ill. 2d 34, 42 (2008); Ill. S. Ct. R. 651(c). Counsel should certify discharge of these duties. *Perkins*, 229 Ill. 2d at 42; *Pendleton*, 223 Ill. 2d at 472.

postconviction counsel than from direct appeal or trial counsel" so "it should be even more difficult for a defendant to prove . . . unreasonable assistance than to prove . . . ineffective assistance under *Strickland*").

Rule 651(c) operates independently of the general reasonable-assistance standard. The Rule functions as a "'vehicle for ensuring a reasonable level of assistance'" in second-stage proceedings and only applies to counsel retained or appointed after a petitioner files a pro se petition. *Cotto*, 2016 IL 119006, ¶ 41 (internal citations and quotations omitted). When Rule 651(c) applies, postconviction counsel must comply with its requirements, and failure to do so results in automatic remand. *See People v. Addison*, 2023 IL 127119, ¶ 33. But compliance with Rule 651(c) creates only a rebuttable presumption that counsel provided reasonable assistance. *Id.*; *Custer*, 2019 IL 123339, ¶ 32. Even after the requirements of Rule 651(c) have been satisfied, petitioners may pursue claims that counsel failed to provide a reasonable standard of representation. *People v. Smith*, 2022 IL 126940, ¶ 38. Whether postconviction counsel complied with Rule 651(c) — when it applies — is thus a separate inquiry from whether counsel provided reasonable assistance. *See id.* And regardless of Rule 651(c)'s application, both appointed and retained postconviction counsel must provide reasonable assistance at all stages of postconviction proceedings. *People v. Urzua*, 2023 IL 127789, ¶ 51; *People v. Johnson*, 2018 IL 122227, ¶¶ 16-19; *Cotto*, 2016 IL 119006, ¶¶ 41-42.

The purpose of this generally applicable reasonable-assistance standard is to ensure that postconviction counsel performs with sufficient competence to avoid the loss of a meritorious claim. *See Johnson*, 2018 IL 122227, ¶ 17 (fulfilling the Act's purpose necessitates "some level of attorney competence," because without review of attorney performance, "meritorious postconviction claims may be lost"); *id.* ¶ 18 (if no standard of performance applied, counsel "could submit a wholly deficient petition, and meritorious claims could be lost"). Accordingly, counsel fails to fulfill the Act's purpose when his or her deficient performance causes petitioner to lose a meritorious claim.

Put another way, for a postconviction petitioner to prevail on an unreasonable-assistance claim, he must show that counsel (1) performed deficiently and, as a result, (2) lost a claim that would have otherwise been won. *See, e.g.*, *Williams*, 2025 IL 129718, ¶¶ 46-49 (counsel performed reasonably by making "only argument available" where no meritorious claim existed and petitioner failed to prove otherwise); *People v. Huff*, 2024 IL 128492, ¶ 24 (petitioner failed to identify anything counsel could have done "to allow the petition to survive dismissal"); *Cotto*, 2016 IL 119006, ¶ 50 (retained postconviction counsel "ably discharged his duties" to present claims, and petitioner failed to show what else counsel could have done to defend against dismissal); *Perkins*, 229 Ill. 2d at 51 (no unreasonable assistance where "counsel's argument was apparently the best option

available based on the facts" and petitioner failed to show counsel could have somehow saved the claim); *People v. Spreitzer*, 143 Ill. 2d 210, 220-23 (1991) (no unreasonable assistance where counsel competently presented, supported, and argued claims' merits, and petitioner "could not show that he was prejudiced in any way by post-conviction attorney's conduct"). Consistent with these cases, multiple panels of the appellate court have expressly held that a postconviction petitioner must make a showing similar to *Strickland*'s performance and prejudice prongs to demonstrate unreasonable assistance and obtain remand. *See Zareski*, 2017 IL App (1st) 150836, ¶ 59 (holding that "*Strickland*-like" analysis is appropriate for unreasonable-assistance claims when compliance with Rule 651(c) is not at issue); *People v. Perez*, 2023 IL App (4th) 220280, ¶ 54 (same); *People v. Delgado*, 2022 IL (2d) 210008, ¶ 20 (same). But an unreasonable-assistance claim demands a greater showing than the *Strickland* standard from petitioners because the postconviction context requires less of counsel. *See Cotto*, 2016 IL 11906, ¶ 45; *Zareski*, 2017 IL App (1st) 150836, ¶¶ 50-61.

Accordingly, this Court should now clarify that, in cases where Rule 651(c) is not at issue, to establish unreasonable assistance and obtain remand for further proceedings, a postconviction petitioner must show not only that postconviction counsel performed deficiently, *cf. Strickland*, 466 U.S. at 687, but that as a result of counsel's deficient performance, petitioner lost a meritorious claim, *i.e.*, a claim that could have been won, *see, e.g.*, *Williams*,

2025 IL 129718, ¶¶ 46-49; *Huff*, 2024 IL 128492, ¶ 24; *Cotto*, 2016 IL 119006, ¶ 50. Merely showing a reasonable probability of a different outcome as in a *Strickland* claim, *see* 466 U.S. at 694, does not suffice in the postconviction context because the purpose of the reasonable-assistance standard as guaranteed by the Act is to ensure that *meritorious* claims are not lost, *see Johnson*, 2018 IL 122227, ¶¶ 17-18. Only after a petitioner makes this showing should a petition be remanded for further proceedings or other relief as appropriate.

Applying this standard here, petitioner fails to establish that his retained postconviction counsel provided unreasonable assistance.

B. Petitioner shows neither that his postconviction counsel performed deficiently nor that he had a meritorious claim that could have succeeded.

Petitioner fails to establish that postconviction counsel Kuehn provided unreasonable assistance. For starters, Kuehn performed competently: He presented nonfrivolous claims and supported them with legal argument and extra-record evidence. Kuehn moreover reasonably argued that these claims were not forfeited because they relied on evidence outside the trial record. Furthermore, as discussed above, *see* Section I.A *supra*, claims 1 and 2 lack merit, so they would not have advanced to the third stage even if Kuehn had done as petitioner advocates here. And claims 3 through 7 are also meritless and would not have survived second-stage review even if Kuehn had alleged his own ineffectiveness on direct appeal.

1. Postconviction counsel performed competently.

Postconviction counsel did not perform deficiently by failing to either allege his own ineffectiveness on direct appeal to avoid procedural default, Pet'r Br. 15-18, or by "failing properly to support" claims 1 and 2 with "legal argument and evidentiary support," *id.* at 18-21.

a. Kuehn reasonably argued that petitioner's claims could not have been raised on direct appeal and were thus not forfeited.

Kuehn performed competently by arguing that petitioner's ineffective-assistance-of-trial-counsel claims were unavailable on direct appeal and so were not forfeited. Consistent with this argument, Kuehn submitted extra-record evidence in support of all of petitioner's claims.

Claims raised in postconviction proceedings that could have been raised and considered on direct review are deemed procedurally defaulted. *People v. Veach*, 2017 IL 120649, ¶ 47. "Procedural default does not, however, preclude a [petitioner] from raising an issue on collateral review that depended upon facts not found in the record." *Id.* Petitioners may thus forfeit ineffective-assistance-of-trial-counsel claims by failing to raise them on direct appeal when trial counsel's deficiencies are apparent from the record, but claims relying on facts outside the trial record may be brought in postconviction proceedings. *Id.* ¶¶ 46-47. "An ineffective-assistance claim based on what the record on direct appeal discloses counsel did, in fact, do is . . . subject to the usual procedural default rule." *People v. Erickson*, 161 Ill. 2d 82, 87-88 (1994). "But a claim based on what ought to have been done

may depend on proof of matters which could not have been included in the record precisely because of the allegedly deficient representation." *Id.*

Petitioner insists that to avoid the procedural default that the circuit and appellate courts identified, Kuehn had to allege ineffective assistance of appellate counsel. Pet'r Br. 15; *see People v. English*, 2013 IL 112890, ¶ 22 (procedural bar relaxed when forfeiture stems from ineffective assistance of counsel on direct appeal). But that would be true only if the claims were in fact forfeited. Here, Kuehn did not allege his own ineffectiveness on direct appeal because he reasonably believed petitioner's ineffective-assistance-of-trial-counsel claims *were not forfeited*.

Kuehn raised postconviction claims that relied on evidence outside the trial record for support and thus could not have been raised on direct appeal. *See Veach*, 2017 IL 120649, ¶ 47. All claims allege courses of conduct that trial counsel failed to take, *see* C887-912, and so required additional factual development to determine whether these failures amounted to deficient performance, *see Erickson*, 161 Ill. 2d at 87-88. Accordingly, Kuehn attached extensive extra-record evidence to the postconviction petition to support each claim of what counsel should have done, C1006-93, and cited this evidence throughout the petition, C887-912. Kuehn emphasized in the petition, in response to the People's motion to dismiss, and at oral argument in the circuit court, that the claims relied on facts outside the trial record and so

were not forfeited. *See* C895, 1123-28; R954-55. This was a reasonable strategy to avoid procedural default. *Cf. Strickland*, 466 U.S. at 689.

That both circuit and appellate courts found some claims procedurally defaulted does not establish that Kuehn's approach was unreasonable. On the contrary, both courts applied the wrong standard in making that determination.[5] The circuit court found petitioner's claims 3 through 7 defaulted because they "rely on information known or readily available to the Petitioner and trial counsel and could have been raised on appeal." C1134. However, the relevant question is not whether the claims relied on "available" information but whether the claims were apparent from the trial record. *See Veach*, 2017 IL 120649, ¶¶ 46-47. Because these claims were based on evidence outside of the trial record, they could not have been raised on direct appeal and were not forfeited.

As for claims 1 and 2, the circuit court correctly reached their merits, finding that they were not forfeited, but the appellate court mistakenly concluded otherwise. It reasoned that petitioner had forfeited claim 1 because he "had the opportunity to raise arguments regarding the interview on direct appeal and actually did so, but chose not to argue trial counsel should have filed a motion to suppress, thereby forfeiting the argument."

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[5] Respondent acknowledges that the People argued in the circuit and appellate courts that petitioner's claims were both procedurally defaulted and meritless, *see* C1104-05; Resp. Br. 10, 18, but as appellee, in this Court the People may raise any argument of record to support the judgment below, *see People v. Castleberry*, 2015 IL 116916, ¶ 22.

SA11 ¶ 55. The appellate court held that petitioner's claim 2 concerned "the issue of trial counsel's stipulation," which "has been decided and is *res judicata*," and that any alternate arguments about the bone fragments were forfeited. *Id.* ¶ 56. Critically, the appellate court did not find that the facts on which these claims depended were apparent from the trial record. *See Veach*, 2017 IL 120649, ¶¶ 46-47. They were not.

Petitioner argues here that the appellate court wrongly concluded that claims 1 and 2 were defaulted, *see* Pet'r Br. 22-23 (arguing that claim 1 was not forfeited where "[direct appeal] counsel had no ability to attach [petitioner's] affidavit to the [direct] appeal," a fact that the appellate court "ignored"); *id.* at 24 (arguing that claim 2 was not forfeited because "the testing of the bone fragments had not occurred at the time of the direct appeal, and the expert's affidavit as to the results of the testing was not available"), and that both the appellate and circuit courts wrongly concluded that the remaining claims were defaulted, *id.* at 26 (arguing that remaining claims required extra-record evidence). The People agree. But if no forfeiture occurred, Kuehn cannot have needed to allege his own ineffectiveness on direct appeal.

Petitioner's contention that Kuehn labored under an actual conflict of interest, Pet'r Br. 15-18, fails for the same reason. An actual conflict of interest only exists when there is a "specific deficiency in . . . counsel's strategy, tactics, or decision making that is attributable to [a] conflict."

People v. Yost, 2021 IL 126187, ¶ 38. But because the claims could not have been raised on direct appeal, Kuehn did not perform deficiently by not raising them on direct appeal, so he was not ineffective in postconviction proceedings for failing to argue his own deficiency; thus, he did not operate under a conflict of interest.

Moreover, petitioner's argument that a "different, conflict free counsel might have . . . argued more vigorously that the claims were not forfeited," Pet'r Br. 17-18, withers under scrutiny. Kuehn *did* vigorously argue that none of petitioner's claims were forfeited. *See* C895, 1123-28, 1137; R954-55. And the circuit court agreed with Kuehn as to claims 1 and 2. C1133. Rather, it was petitioner's new, "conflict-free" counsel on postconviction appeal — not Kuehn — who abandoned any argument in the appellate court that the circuit court had erred by dismissing claims 3 through 7 as forfeited. *See* App. Br. 1, 16-50; Reply Br. 1-20.

Accordingly, Kuehn performed reasonably — and certainly not deficiently — by aiming to avoid default by arguing that petitioner's ineffective-assistance-of-trial-counsel claims were unavailable on direct appeal because they relied on facts outside the trial record.

b. Kuehn competently presented claims 1 and 2.

Kuehn also competently presented petitioner's claims 1 and 2 by providing detailed factual support and legal argument in the petition.[6] Petitioner's arguments to the contrary are meritless. *See* Pet'r Br. 18-21.

The constitution demands only "a reasonably competent attorney," not perfect representation. *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (internal quotation marks and citations omitted). Indeed, as explained, the standard for counsel's performance in the postconviction context is lower than at trial or on direct appeal, *see Custer*, 2019 IL 123339, ¶ 30, where, under *Strickland*, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," 466 U.S. at 690; *see also supra* pages 26-31. Because Kuehn's efforts readily satisfy the constitutional standard for attorney performance, they necessarily satisfy the lower standard applicable to counsel on collateral review.

Cotto is instructive. There, the defendant's retained postconviction counsel drafted a petition that included "several detailed claims of ineffective assistance of counsel" and "several supporting attachments," such as affidavits and other extra-record evidence. 2016 IL 119006, ¶ 46. The

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[6] In the appellate court, petitioner argued only that Kuehn failed to properly present claims 1 and 2. *See* App. Br. 37-43. To the extent he now argues Kuehn failed to properly present claims 3 through 7, *see* Pet'r Br. 21, these arguments are forfeited, *see Conick*, 232 Ill. 2d at 144.

petition survived first-stage review, *id.* ¶ 47, and after briefing, the circuit court heard argument from both sides on the petition's substantive claims, *id.* ¶ 48. Although the circuit court ultimately dismissed the petition on its merits, this Court found that postconviction counsel had nevertheless "ably discharged his duties." *Id.* ¶ 50.

The same is true here. Kuehn raised detailed ineffective-assistance claims that survived the first stage. *See* C1095. In the petition, Kuehn provided comprehensive arguments to support claims 1 and 2, *see* C895-906, and attached numerous extra-record exhibits to support those claims, *see* C989-1005 (Alton Police Department policy manual); C1006-08 (affidavit of petitioner's former attorney); C1033-43 (petitioner's affidavit); C1009-13 (affidavit and expert report of Dr. Alexander Cherkinsky); C1014-15 (deed to petitioner's property); C1016-18 (affidavit of petitioner's mother). Kuehn responded to the People's motion to dismiss, C1123-29, and focused his oral argument before the circuit court on the merits of claims 1 and 2, *see* R953-59. After the court dismissed the petition, Kuehn moved the court to reconsider its rulings on claims 1 and 2, *see* C1136-48, and gave further oral argument on his motion, *see* R967-79. Thus, Kuehn discharged his duty to present petitioner's claims 1 and 2. *Cotto*, 2016 IL 119006, ¶¶ 46-51.

Petitioner nevertheless argues that "retained counsel's performance was riddled with multiple failures with respect to both the law and the facts," Pet'r Br. 20, criticizing Kuehn's choices in legal argument and factual

support, *id.* at 20-21. In essence, petitioner demands perfect representation — far more than the reasonable representation to which he is entitled under the Act. *See Cotto*, 2016 IL 119006, ¶¶ 45-51. Moreover, petitioner fails to cite any analogous case in which retained postconviction counsel was found to have performed unreasonably under similar circumstances. Petitioner cites a single unpublished appellate court opinion in which retained postconviction counsel performed unreasonably when he "failed to attach affidavits or any other evidence to support the claims in his petition, failed to explain the significance of proposed witnesses, and demonstrated a complete unfamiliarity with the record and the requirements outlined in the Act." Pet'r Br. 19-20 (citing *People v. Johnson*, 2022 IL App (1st) 190258-U). As petitioner's description makes plain, *Johnson* bears no resemblance to this case.

In sum, Kuehn competently performed his duties to petitioner, and petitioner fails to demonstrate otherwise.

2. Petitioner cannot show that he had any meritorious claim that Kuehn could have saved by pursuing alternative arguments.

Even assuming petitioner could overcome the presumption of reasonable representation, petitioner cannot show that he had any meritorious claim that Kuehn could have saved, either by presenting it differently in the petition or by alleging that he had provided ineffective assistance on direct appeal.

First, petitioner fails to demonstrate a viable path that Kuehn could have taken to advance claims 1 and 2 to third-stage proceedings. He argues that Kuehn failed to make several legal and factual arguments to support the hypothetical suppression motion's viability. Pet'r Br. 20-21. Petitioner also points out Kuehn's failure to argue that trial counsel's failure to file a suppression motion was not sound trial strategy. *Id.* at 21. And petitioner further argues that Kuehn "failed to present any legal arguments as to why the bones were inadmissible and irrelevant" and failed to attach documentation providing certain facts about the bones. *Id.* at 20-21. But these alleged deficiencies all concern how Kuehn argued *Strickland*'s performance prong of the ineffective-assistance-of-trial-counsel claims. *See id.* Petitioner has provided no answer for how Kuehn could have met petitioner's burden on *Strickland*'s prejudice prong. *See id.* Indeed, petitioner cannot make this showing because, regardless of postconviction counsel's best efforts, nothing in the record demonstrates a reasonable probability that the trial's outcome would have been different had trial counsel suppressed petitioner's interview, or radiocarbon dated the bones, when the evidence against petitioner was overwhelming. *See Keys*, 2025 IL 130110, ¶ 59 (no *Strickland* prejudice where other direct and circumstantial evidence overwhelmingly proved guilt). He thus fails to show how Kuehn could have advanced these *Strickland* claims to third-stage proceedings. *See Huff*, 2024 IL 128492, ¶ 24 (no unreasonable assistance where petitioner

failed to identify anything postconviction counsel could have done "to allow the petition to survive dismissal"); *Perkins*, 229 Ill. 2d at 51 (petitioner failed to show postconviction counsel could have somehow saved the claim); *Spreitzer*, 143 Ill. 2d at 220-23 (petitioner "could not show that he was prejudiced in any way by post-conviction attorney's conduct").

Moreover, even if this Court were to hold that petitioner's claims were so clearly forfeited that Kuehn's only option was to allege his own ineffectiveness on direct appeal to avoid dismissal on forfeiture grounds, petitioner's claims still would have failed because they are meritless. Kuehn's conduct thus did not prejudice petitioner where petitioner had no meritorious claims that Kuehn could have saved.

Alleging ineffective assistance of direct appeal counsel may relax the forfeiture bar and allow a postconviction court to reach the merits of otherwise defaulted claims. *See Williams*, 2024 IL 127304, ¶ 20. To advance the underlying claim, a petitioner must satisfy *Strickland* by showing "both that appellate counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability that the appeal would have been successful." *English*, 2013 IL 112890 ¶ 33. Overcoming the forfeiture bar by alleging ineffective assistance of appellate counsel thus turns on the merits of the underlying claims. *Williams*, 2024 IL 127304, ¶ 22.

Accordingly, to show Kuehn provided unreasonable assistance by failing to allege in the postconviction petition his own ineffectiveness on

direct appeal, petitioner must demonstrate that his underlying ineffective-assistance-of-trial-counsel claims were meritorious. That is, petitioner must show that, had Kuehn raised these claims on direct appeal, they would have succeeded. *See Williams*, 2024 IL 127304, ¶ 22. As discussed, petitioner has forfeited the merits of his ineffective-assistance-of-trial-counsel claims in this Court. *See supra* Part I; *see also* Pet'r Br. 22-26. He therefore forfeits any argument that his ineffective-assistance-of-trial-counsel claims would have succeeded on direct appeal, even if Kuehn had raised them in that procedural posture. *See Dabbs*, 239 Ill. 2d at 294 (citing S. Ct. R. 341(h)(7)).

Moreover, petitioner's ineffective-assistance-of-trial-counsel claims would have failed on direct review. As explained in Section I.A, *supra*, petitioner cannot bear his burden to show that trial counsel was ineffective for not moving to suppress the recorded interview (claim 1) or not pursuing radiocarbon dating the bone fragments before stipulating to the admission of DNA test results (claim 2). Accordingly, counsel on direct appeal was not ineffective for failing to raise these claims. *See Williams*, 2024 IL 127304, ¶ 22

Claims 3 through 7 likewise fail both *Strickland* prongs. First, petitioner fails to show that trial counsel performed deficiently by not investigating and presenting evidence from the parking lot witnesses (claim 3), an independent fingerprint expert (claim 6), or the journalist's unknown source (claim 7) because the additional evidence, as presented, adds no value

to his case. *See Steidl*, 177 Ill. 2d at 256. Other than Cathers's affidavit, *see* C1019-20, petitioner provides no affidavits to show what the proposed additional witnesses would have testified to, *see* C906-09, 910-11. He merely speculates that the additional witnesses' testimony would have bolstered his defense strategy that he was not the man in the parking lot. *See id.* And Cathers's affidavit shows she would have testified consistently with her trial testimony, C908-09, 1019-20, adding nothing to the defense. Because petitioner fails to show how this speculative additional evidence would have helped his defense, trial counsel did not perform deficiently by failing to elicit and present evidence from other witnesses. *See Steidl*, 177 Ill. 2d at 256.

Furthermore, petitioner fails to overcome the strong presumption that counsel's decisions not to emphasize the lack of DNA evidence against petitioner (claim 4) or to move for a change of venue (claim 5) were sound trial strategies. *See People v. Guest*, 166 Ill. 2d 381, 394 (1995) ("choice of defense theory is ordinarily a matter of trial strategy, and counsel has the ultimate authority to decide this trial strategy" which is generally unreviewable); *see also* C1016-17 (petitioner's mother's affidavit shows counsel explained that not moving to change venue was strategic). Moreover, petitioner fails to show that any of these decisions prejudiced him. None of the alternative courses of conduct are likely to have changed the trial's outcome because all direct and circumstantial evidence against petitioner

would have remained just as strong. *See* Section I.A.1, 2 *supra*; *Keys*, 2025 IL 130110, ¶ 59.

And because these ineffective-assistance-of-trial-counsel claims would have failed, Kuehn was not ineffective on direct appeal for failing to raise them. *See Williams*, 2024 IL 127304, ¶ 22. Therefore, petitioner did not lose any meritorious postconviction claims because of Kuehn's decision not to allege his own ineffectiveness on direct appeal.

In sum, petitioner cannot demonstrate that postconviction counsel provided unreasonable assistance, and he is accordingly not entitled to a remand for further postconviction proceedings.

CONCLUSION

For these reasons, the People respectfully request that this Court affirm the appellate court's judgment.

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 44 pages.

/s/ Lauren E. Schneider
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SUPPLEMENTAL APPENDIX

Illinois Official Reports

Appellate Court

People v. Carroll, 2024 IL App (4th) 231207

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROGER W. CARROLL JR., Defendant-Appellant.
District & No.	Fourth District No. 4-23-1207
Filed	November 25, 2024
Decision Under Review	Appeal from the Circuit Court of Jersey County, No. 18-CF-68; the Hon. Allison Lorton, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Erin K. Conner, of Kuehn, Beasley & Young, P.C., of Belleville, for appellant. Ben Goetten, State's Attorney, of Jerseyville (Patrick Delfino, David J. Robinson, and Connor Goetten, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE DeARMOND delivered the judgment of the court, with opinion. Justices Lannerd and Knecht concurred in the judgment and opinion.

OPINION

¶ 1 In March 2020, a jury found defendant, Roger W. Carroll Jr., guilty of first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2010)) and found he personally discharged a firearm (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)) in connection with the disappearance of Bonnie Woodward (Woodward). Defendant retained new counsel for posttrial motions, who presented claims of ineffective assistance of trial counsel. Posttrial counsel then represented defendant on direct appeal, again raising issues of ineffective trial counsel. This court affirmed. *People v. Carroll*, 2021 IL App (4th) 200491-U, ¶ 94. In June 2022, posttrial counsel filed a petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2022)), raising additional issues of ineffective assistance of trial counsel. However, posttrial counsel did not allege he rendered ineffective assistance as appellate counsel.

¶ 2 The trial court dismissed the petition at the second stage, finding two claims lacked merit and the others were forfeited because they could have been raised on direct appeal. Defendant appeals with new counsel, who now argues (1) the court erred in failing to advance two claims to third-stage proceedings; (2) postconviction counsel labored under an actual conflict of interest when, in his representation of defendant as postconviction counsel, he did not allege his own ineffective assistance as appellate counsel for failing to raise the forfeited issues on direct appeal, necessitating a remand without consideration of the merits of the underlying claims; and (3) postconviction counsel provided unreasonable assistance in failing to properly present defendant's claims, requiring an automatic remand for new second-stage proceedings with new counsel. We affirm.

¶ 3 ### I. BACKGROUND

¶ 4 In April 2018, the State filed an information charging defendant with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2010)), one count of concealment of a homicidal death (720 ILCS 5/9-3.4(a) (West 2010)), and one count of aggravated kidnapping (720 ILCS 5/10-2(a)(3) (2010)). The aggravated kidnapping and concealment of a homicidal death counts were eventually dismissed before the verdict. Defendant was represented at trial by attorneys Scott Snider and David Fahrenkamp. The facts of the underlying case are found in *Carroll*, 2021 IL App (4th) 200491-U, and have been repeated here where necessary to address the issues raised on appeal.

¶ 5 In his opening statement, defense counsel asserted the evidence would show "holes" in the State's case, including the lack of any identification of defendant near Woodward's workplace, a failure to show when fingerprints might get placed on a vehicle, and the lack of deoxyribonucleic acid (DNA) connecting defendant to bone fragments found on his property. Defense counsel also stated defendant's son, Nathan Carroll (Nathan), would not be found credible.

¶ 6 Nathan, who was 25 years old at the time of trial, testified he was 16 when Woodward disappeared. Nathan testified before grand jury proceedings and at trial under a grant of immunity. Nathan said he knew Woodward's stepdaughter, Heather Woodward (Heather), through a church group. In June 2010, Heather ran away from Woodward's home, and defendant offered to have Heather live with them until she was 18 and able to be on her own. Nathan said he never met Woodward, but defendant told him she "was a bad person," who was

"mean and aggressive and abusive" to Heather. Nathan testified defendant told him Woodward "needed to go away and never come back."

¶ 7 When the family was vacationing with in-laws in late June 2010, defendant told Nathan that Woodward "needed to die." Nathan attempted to talk defendant out of doing anything, but eventually, at defendant's direction, Nathan and defendant returned to their property in Jerseyville, Illinois, a day earlier than defendant's wife, Monica Carroll (Monica), and Heather, who had accompanied them on the trip. Nathan said, once they arrived, defendant drove to Woodward's workplace at a nursing home, pointed at her truck, and said, "[G]ood she is working today." Nathan testified defendant was familiar with Woodward's work schedule because he asked Heather what time Woodward would typically arrive and leave for work.

¶ 8 Nathan said, once defendant arrived home from the trip, defendant showered, shaved, dressed, loaded his gun, and said, "[T]his has gotta happen whether you like it or not," before leaving. In preparation, Nathan erected a tent away from the house with the idea that defendant would tell Woodward that Heather was staying inside the tent to lure Woodward inside.

¶ 9 Nathan testified he heard eight or nine gunshots from an area behind the garage after defendant returned. When he walked outside through the garage, he saw the lower part of human legs wearing tan "scrub pants." Defendant told him "not to go back there because it's ugly." Nathan saw defendant start up a tractor, scoop a body up in the front loader, and dump the body in a large brush fire previously lit by Nathan. According to Nathan, when defendant showed him Woodward's cell phone, Nathan took it, smashed it with a hammer, put it in a plastic bag, and threw it on the fire. Nathan and defendant both mowed the grass everywhere Woodward's body had been and continually stoked the fire for several days.

¶ 10 After the fire burned out, defendant scooped up the remains with the tractor and dumped them in the creek. Nathan testified defendant talked about the murder "[a]lmost nightly for a couple years," constantly telling Nathan not to talk to police and to delete text messages from Monica, which she later described as having been sent on the day Nathan and defendant returned home from vacation early, inquiring about what they were doing. Nathan said defendant told him he had placed his arm on Woodward's truck. Nathan testified defendant had previously killed two dogs on the property.

¶ 11 Nathan testified he lied when first called to testify at the grand jury because he wanted to protect his father. During the course of his testimony before the grand jury, the prosecutor advised him his grant of immunity was in jeopardy if he failed to tell the truth. After speaking with his attorney, Nathan said he then began telling the truth about his and defendant's involvement in the murder and the disposal of Woodward's remains. Over defense counsel's objection, Nathan testified he received threats from family members after his grand jury testimony, and most of his father's family refused to speak with him.

¶ 12 James David Brand, defendant's brother-in-law, testified he saw newspaper articles about Woodward's disappearance. Based on a description of the person suspected in the disappearance and the vehicle that person drove, Brand called the police and told them it looked like defendant was involved in the disappearance.

¶ 13 Scott Golike testified that, in 2010, he was chief of detectives with the Alton Police Department and oversaw the investigation into Woodward's disappearance. He testified about the various circumstances that led authorities to become suspicious about the unexplained disappearance of Woodward in 2010. Those included her unexplained absence from work, conversations with friends and family, and the fact her truck was found in her workplace

parking lot, apparently abandoned, with the doors locked and windows down. Several employees said they observed an interaction between an unknown man and Woodward in the parking lot sometime before she disappeared. Based on descriptions of the man and the vehicle he appeared to be driving, which matched defendant and his vehicle, defendant became a suspect approximately one month after Woodward's disappearance.

¶ 14 On July 5, 2010, Golike spoke with defendant at his home. Defendant was cooperative, spoke to Golike voluntarily, and consented to a search of his home. He also allowed his car to be towed to the Alton Police Department to be searched. Defense counsel emphasized those points on cross-examination. On September 29, 2010, a search warrant was executed on defendant's property, and investigators seized firearms and ammunition. However, the case went cold until March 2018, when defendant's neighbor contacted Golike, prompting him to contact Detective Nick Manns about a then pending domestic battery investigation involving defendant.

¶ 15 Golike laid the foundation for the admission of a redacted version of defendant's September 29, 2018, interview with police. The record shows defense counsel asked the State before trial to redact references in the interview to the use of cadaver dogs "hitting" on things on defendant's property, and the State agreed to do so.

¶ 16 Golike testified he placed defendant in his squad car and spoke with him for about three hours. He then transported defendant to the police station to "memorialize" and record the conversation that occurred in the squad car. The recording of that interview was admitted into evidence but has not been included in the record on appeal. However, the court reporter's transcript of the interview as it was played for the jury is in the record on appeal.

¶ 17 At the beginning of the recorded interview, the following colloquy occurred:

> "MR. GOLIKE: Okay but as far as this morning, um, (inaudible) we we came out, um, you didn't know your (inaudible)…helicopter and airplane, I guess. Um, did you (inaudible) left and then you guys left, um, you (inaudible) I just want to make sure for my notes that I got this, uh, (inaudible) but I contacted ya we took you up to the (inaudible) let you know your *Miranda* rights [(see *Miranda v. Arizona*, 384 U.S. 436 (1966))] we went over and then we got basically just walked you through (inaudible) you're you're account basically I read you you're *Miranda* earlier and we went over that basically (inaudible) with Nathan and you, um, stayed on your property 'til you guys went to dinner somewhere that day means that roughly by (inaudible), um, you don't recall anytime you went to Alton at all on that day and your grey car was there on that day but you guys brought the En Envoy and the boat back.
>
> [DEFENDANT]: Yeah."

¶ 18 During the interview, Golike asked questions affirming defendant's reported lack of contact with Woodward. For example, the following colloquy occurred:

> "MR. GOLIKE: Okay. No (inaudible). Okay. You ever been in an argument with [Woodward]? She's never been in any of your vehicles?
>
> [DEFENDANT]: That's correct.
>
> MR. GOLIKE: She's never been in (inaudible).
>
> [DEFENDANT]: No.
>
> MR. GOLIKE: Okay. Um, she's never been in your Envoy? And you've never been in her vehicle, right?

[DEFENDANT]: (Inaudible).

MR. GOLIKE: And you've never had the occasion to handle her vehicle or touch her vehicle?

[DEFENDANT]: That's correct."

Golike also asked, "But really [your] association with [Woodward] is almost nonexistent according to you, right? [You] have met Heather almost a year ago [through] church." Defendant responded, "Right." When asked if anyone in his family ever accused him of involvement in Woodward's disappearance, defendant stated his mother and brother-in-law had and said, "Well, anyway you know my mom she's like oh my gosh did you do this? I'm like, no, you know I didn't do it. Just…(inaudible)."

¶ 19 At another point in the interview, Golike summed it up in part as follows:

"MR. GOLIKE: Um, okay. So, that's that's pretty much that's pretty much the story and, um, and not to beat a dead horse but just to cover the whole thing you (inaudible) we're out (inaudible) she is not on your property. She's not in your garage. She's not been in your kitchen in your house, any of your cars and and vice versa. You never been in her car and you ain't been in her house and we've I think we've (inaudible). Um, you've had no contact with (inaudible) and she's had no (inaudible) contact with you or your property?"

¶ 20 Overall, defendant denied ever speaking with Woodward, having a disagreement with Woodward, or being around, handling, or touching her vehicle. He explained why Heather was at his home and her relationship with Nathan. Golike asked a number of questions about Nathan that were probative of his possible involvement in Woodward's disappearance. Defendant did not implicate Nathan in the crime and instead said he did not think Nathan held any grudges against Woodward.

¶ 21 Toward the end of the interview, Golike asked, "Any chance your fingerprints would be on [Woodward's] car on the driver's door? Like all over it. (inaudible). No chance?" Defendant stated, "[N]o, there's no way that my fingerprints are on that car door or my DNA is on the car door (inaudible)." Defendant voluntarily provided a DNA sample. After Golike made statements indicating he believed defendant killed Woodward and asking defendant to tell him where the body was, defendant said, "[T]rying to be cooperative." Defendant also said, "[A]nd you know I was instructed by the attorney's not to say anything and maybe that's why I (inaudible). Just shut my yap and just, you know, not say anything." There were references made to "booking" defendant, and he said, "So, when do I get to talk to my attorney?" Golike told him he could do so and asked, "You want to do that?" Defendant responded, "Well, (inaudible)," and the video then ended.

¶ 22 Manns, a detective with the Jersey County Sheriff's Office, testified that, in March 2018, he received a report of defendant committing a domestic battery against Monica and viewed photographs of her injuries. A police search for defendant in the Jerseyville area was unfruitful. Manns, being familiar with the area, drove by defendant's home after his shift, and he found defendant lying unconscious in a wooded area far off the road. Found on defendant were a bag of syringes and insulin, which defendant later admitted using, intending to commit suicide because "he hurt his wife bad." While investigating the domestic battery, Manns learned from Golike defendant was suspected in Woodward's disappearance 10 years earlier.

¶ 23 The State presented testimony from several family members and friends of Woodward, who said the last time they saw or heard from her was the day she disappeared. They also said she had engaged in no online activity or financial transactions since that day.

¶ 24 The State called witnesses from Woodward's workplace, who testified about seeing her in the employee parking lot on June 25, 2010. April Cathers testified she saw a man in the parking lot and indicated his hands were on the driver's side door of Woodward's truck. Cathers gave a general description of the man. When asked to describe his height, she said, "He wasn't that tall," and "maybe 5 foot 7 maybe 5 foot 6 somewhere around there." She was unable to identify the man in a photo lineup.

¶ 25 Another coworker, Wanda Bausily, testified, as she was leaving work on that day, she saw a man standing next to Woodward's truck and saw his face. As she drove away, she saw Woodward and the man standing next to a silver four-door car. She identified defendant in court as the man she saw that day. She explained she was unable to pick him out of the photo lineup in 2010 because, as she recalled, the men's pictures contained more facial hair. When shown a copy of what was represented to be the same lineup, she did not believe it was the same one shown to her before.

¶ 26 Bausily stated she got a good look at defendant's face and was only 10 feet away from him at one point. On cross-examination, she testified the state's attorney showed her a photograph of defendant in preparation for her testimony. She also said she had seen defendant on social media over the past 10 years because Woodward's disappearance had been in the news. However, she insisted she accurately remembered defendant from when she saw him with Woodward.

¶ 27 Monica testified she and defendant were in the process of getting divorced. Upon returning to Jerseyville from vacation in June 2010, she saw a large brushfire, which burned continuously for six or seven days while being repeatedly stoked by defendant and Nathan. She also saw both of them use the tractor to scoop up the ashes from the brushfire and take them down over the hill to the creek. When she was asked about the domestic violence incident in March 2018, she said she was preparing to leave for work one morning when defendant suddenly grabbed her by the hair and struck her in the head, neck, and across the face 10 or 12 times with a Taser. Defendant told Monica he "had killed for [her]," and he was a monster. He admitted to Monica he used to be able to control his anger, "but he couldn't anymore." Monica said she was able to convince defendant to let her leave, and she immediately drove to the Jersey County Sheriff's Office to report the incident.

¶ 28 The State presented evidence about the multiday search and excavation of defendant's property in April 2018 to attempt to find Woodward's body. A 9-millimeter cartridge, shell casing, and projectile were located within the area where Woodward was purportedly murdered. Throughout the excavation of defendant's property, the search team located over 25 bone fragments. Forensic scientists with the Illinois State Police testified the projectile and shell casing had been fired from a Stoeger handgun taken from defendant's residence.

¶ 29 The parties entered a stipulation concerning bone fragments found in a "burn pit" on defendant's property. Under the stipulation, 10 bones were taken from "quadrant one" and 15 from "quadrant two." An expert determined two fragments taken from quadrant one could not be excluded as having human origin. A Federal Bureau of Investigation (FBI) report determined DNA testing on two bone fragments tested from quadrant two did not belong to

Woodward. The stipulation indicated DNA testing could not be conducted on the remaining bone fragments.

¶ 30 Matthew Davis, a forensic anthropologist and archeologist, testified some of the bone fragments had been subjected to "extreme burning" and were consistent with "incomplete cremation." Although some fragments were found to contain DNA, it did not match that of Woodward. Davis also concluded from finding bone fragments in different locations on defendant's property that they were scattered across the ground surface, working their way into the ground over time.

¶ 31 A research botanist for the United States Department of Agriculture Forest Service testified he received samples from a tree located near the location of the brushfire. After analyzing the tree rings in the samples provided, his opinion was the tree experienced a traumatic event during the wood growth season of 2010.

¶ 32 Amy Hart, a forensic scientist, testified about fingerprints found on Woodward's truck. She testified a fingerprint and palmprint located on Woodward's truck door matched defendant's fingerprint card. Defense counsel objected to the testimony. On cross-examination, defense counsel asked questions of Hart aimed at attacking the reliability of the fingerprint analysis.

¶ 33 Before the State rested its case, the parties stipulated, after defendant's laptop was seized, the term "Bonnie" was found several hundred times after June 25, 2010. However, "Bonnie" appeared zero times on the hard drive before her disappearance date of June 25, 2010.

¶ 34 During closing arguments, the State played portions of Golike's interview with defendant to argue he appeared guilty when explaining his denial of involvement in Woodward's disappearance. Regarding the bone fragments, the State told the jury, "He burnt her for days and he made it impossible for DNA to be extracted from all those bone fragments."

¶ 35 Defense counsel focused on defects in the evidence, including the testimony of eyewitnesses who saw Woodward talking to a man outside of her place of employment, and emphasized testimony saying the man was approximately five feet, seven inches, tall when defendant was over six feet tall. Counsel also argued Nathan's testimony was not credible. Counsel repeatedly noted the absence of DNA evidence and argued its absence should be more persuasive than the testimony of witnesses whom he contended were motivated to lie.

¶ 36 The jury found defendant guilty of first degree murder and found the statutory enhancement for personally discharging a firearm causing death was proved. After trial, attorney Clyde Kuehn entered an appearance as counsel. Snider also remained as counsel. Kuehn filed a motion for a new trial, arguing, in part, defendant did not receive effective assistance of counsel at trial. Among the ineffective assistance claims, Kuehn alleged ineffective assistance when counsel (1) failed object to Bausily's identification of defendant, (2) stipulated to the admissibility of the bone fragment evidence, (3) failed to request additional redactions of Golike's interview with defendant, (4) failed to hire a defense expert on fingerprint identification evidence, and (5) failed to move for a change of venue. The trial court denied the motion. In October 2020, the court sentenced defendant to 40 years in prison, with an additional 25-year enhancement for the use of a firearm. Defendant appealed.

¶ 37 Kuehn represented defendant on appeal. In his appeal, defendant raised several issues, including multiple claims of ineffective assistance of counsel. Among those, defendant alleged ineffective assistance based on trial counsel's (1) stipulation to bone fragment evidence,

(2) failure to object to Bausily's identification of defendant, and (3) failure to seek to further redact portions of Golike's interview with defendant. In particular, defendant argued the bone fragment evidence did not prove anything about Woodward, and the presence of human bone fragments that did not belong to Woodward could lead the jury to speculate defendant was a serial killer. This court affirmed. *Carroll*, 2021 IL App (4th) 200491-U, ¶ 94.

¶ 38 On January 5, 2022, defendant moved for access to the bone fragments in order to perform radiocarbon testing to determine the age of the fragments. The motion was granted. On January 11, 2022, defendant moved for access to the original, unedited video of Golike's interview with him. The parties agreed to continue that motion pending the resolution of a possible postconviction petition.

¶ 39 On June 23, 2022, Kuehn filed a postconviction petition on defendant's behalf, alleging ineffective assistance of trial counsel based on counsel's (1) failure to move to suppress defendant's statements to Golike, alleging defendant was in custody and had asked to speak with his attorney; (2) stipulation to the admission of the bone fragment evidence without having them radiocarbon tested for age before trial; (3) failure to interview witnesses who saw a man by Woodward's truck at her workplace; (4) failure to make the lack of DNA evidence against defendant a central theme of the trial; (5) failure to file a motion to change venue; (6) failure to retain a fingerprint expert to attack the reliability of fingerprint evidence; and (7) failure to interview a news reporter about a source who identified the man in the parking lot of Woodward's workplace as a smoker. The petition noted one of the witnesses at Woodward's workplace had died before trial. Another was never called at trial. Kuehn attached copies of news articles. Kuehn also included affidavits from multiple people, including Cathers, defendant, defendant's mother, the attorney who represented defendant at the time of the interview, and Alexander Cherkinsky, a scientist who performed radiocarbon testing on the bone fragments.

¶ 40 Cherkinsky's affidavit established he was an expert in radiocarbon testing. Cherkinsky determined two bone fragments taken from defendant's property possessed sufficient radiocarbon for testing. Cherkinsky determined a bone fragment from quadrant one more likely than not came from a species that died at or around 1996 to 1998. A bone fragment from quadrant two more likely than not came from a species that died between 1991 and 1994. The affidavit did not establish if the "species" was animal or human.

¶ 41 In his affidavit, defendant averred he was six feet, one inch, tall. He asserted he was asked questions without being given *Miranda* warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) and after he asked to speak with his attorney. He also averred Golike told him his DNA had been found on cigarette butts found in the parking lot of Woodward's workplace, and a news article stated police were looking for a smoker who was seen speaking to Woodward in the parking lot. Defendant averred he was not a smoker. He stated he asked his attorneys before trial to perform radiocarbon testing of bone fragments to determine their age. Defendant also averred he asked his trial counsel to pursue a change of venue, but counsel said they wanted to keep the current trial judge, whom they felt was important to ensure a fair trial. Defendant stated his mother later learned the judge would have traveled with the case to another venue. Defendant also averred defense counsel hired a fingerprint expert, but the expert was never called to testify.

¶ 42 Defendant's mother, Jean Carroll, averred she spoke with defense counsel about substituting the trial court judge and a change of venue, and counsel told her it was too late to

substitute the judge except for cause, and a change of venue could lead to a more conservative judge. She said counsel told her there was no need to test bone fragments because the State's evidence of bone fragments would not be able to be admitted into evidence. She also averred she paid for a fingerprint expert.

¶ 43 Kuehn argued all the issues raised in the postconviction petition involved facts outside of the trial court record that could not have been raised on direct appeal. He did not argue he rendered ineffective assistance of counsel by failing to raise any of the issues on direct appeal. The trial court advanced the petition to the second stage of postconviction proceedings. The State moved to dismiss, arguing defendant forfeited the issues raised because they could have been raised on direct appeal. In the alternative, the State argued the issues lacked merit.

¶ 44 The trial court found issues 3 through 7 relied on information known or readily available to defendant at the time of trial and could have been raised on direct appeal. Thus, the court found them forfeited. Regarding the first two issues, the court found defendant could not establish deficient representation or prejudice. As to counsel's failure to move to suppress defendant's statements, the court found the matter was likely one of trial strategy, in order to allow evidence of defendant's statements of innocence. The court further found, even if the statements were suppressed, the outcome of trial would not have been different. The court next found the results of radiocarbon testing of bone fragments did not refute the findings of the stipulation, they could have been a matter of trial strategy, and they would not have changed the outcome of trial. Accordingly, the court dismissed the petition. The court denied defendant's motion to reconsider.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 On appeal, defendant contends the trial court erred in dismissing his postconviction petition. Specifically, he argues he made a substantial showing of ineffective assistance of trial counsel based on the failure of counsel to file a motion to suppress and obtain radiocarbon testing of the bone fragments. Thus, he seeks third-stage postconviction proceedings on those claims. Regarding the remaining issues, he maintains this court should remand for new second-stage proceedings because Kuehn, when acting as postconviction counsel (1) labored under an actual conflict of interest when he was faced with the obligation to raise his own ineffective assistance as appellate counsel in the postconviction petition to avoid forfeiture of the issues and (2) rendered unreasonable assistance by failing to adequately present defendant's claims. He further contends this court should automatically remand without consideration of the underlying merits of the forfeited claims, especially regarding prejudice.

¶ 48 The Act "provides a mechanism for criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitutions." *People v. Morris*, 236 Ill. 2d 345, 354, 925 N.E.2d 1069, 1075 (2010). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The Act establishes a three-stage process for adjudicating a postconviction petition. *English*, 2013 IL 112890, ¶ 23. At the first stage, the trial court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2022). If the petition is not dismissed at the first stage, it advances to the second stage. 725 ILCS 5/122-2.1(b) (West 2022). At the second stage, the State may file an answer

or move to dismiss the petition. 725 ILCS 5/122-5 (West 2022). A petition may be dismissed at the second stage "only when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *People v. Hall*, 217 Ill. 2d 324, 334, 841 N.E.2d 913, 920 (2005). If a constitutional violation is established, "the petition proceeds to the third stage for an evidentiary hearing." *People v. Harris*, 224 Ill. 2d 115, 126, 862 N.E.2d 960, 967 (2007). In this case, the State filed a motion to dismiss, and the trial court granted that motion. We review the court's second-stage dismissal *de novo*. *People v. Pendleton*, 223 Ill. 2d 458, 473, 861 N.E.2d 999, 1008 (2006).

¶ 49 A. Forfeiture

¶ 50 At the outset, the State argues, not only did defendant forfeit issues 3 through 7 in his postconviction petition by failing to raise them on direct appeal, but he also forfeited the two issues the trial court addressed. We agree.

¶ 51 The purpose of a postconviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal. *People v. Harris*, 206 Ill. 2d 1, 12, 794 N.E.2d 314, 323 (2002). Issues that were raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised on direct appeal, but were not, are forfeited. *People v. Ligon*, 239 Ill. 2d 94, 103, 940 N.E.2d 1067, 1073 (2010). The doctrines of *res judicata* and forfeiture are relaxed where fundamental fairness requires, the forfeiture stems from the ineffective assistance of appellate counsel, or the facts relating to the issue do not appear on the face of the original appellate record. *People v. Williams*, 209 Ill. 2d 227, 233, 807 N.E.2d 448, 452 (2004). However, while the doctrine of forfeiture does not bar consideration of an issue where the forfeiture stems from the incompetency of counsel on appeal, a claim of ineffective assistance of appellate counsel must appear in the postconviction petition. *People v. Lacy*, 407 Ill. App. 3d 442, 461, 943 N.E.2d 303, 320 (2011).

¶ 52 Defendant suggests we may not find forfeiture of the issues when the trial court did not do so. However, our review of the matter is *de novo*. *Pendleton*, 223 Ill. 2d at 473. Further, the State may argue any point in support of the judgment on appeal, even though not directly ruled on by the trial court, when the factual basis for such point was before the trial court. *People v. Rajagopal*, 381 Ill. App. 3d 326, 329, 885 N.E.2d 1152, 1155 (2008). "Moreover, it is well settled that we review the judgment of the trial court, not its reasoning." *Rajagopal*, 381 Ill. App. 3d at 329. "Accordingly, we may affirm the judgment below on any basis supported by the record, even if that basis was rejected by the trial court." *Rajagopal*, 381 Ill. App. 3d at 329.

¶ 53 Here, regarding the failure of counsel to file a motion to suppress, defendant argued in his postconviction petition the interview showed he was in custody, and he alleged he was not properly given *Miranda* warnings and asked to speak to his attorney. See *Miranda*, 384 U.S. at 478-79. He also alleged counsel failed to challenge the process by which the statements were obtained, recorded, and played to the jury. All of those were facts derived from the record or were known by defendant, and thus available to counsel on direct appeal. However, on direct appeal, when Kuehn raised the issue of the interview, instead of arguing trial counsel should have moved to suppress the evidence, he instead argued counsel was ineffective for failing to redact portions of it.

¶ 54 This court has previously explained, " '[w]aiver is the intentional relinquishment of a known right, whereas forfeiture is the failure to make a timely assertion of a known right.' " *People v. Scott*, 2015 IL App (4th) 130222, ¶ 21, 25 N.E.3d 1257 (quoting *People v. Bowens*, 407 Ill. App. 3d 1094, 1098, 943 N.E.2d 1249, 1256 (2011)). The forfeiture exception based on facts outside of the original appellate record is not an invitation for defendants to present incomplete claims at trial, sit back, and if they are unsuccessful, raise the "new" facts in a postconviction petition. *People v. Mabrey*, 2016 IL App (1st) 141359, ¶ 40, 68 N.E.3d 423.

¶ 55 Defendant had the opportunity to raise arguments regarding the interview on direct appeal and actually did so, but chose not to argue trial counsel should have filed a motion to suppress, thereby forfeiting the argument. Thus, defendant's claim is most reasonably construed as directed at appellate counsel for failing to raise the issue on direct appeal. See *People v. Campbell*, 2023 IL App (4th) 220652-U, ¶ 25.

¶ 56 As to radiocarbon testing of the bone fragments, on direct appeal, this court rejected defendant's argument trial counsel was ineffective for stipulating to the bone fragment evidence. *Carroll*, 2021 IL App (4th) 200491-U, ¶¶ 71-73. In his postconviction petition, defendant alleged trial counsel was ineffective for stipulating to the evidence without having the bone fragments radiocarbon tested. He argues that is a "new" fact outside of the record because he sought the testing after the direct appeal was decided. But that simply relates back to the facts known at trial and in the record. Indeed, in his postconviction petition, defendant stated he asked trial counsel to test the bone fragments for their age, thus admitting knowledge of the potential for such testing at the time of trial. "A defendant cannot avoid the bar of *res judicata* by simply rephrasing issues previously addressed on direct appeal." *People v. Kimble*, 348 Ill. App. 3d 1031, 1034, 811 N.E.2d 346, 349 (2004). Ultimately, the issue of trial counsel's stipulation has been decided and is *res judicata*. To the extent alternate arguments concerning the matter were not raised on direct appeal, they are forfeited.

¶ 57 Forfeiture aside, regarding defendant's claim he received unreasonable assistance from postconviction counsel for failing to raise the issues on direct appeal, we determine defendant also failed to make a substantial showing of a constitutional violation because the forfeited claims would have lacked merit had they been raised on direct appeal.

¶ 58 B. Unreasonable Assistance of Postconviction Counsel

¶ 59 Defendant argues Kuehn, acting as postconviction counsel, rendered unreasonable assistance by failing to raise the forfeited claims on direct appeal. In doing so, defendant seeks a remand without any consideration of the merits of the underlying claims because Kuehn (1) failed to adequately present defendant's claims and (2) labored under an actual conflict of interest when he was faced with the obligation to raise his own ineffective assistance as appellate counsel in the postconviction petition to avoid forfeiture of the issues. We first address whether defendant is entitled to a remand without an analysis of the merits of his claims.

¶ 60 1. *Failure to Properly Present the Claims*

¶ 61 Defendant first argues, aside from any conflict of interest, Kuehn provided unreasonable assistance as postconviction counsel by failing to adequately present defendant's claims, including failing to present sufficient factual information. In doing so, defendant cites Illinois Supreme Court Rule 651(c) (eff. July 1, 2017), a provision pertaining to appointed counsel,

and suggests we should remand for new second-stage proceedings without consideration of the merits of the claims. See *People v. Suarez*, 224 Ill. 2d 37, 47, 862 N.E.2d 977, 982 (2007) (holding where appointed counsel has not complied with Rule 651(c), a remand is required regardless of whether the petition's claims have any merit).

¶ 62 We first note criminal defendants have no constitutional right to postconviction counsel. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *People v. Moore*, 189 Ill. 2d 521, 541, 727 N.E.2d 348, 358 (2000). Nonetheless, our supreme court "has long held that, at the second and third stages of postconviction proceedings, defendants are entitled to a 'reasonable' level of attorney assistance." *People v. Johnson*, 2018 IL 122227, ¶ 16, 123 N.E.3d 1083.

¶ 63 In *People v. Zareski*, 2017 IL App (1st) 150836, ¶ 51, 84 N.E.3d 527, the First District held that, when the initial petition is filed by retained counsel, Rule 651(c) does not apply, and retained counsel's performance is governed by a general standard of reasonable assistance that does not incorporate the requirements of Rule 651(c). See *People v. Cotto*, 2016 IL 119006, ¶ 41, 51 N.E.3d 802. Thus, an "automatic-remand rule" does not apply where retained counsel files the initial postconviction petition. *Zareski*, 2017 IL App (1st) 150836, ¶ 55. Instead, the court in *Zareski* adopted a "*Strickland*-like analysis" (see *Strickland v. Washington*, 466 U.S. 668 (1984)), which requires an evaluation of prejudice to determine whether reasonable assistance was provided by counsel. *Zareski*, 2017 IL App (1st) 150836, ¶ 59. This court agreed with that view in *People v. Perez*, 2023 IL App (4th) 220280, ¶¶ 40-57, 233 N.E.3d 334, and found no conflict between *Zareski* and subsequent Illinois Supreme Court decisions. This court held, "Where Rule 651(c) does not apply, to justify a remand on a claim of unreasonable assistance, a defendant must identify some meritorious postconviction claim that he or she lost due to counsel's conduct." *Perez*, 2023 IL App (4th) 220280, ¶ 54. "In other words, had counsel done the things the defendant claims should have been done *** the postconviction proceedings would have advanced to the next stage or the trial court would have granted the defendant postconviction relief." *Perez*, 2023 IL App (4th) 220280, ¶ 54.

¶ 64 We continue to adhere to our decision in *Perez* and will not remand without consideration of the merits of defendant's claims within the framework of the "*Strickland*-like analysis" mentioned above. As a result, defendant must show how he was prejudiced by the claimed errors of counsel. See *Zareski*, 2017 IL App (1st) 150836, ¶ 61 (finding if a potential claim had no merit, the defendant could not receive postconviction relief on that claim, regardless of whether postconviction counsel should have presented it earlier, better, or at all).

¶ 65 We note defendant also asks that we adopt the view from *People v. Williams*, 2023 IL App (5th) 220185-U, ¶ 21, and *People v. Johnson*, 2022 IL App (1st) 190258-U, ¶¶ 33-43, which departed from *Zareski* and remanded when a lack of prejudice could not be determined from the record due to postconviction counsel's failure to properly shape the defendant's claims or include proper support for the claims. Given our decision in *Perez*, we decline to do so. Further, we find those cases inapplicable here because we are able to determine defendant's underlying claims lack merit aside from any failures of counsel to attach affidavits or properly shape defendant's claims.

¶ 66 2. *Actual Conflict of Interest*

¶ 67 Defendant next argues, under the recent Second District case of *People v. Janusz*, 2024 IL App (2d) 220348, 240 N.E.3d 82, an automatic remand is required because Kuehn was laboring under an actual conflict of interest. The State, however, argues this court should follow the

approach of the First District in *Zareski*, which, aside from holding Rule 651(c) did not apply, examined the underlying merits of forfeited claims to determine whether an actual conflict of interest occurred.

¶ 68 "A criminal defendant's sixth amendment right to the effective assistance of counsel includes the right to conflict-free representation." *People v. Peterson*, 2017 IL 120331, ¶ 102, 106 N.E.3d 944. "Such representation means 'assistance by an attorney whose allegiance to his client is not diluted by conflicting interests or inconsistent obligations.' " *Peterson*, 2017 IL 120331, ¶ 102 (quoting *People v. Spreitzer*, 123 Ill. 2d 1, 13-14, 525 N.E.2d 30, 34 (1988)). "Two categories of conflict of interest exist: *per se* and actual." *Peterson*, 2017 IL 120331, ¶ 102. Defendant here does not raise a *per se* conflict of interest. Instead, he argues only an actual conflict of interest.

¶ 69 When a defendant cannot establish the existence of a *per se* conflict of interest, he or she must show the existence of an actual conflict to obtain a reversal of his or her conviction. *Peterson*, 2017 IL 120331, ¶ 105. "To succeed on an actual conflict-of-interest claim, the defendant must establish that the conflict adversely affected counsel's performance." *Peterson*, 2017 IL 120331, ¶ 105. The First District has held "an actual conflict does not result in an automatic reversal, as a defendant must show some specific defect in his counsel's strategy, tactics, or decision making attributable to the conflict." *People v. Zirko*, 2021 IL App (1st) 162956, ¶ 22, 196 N.E.3d 1131. "To establish an actual conflict, a defendant must do more than proffer speculative allegations and conclusory statements." *Zirko*, 2021 IL App (1st) 162956, ¶ 22.

¶ 70 In *Zareski*, a jury convicted the defendant of first degree murder, and the trial court sentenced him to 24 years' imprisonment. The defendant retained new counsel, Scott Frankel, to represent him during the posttrial proceedings. In the defendant's posttrial motion, Frankel raised several claims asserting trial counsel provided ineffective assistance. Frankel also represented the defendant on direct appeal, again raising claims of ineffective assistance of trial counsel. The appellate court affirmed. *Zareski*, 2017 IL App (1st) 150836, ¶¶ 1, 24. Later, while still retained by defendant, Frankel filed a postconviction petition, claiming in part ineffective assistance of trial counsel. *Zareski*, 2017 IL App (1st) 150836, ¶¶ 26-27. That petition raised a new claim that was not raised on direct appeal. Frankel did not claim he rendered ineffective assistance by failing to raise that claim on direct appeal. The trial court advanced the petition to the second stage, and the State moved to dismiss the petition. *Zareski*, 2017 IL App (1st) 150836, ¶¶ 28, 32. The court granted the motion. *Zareski*, 2017 IL App (1st) 150836, ¶ 28.

¶ 71 On appeal, the defendant contended Frankel labored under a conflict of interest and failed to provide reasonable assistance by omitting certain claims and presenting others deficiently. *Zareski*, 2017 IL App (1st) 150836, ¶¶ 3-4. The appellate court disagreed. Regarding the omitted claim of ineffective assistance of appellate counsel, the First District considered whether prejudice was an element of such a claim.

¶ 72 The *Zareski* court first noted, when evaluating an actual conflict of interest, instead of obtaining an automatic reversal, a defendant must show a specific defect in his counsel's strategy, tactics, or decision making attributable to the conflict. *Zareski*, 2017 IL App (1st) 150836, ¶ 38. While the court noted cases that held a defendant, in instances involving an actual conflict, was not required to prove the conflict contributed to his conviction, it also observed the defendant was required to offer more than speculative or conclusory statements

to show counsel's performance was affected by the conflict. *Zareski*, 2017 IL App (1st) 150836, ¶ 38. The court agreed with the State's argument that, to make such a determination, it must look beyond the mere fact of counsel's failure to raise his or her own ineffectiveness as appellate counsel to avoid forfeiture. *Zareski*, 2017 IL App (1st) 150836, ¶ 39. Instead, the court held a "layered approach to review an attorney's performance makes the most sense." *Zareski*, 2017 IL App (1st) 150836, ¶ 39. The court further reasoned, "For instance, when a defendant claims that direct appeal counsel was ineffective for failing to raise a claim, we examine the underlying claim to determine if that attorney's performance was deficient." *Zareski*, 2017 IL App (1st) 150836, ¶ 39.

¶ 73 The *Zareski* court acknowledged the defendant need not prove "prejudice" in the same sense as a regular ineffective assistance claim but stated it must at least look at the underlying claims to determine if counsel should have raised them. *Zareski*, 2017 IL App (1st) 150836, ¶ 40. Otherwise, the trial court could be forced on remand to evaluate claims that have no chance of success in a new postconviction petition. *Zareski*, 2017 IL App (1st) 150836, ¶ 40. The court noted cases in which courts have applied such an approach in either accepting or rejecting actual conflict of interest claims. *Zareski*, 2017 IL App (1st) 150836, ¶ 40 (citing *People v. Williams*, 139 Ill. 2d 1, 12-14, 563 N.E.2d 431, 436-37 (1990), and *People v. White*, 362 Ill. App. 3d 1056, 1061, 842 N.E.2d 188, 192 (2005)). The court then considered the forfeited claim and found it would not have been successful on direct appeal. Thus, there was no "specific defect" in Frankel's performance when he did not raise the issue on direct appeal. *Zareski*, 2017 IL App (1st) 150836, ¶¶ 38-39, 42.

¶ 74 For similar reasons, aside from an analysis of whether there was a specific defect to show an actual conflict of interest, the court in *Zareski* found that general allegations counsel provided unreasonable assistance for failing to raise claims of his own ineffective assistance would be analyzed using a "*Strickland*-like analysis." *Zareski*, 2017 IL App (1st) 150836, ¶ 59. This court recently agreed with that holding and held, "in order to succeed on a claim postconviction counsel provided unreasonable assistance by failing to raise a particular claim, a defendant must demonstrate that he was prejudiced by the omission." *People v. Schoolcraft*, 2022 IL App (4th) 200601-U, ¶ 41. A defendant does so by establishing the claim has arguable merit and would have survived dismissal if it had been included in the petition. *Schoolcraft*, 2022 IL App (4th) 200601-U, ¶ 41 (citing *Zareski*, 2017 IL App (1st) 150836, ¶ 60). This court agreed with *Zareski* that " '[i]n evaluating the performance of postconviction counsel, whether the petitioner was prejudiced (at a minimum) should be part of the inquiry.' " *Schoolcraft*, 2022 IL App (4th) 200601-U, ¶ 41 (quoting *Zareski*, 2017 IL App (1st) 150836, ¶ 60).

¶ 75 However, in *Janusz*, the Second District took a different approach. There, the defendant was found guilty of multiple offenses. As in *Zareski*, the defendant retained new counsel after the jury verdict, who represented him for the remainder of the trial court proceedings, on direct appeal, and in postconviction proceedings. *Janusz*, 2024 IL App (2d) 220348, ¶¶ 9, 11, 15. Counsel raised a claim of ineffective assistance of trial counsel on direct appeal, and the appellate court affirmed. *Janusz*, 2024 IL App (2d) 220348, ¶ 11. In the postconviction petition, counsel raised new claims of ineffective assistance. The trial court summarily dismissed the petition, finding in part the new claims were forfeited because they could have been raised on direct appeal. *Janusz*, 2024 IL App (2d) 220348, ¶¶ 15-16. The defendant appealed, contending his counsel labored under an actual conflict of interest, owing to counsel's former representation on direct appeal, when counsel would have been required to

plead his own ineffectiveness as appellate counsel to avoid forfeiture of the issues. *Janusz*, 2024 IL App (2d) 220348, ¶ 19.

¶ 76 The Second District agreed and remanded for further proceedings. In doing so, the court rejected the State's argument the defendant's petition failed on the merits. The court reasoned the prejudice required in the context of an actual conflict of interest claim—that is, a specific defect attributable to the alleged conflict—was not the same type of "outcome-centric prejudice" as in a typical ineffective assistance claim or an unreasonable assistance of postconviction counsel claim. *Janusz*, 2024 IL App (2d) 220348, ¶ 25. The court cited cases holding that, in an actual conflict of interest claim, a defendant is not required to prove prejudice in that the conflict contributed to his or her conviction or outcome of the proceeding. *Janusz*, 2024 IL App (2d) 220348, ¶ 25 (citing *People v. Taylor*, 237 Ill. 2d 356, 375-76, 930 N.E.2d 959, 971 (2010), and *People v. Salamie*, 2023 IL App (2d) 220312, ¶ 56, 239 N.E.3d 675).

¶ 77 However, the court also acknowledged another panel of the Second District had examined the merits of a forfeited claim where the defendant alleged unreasonable assistance of postconviction counsel but not a conflict of interest. *Janusz*, 2024 IL App (2d) 220348, ¶ 25 (citing *People v. Delgado*, 2022 IL App (2d) 210008, ¶ 25, 211 N.E.3d 872). The court also recognized *Zareski* had acknowledged the different meaning of "prejudice" in a conflict of interest claim and nevertheless had addressed whether the forfeited claims would have been successful on direct appeal. *Janusz*, 2024 IL App (2d) 220348, ¶ 25 (citing *Zareski*, 2017 IL App (1st) 150836, ¶¶ 40-42). Citing a case involving appointed counsel, the *Janusz* court then stated, "While we recognize that much of the case law on actual conflicts of interest does not involve postconviction counsel laboring under an actual conflict of interest, our supreme court requires that postconviction counsel be as conflict-free as trial counsel when shaping a defendant's postconviction claims." *Janusz*, 2024 IL App (2d) 220348, ¶ 25 (citing *People v. Hardin*, 217 Ill. 2d 289, 300, 840 N.E.2d 1205, 1212-13 (2005)).

¶ 78 The *Janusz* court further reasoned the failure of postconviction counsel to raise ineffective assistance was "a specific defect that itself may amount to unreasonable assistance." *Janusz*, 2024 IL App (2d) 220348, ¶ 28. Citing Rule 651(c) and noting by analogy an appointed counsel's fundamental duty to shape claims into a legally cognizable form at the second stage of proceedings, the court reasoned a defendant should expect the same level of representation from retained counsel, including at the first stage of proceedings. *Janusz*, 2024 IL App (2d) 220348, ¶ 29. The court found pleading ineffective assistance to avoid forfeiture was a "routine amendment" and defendant's petition lacked that routine assertion. *Janusz*, 2024 IL App (2d) 220348, ¶ 31. The court then stated, "In light of the limited context of first-stage proceedings and the recognized reticence to argue one's own ineffectiveness, we conclude that the defect in defendant's first-stage petition was attributable to postconviction counsel's conflict in arguing his own ineffectiveness on direct appeal." *Janusz*, 2024 IL App (2d) 220348, ¶ 31. The court then remanded to allow the defendant to replead the petition and did not address the merits of the claims.

¶ 79 We adhere to *Zareski*. We first note, unlike here, *Janusz* involved the summary dismissal of a postconviction petition at the first stage. Further the reasoning of the *Janusz* court relied in part on a case involving appointed counsel and Rule 651(c). However, as previously discussed, this court in *Perez* specifically adopted the reasoning of *Zareski* and our supreme court in *Cotto*, holding Rule 651(c) is inapplicable in cases involving retained counsel. See

Perez, 2023 IL App (4th) 220280, ¶¶ 40-57. Lastly, the idea counsel would raise an ineffective assistance of counsel claim solely as a tactical means of avoiding forfeiture speaks volumes about the concept of "manufactured" issues on appeal—something we should do nothing to encourage.

¶ 80 We also agree with the reasoning of *Zareski*. To show an actual conflict, a defendant normally is not required to prove "prejudice" in the same sense as an ineffective assistance claim; however, we must at least look at the merits of the underlying claims to determine if counsel should have raised them. See *Zareski*, 2017 IL App (1st) 150836, ¶ 40. Indeed, aside from allegations of an actual conflict of interest, we have previously adopted *Zareski*'s use of a " '*Strickland*-like analysis' " to determine if postconviction counsel provided unreasonable assistance when omitting claims of his or her own ineffective assistance on direct appeal. See *Schoolcraft*, 2022 IL App (4th) 200601-U, ¶¶ 40-41 (quoting *Zareski*, 2017 IL App (1st) 150836, ¶ 59). To allow essentially an automatic reversal when a defendant claims an actual conflict of interest based on postconviction counsel's failure to raise his or her own ineffective assistance on appeal would allow defendants to repackage their unreasonable assistance claims as conflict of interest claims in a manner that could prolong the process and potentially lead to unnecessary proceedings. Much like the conclusion reached by the *Zareski* court regarding *per se* conflicts, an actual "conflict of interest does not exist merely because a defense attorney's competence is questioned by his [or her] client during posttrial proceedings." (Internal quotation marks omitted.) *Zareski*, 2017 IL App (1st) 150836, ¶ 36.

¶ 81 Accordingly, in determining whether a defendant showed some specific defect in his or her counsel's strategy, tactics, or decision making attributable to an actual conflict of interest arising from counsel's failure to allege his or her own ineffective assistance as appellate counsel, we consider whether those claims, had they been asserted, had merit. If defendant was able to make a substantial showing that his underlying forfeited claims had merit, then, likewise, he would have made a substantial showing Kuehn was laboring under actual conflict of interest and was ineffective when he failed to raise the claims on direct appeal.

¶ 82 C. Defendant's Underlying Claims

¶ 83 1. *Motion to Suppress*

¶ 84 Defendant first contends trial counsel was ineffective for failing to move to suppress his statements to Golike. Specifically, defendant argues his statements were presumed inadmissible based on section 103-2.1(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-2.1(b) (West 2022)).

¶ 85 A claim of ineffective assistance of counsel is analyzed under the two-pronged, performance-prejudice test established in *Strickland*, 466 U.S. at 687. *People v. Patterson*, 217 Ill. 2d 407, 438, 841 N.E.2d 889, 907 (2005). To prevail, a defendant must show (1) defense counsel's performance was deficient and (2) the deficient performance prejudiced the defendant to the extent he was deprived of a fair proceeding. *Patterson*, 217 Ill. 2d at 438. A defendant's failure to satisfy either prong of the *Strickland* test prevents a finding of ineffective assistance of counsel. *Patterson*, 217 Ill. 2d at 438. In reviewing a claim of ineffective assistance of counsel, a court must consider defense counsel's performance as a whole and not merely focus upon isolated incidents of conduct. See *People v. Cloyd*, 152 Ill. App. 3d 50, 57, 504 N.E.2d 126, 130 (1987).

¶ 86 A strong presumption exists that defense counsel's conduct was within the wide range of reasonable professional assistance and all decisions were made in the exercise of reasonable professional judgment. *Cloyd*, 152 Ill. App. 3d at 57; *People v. Martin*, 236 Ill. App. 3d 112, 121, 603 N.E.2d 603, 609 (1992). In particular, a defendant must overcome the strong presumption the challenged action or inaction may have been the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 327, 948 N.E.2d 542, 547 (2011). Matters of trial strategy will generally not support a claim of ineffective assistance of counsel, even if defense counsel made a mistake in trial strategy or tactics or made an error in judgment. *Patterson*, 217 Ill. 2d at 441; *People v. Perry*, 224 Ill. 2d 312, 355, 864 N.E.2d 196, 221 (2007). "Only if counsel's trial strategy is so unsound that he entirely fails to conduct meaningful adversarial testing of the State's case will ineffective assistance of counsel be found." *Perry*, 224 Ill. 2d at 355-56.

¶ 87 To establish prejudice, the defendant must prove there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Richardson*, 189 Ill. 2d 401, 411, 727 N.E.2d 362, 369 (2000). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Richardson*, 189 Ill. 2d at 411. The prejudice prong entails more than an "outcome-determinative" test. *Richardson*, 189 Ill. 2d at 411. "The defendant must show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair." *Richardson*, 189 Ill. 2d at 411.

¶ 88 Likewise, claims of ineffective assistance of appellate counsel are governed by the two-pronged test of *Strickland*. *People v. Johnson*, 206 Ill. 2d 348, 378, 794 N.E.2d 294, 312 (2002). Appellate counsel's decision regarding which issues to pursue is generally entitled to substantial deference. *People v. Johnson*, 205 Ill. 2d 381, 406, 793 N.E.2d 591, 606 (2002). Appellate counsel is not required to " 'brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit.' " *Johnson*, 206 Ill. 2d at 378 (quoting *People v. Easley*, 192 Ill. 2d 307, 329, 736 N.E.2d 975, 991 (2000)). Where the underlying issue is nonmeritorious, a defendant suffers no prejudice; therefore, the reviewing court is required to examine the merits of the claims not raised by appellate counsel. *People v. Simms*, 192 Ill. 2d 348, 362, 736 N.E.2d 1092, 1107 (2000).

¶ 89 Section 103-2.1(b) provides in part that an oral statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding unless an electronic recording is made of the custodial interrogation and the recording is substantially accurate and not intentionally altered. 725 ILCS 5/103-2.1(b) (West 2022).

¶ 90 Here, defendant focuses on the lack of recording of his statements made to Golike in the squad car and asserts that makes the later recorded interview inadmissible because those statements were a memorialization of the earlier conversation. However, defendant's statements in the squad car were not introduced at trial. It was defendant's properly recorded interview that was presented to the jury. While Golike characterized the later interview as a memorialization and recording of the earlier conversation, it nevertheless was a new recorded interview with defendant. Because the statements admitted at trial were recorded, they met the requirements of section 103-2.1(b).

¶ 91 Defendant also suggests he made a substantial showing he was not properly given *Miranda* warnings and was questioned after he asked for counsel. See *Miranda*, 384 U.S. at 478-79. However, the record shows defendant agreed when Golike stated *Miranda w*arnings were previously given and defendant did not mention counsel until the end of the interview. In any event, to the extent the affidavits provided from defendant and his counsel may have presented such issues, or to the extent section 103-2.1(b) could be deemed to apply, we also find defendant has failed to overcome the presumption his counsel's decision to forgo filing a motion a suppress was one of trial strategy.

¶ 92 Defendant did not address trial strategy in his postconviction petition, nor does he address it in his brief on appeal. Even in his reply brief, defendant barely addresses the issue, but states counsel could not have had a reasonable strategy for failing to seek to suppress the admission of incriminating statements or prejudicial facts. However, defendant's statements to Golike were generally exculpatory rather than inculpatory. The statements did not indicate defendant committed the charged crimes. Instead, defendant agreed with statements from Golike that defendant was not involved with Woodward's disappearance.

¶ 93 Overall, the defense strategy did not include a claim the statements were involuntary. Instead, the defense noted defendant's cooperation with the police. Such a defense was reasonable. Defense counsel bolstered defendant's case by eliciting testimony defendant was cooperative. Admission of the interview further showed defendant's cooperation and allowed evidence of his exculpatory statements without having defendant testify and be subjected to cross-examination. Meanwhile, counsel successfully sought a redaction of statements from the interview that were prejudicial to defendant. We cannot fault trial counsel's tactical decision to follow that path rather than challenging the voluntariness of the statements.

¶ 94 Because we find defendant failed to show the evidence was inadmissible or, even if it was, failed to overcome the presumption counsel allowed its admission as a matter of strategy, any argument of ineffective assistance of trial counsel would have failed on direct appeal. Accordingly, defendant has failed to demonstrate Kuehn was laboring under an actual conflict of interest or show unreasonable assistance of postconviction counsel for failing to raise the issue.

¶ 95 2. *Bone Fragments*

¶ 96 Defendant next contends trial counsel rendered ineffective assistance by stipulating to bone fragment evidence without first having the fragments radiocarbon tested for age. He argues, had such testing been completed, there was a reasonable probability that the State's bone fragment evidence would have been excluded as irrelevant. As previously discussed, the general issue of the stipulation to bone fragment evidence is *res judicata* because it was raised and decided on direct appeal. However, to the extent defendant could be viewed as raising an issue not available on direct appeal, we also find it lacks merit.

¶ 97 On direct appeal, defendant argued, as he does here, that trial counsel was ineffective for entering the stipulation when the evidence had questionable relevance other than perhaps to suggest he was a serial killer. In his brief on direct appeal, defendant did not provide other cogent arguments or citation to authority for why the bone fragment evidence as a whole was inadmissible or irrelevant. This court determined defendant failed to show counsel's decision to enter the stipulation was not a matter of strategy. In doing so, this court wrote:

> "Barring any likelihood defendant had a competing expert available to refute the findings of the FBI forensic scientist, the fact he may have chosen to minimize the import of bone fragment evidence by stipulating to the ultimate findings is not an unreasonable trial strategy. Defense counsel had two options: allow a seasoned FBI scientist to walk the jury through each excruciatingly macabre detail about the bone fragments and their exposure to heat and charring, thereby keeping the thought of a burning human being in the forefront of their minds for as long as the testimony takes, or read an emotionless stipulation stating sterile facts to the jury in a perfunctory fashion, thereby hoping to minimize the impact. [Citation.] It is also conceivable defense counsel did not want [the expert] highlighting the fact there were dozens of untested bone fragments found on defendant's property, which could not be excluded as coming from Woodward. The stipulation to such evidence was a reasonable trial strategy, defendant's claim of prejudice is speculative at best, and he fails to overcome the 'reasonable trial strategy' presumption." *Carroll*, 2021 IL App (4th) 200491-U, ¶ 73.

¶ 98 Here, defendant again argues the evidence lacked relevance. However, unlike in his direct appeal, defendant cites cases primarily from other jurisdictions to argue the bone fragments would not be admissible unless connected to himself and the crime. He then suggests the radiocarbon testing, which was performed after the direct appeal was decided, shows the State's evidence was irrelevant.

¶ 99 Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Here, the presence of human bone fragments was relevant to a determination a human body had been present on defendant's property. While two fragments were not connected to Woodward's DNA, others that could not be tested could not be excluded as being of human origin. Given Nathan's testimony, evidence of potential human bone fragments in the burn pit was relevant to corroborate his version of events and provide circumstantial evidence of defendant's guilt. We disagree with defendant's claim the evidence lacked relevance.

¶ 100 Meanwhile, Cherkinsky was able to test only two of the many bone fragments. Other fragments could not be excluded as being of human origin, and it was also known that two dogs had been killed on the property on unknown dates. The radiocarbon testing does not refute the fact, based on the stipulation, that Woodward was excluded as the source of two fragments. The reasoning we expressed on direct appeal applies equally here.

¶ 101 As we found on direct appeal, counsel's decision to stipulate to the evidence prevented the State from lengthy testimony highlighting the burning of a human body and the number of fragments that could not be excluded as belonging to Woodward. Defendant also argued unsuccessfully on direct appeal the evidence lacked relevance. Thus, we agree with the State the matter is barred by *res judicata* because we already determined the issue on direct appeal. A postconviction petitioner may not avoid the bar of *res judicata* simply by rephrasing issues previously addressed on direct appeal. See *People v. Franklin*, 167 Ill. 2d 1, 23, 656 N.E.2d 750, 760 (1995); see also *People v. Emerson*, 153 Ill. 2d 100, 106-07, 606 N.E.2d 1123, 1126 (1992) (where defendant's claim of ineffective assistance of counsel is addressed on direct appeal, a similar argument with "changed phraseology" may not be relitigated in postconviction proceedings). To the extent the radiocarbon testing could be viewed as new

facts, we reach the same conclusion we did on direct appeal. The evidence was relevant, and defendant has not overcome the presumption the stipulation was reasonable trial strategy. Any such argument would have failed on direct appeal.

¶ 102 3. *Remaining Claims*

¶ 103 As to the remaining claims, defendant does not argue the claims would have had merit had they been raised on direct appeal. As such, he has forfeited any such arguments. See *People v. McKee*, 2022 IL App (2d) 210624, ¶ 39, 215 N.E.3d 1055 (finding arguments not raised in an opening brief are forfeited). However, forfeiture aside, we find defendant could not show the claims had merit such that Kuehn labored under an actual conflict of interest or rendered ineffective assistance when he failed to raise them on direct appeal.

¶ 104 a. Failure to Interview Witnesses

¶ 105 Regarding counsel's failure to interview witnesses to counter Bausily's testimony, defendant focuses primarily on his height of over six feet, as compared to Cathers's testimony the man she saw was not tall, and the lack of a positive identification by other witnesses. However, the failure of others to identify defendant was shown at trial, and counsel argued defendant's height to the jury. Additionally, the jury heard the conflicting evidence about defendant's height and did not consider it determinative. Meanwhile, Bausily's general testimony was corroborated by her description of seeing defendant with his hand on the door of Woodward's truck, when defendant's handprint and fingerprint were later found there. Her recollection of defendant as clean shaven when she saw him by the truck was corroborated by Nathan's testimony defendant had shaved just before going to Woodward's workplace. This further explained Bausily's confusion with the photo lineup, which included suspects with facial hair. Nathan testified defendant was at Woodward's workplace and subsequently killed her. Defendant's prints were on Woodward's truck, and defendant reportedly told Nathan he had put his arm on the truck while in the parking lot. Given the additional evidence against defendant, we find there is no reasonable probability the trial's outcome would have been different had counsel interviewed the witnesses.

¶ 106 b. DNA and News Report

¶ 107 Defendant next contends trial counsel should have focused on the failure of police to test numerous items in Woodward's truck for his DNA. He also argues counsel should have found the source of a news report that police were looking for a smoker who was seen talking to Woodward. These are less claims of error than matters of trial strategy. Because defendant does not tell us how this newfound trial strategy would have probably changed the outcome of the trial, we view trial counsel's decisions on these matters solely as trial strategy. Twenty/twenty hindsight born from the luxury of time to pore over trial transcripts lends itself to the creation of new defense theories, but that does not necessarily equate to ineffective assistance of trial counsel. Effective assistance of counsel requires competent, not perfect representation. *People v. Hayes*, 2022 IL App (4th) 210409, ¶ 52, 217 N.E.3d 327. Even " '[m]istakes in trial strategy or tactics do not necessarily render counsel's representation defective.' " *Hayes*, 2022 IL App (4th) 210409, ¶ 52 (quoting *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 10, 93 N.E.3d 664). The decision to rely on one theory of defense to the

exclusion of other theories of defense is a matter of trial strategy that is generally immune from claims of ineffective assistance of counsel. *Hayes*, 2022 IL App (4th) 210409, ¶ 52.

¶ 108 Here, as previously noted, defense counsel's theory focused in part on defendant's cooperation with the police and issues with Nathan's credibility. While counsel also focused on "holes" in the State's case, it was reasonable to emphasize the stronger elements of their case rather than raising issues for which other evidence already existed. Defendant was identified by one eyewitness, a vehicle matching the description of his vehicle, and by others, and his own son placed him there. His own brother-in-law told police he thought defendant might have had something to do with Woodward's disappearance based on a newspaper article with a description matching defendant and his vehicle. Further, the State never suggested defendant was inside Woodward's truck, which was found abandoned in the parking lot, and defendant told Golike he had never been in the truck. Meanwhile, a jury could infer from the State's lack of DNA evidence, and the stipulation indicating some of the bone fragments were either too small or too burned for DNA retrieval, that it did not have any. The State argued as much to the jury, stating, "He burnt her for days and he made it impossible for DNA to be extracted from all those bone fragments." Defense counsel argued its absence to the jury repeatedly throughout his closing argument, as well. In fact, counsel kept noting the absence of DNA evidence and how, as science, its absence should be more persuasive than the questionable testimony of witnesses he contended were motivated to lie. Defendant's argument here is essentially that counsel should have argued its absence even more. A further focus on the lack of DNA evidence would add little the case. It was clear to the jury there was no DNA evidence connecting defendant to the murder, so additional argument of counsel would not have changed the outcome of trial. The evidence indicating defendant's guilt was overwhelming, despite the lack of DNA evidence.

¶ 109 Without an affidavit from the author of the news article that defendant contends counsel should have pursued, we have no way of weighing its import. When a defendant attacks the competency of his counsel for failing to call or contact witnesses, he must attach to his postconviction petition affidavits showing the potential testimony of such witnesses and explain the significance of their testimony. *People v. Dean*, 226 Ill. App. 3d 465, 468, 589 N.E.2d 888, 890 (1992). Defendant contends Kuehn's failure to properly support his claims is further evidence of Kuehn's unreasonable assistance and suggests a remand is necessary to allow defendant to establish prejudice. We disagree. As previously noted, we adhere to *Perez*, holding that Rule 651(c) is inapplicable here. In addition, the matter here is merely an alternate reason as to why the underlying claim lacks merit. Overall, we find defendant's claim lacks merit.

¶ 110 c. Fingerprint Expert

¶ 111 Defendant also contends trial counsel should have hired a fingerprint expert to counter the testimony of the State's expert. However, affidavits from defendant and his mother show counsel did retain an expert but decided not to call that person to testify. Defendant also did not include an affidavit or fingerprint analysis from the expert with the postconviction petition. We can only speculate as to why counsel did not call the expert as a witness, though it would appear counsel must have not done so as a matter of strategy. We will not find merit to the underlying claim or a postconviction counsel's representation unreasonable based on speculation. As with the issue concerning the news source, while defendant argues in relation

to other issues that Kuehn's failure to support his claims is further evidence of Kuehn's unreasonable assistance, we disagree it creates an issue requiring remand.

¶ 112 d. Venue

¶ 113 Finally, defendant argues trial counsel was ineffective for failing to seek a change of venue. However, the affidavits from defendant and his mother show the matter was one of trial strategy. While defendant claimed the trial court judge would have moved with the case had a change of venue been sought, he provided no support for that conclusion. Further, defendant has not provided details to show that, had a change of venue occurred, the trial's result would have been different. Accordingly, the issue lacks merit.

¶ 114 In sum, the forfeited postconviction claims would not have had merit had they been raised on direct appeal. Defendant has not made a substantial showing that Kuehn labored under an actual conflict of interest or provided unreasonable assistance when, acting as postconviction counsel, he forfeited the issues by not alleging his own ineffective assistance of appellate counsel.

¶ 115 III. CONCLUSION

¶ 116 For the reasons stated, the judgment of the trial court is affirmed.

¶ 117 Affirmed.

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 23, 2025, the foregoing **Brief and Supplemental Appendix of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Illinois Supreme Court using the Court's electronic filing system, which provided service to the following:

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