2026 IL App (1st) 241884-U
No. 1-24-1884
Order filed November 25, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, SIXTH DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

EMILIO IZAGUIRRE, Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable Timothy Joseph Joyce, Judge, Presiding.
No. 13 CR 19566

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Evans concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in denying defendant's postconviction petition after finding him not credible at an evidentiary hearing.

¶ 2 Defendant Emilio Izaguirre appeals from the denial, following a third-stage evidentiary hearing, of his petition for relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)), which alleged that trial counsel was ineffective for not calling defendant to testify that he acted in self-defense. On appeal, defendant contends that the circuit court's credibility determinations were manifestly erroneous. For the reasons that follow, we affirm.

¶ 3 Defendant was charged by indictment with, *inter alia*, first degree murder, home invasion, and aggravated battery causing great bodily harm. At the 2017 jury trial, the State presented evidence that defendant entered the apartment of his ex-girlfriend, beat her, and stabbed her approximately 30 times, killing her. At trial, the medical examiner who completed the autopsy testified that the cause of death was multiple stab and incised wounds and the manner was homicide. Defendant also repeatedly punched the man with whom defendant's ex-girlfriend was living, fracturing his skull.

¶ 4 Following the State's case and outside the presence of the jury, defendant's public defender asked that defendant be admonished about his right to testify. The following exchange ensued:

> "THE COURT: We'll have precisely that conversation.
>
> Mr. Izaguirre, I'm going to have a conversation with you, all right?
>
> THE DEFENDANT: Okay.
>
> THE COURT: You have the right to testify. Do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: You also have the right not to testify. Do you understand that?
>
> THE DEFENDANT: Yes, I do.
>
> THE COURT: If you elect not to testify, I can tell you that the jury will be instructed essentially as follows: The fact that the defendant did not testify cannot be held against him in any way by the jury in arriving at their verdict.
>
> Do you understand that?
>
> THE DEFENDANT: Yes, I understand.
>
> THE COURT: I do not want to know what you and your attorneys have said to one another, that's none of my business. Okay?

THE DEFENDANT: Okay.

THE COURT: So I want you to answer this next question 'yes' or 'no.' Have you discussed with your attorneys the question or the issue of whether you will testify in this case?

THE DEFENDANT: Yes, we discussed it.

THE COURT: Have you made a decision?

THE DEFENDANT: Yes.

THE COURT: And when I say 'you,' I mean you, not you and your attorneys, I mean you.

What's your decision?

THE DEFENDANT: I will not be testifying.

THE COURT: Has anyone promised you anything to get you to make that decision?

THE DEFENDANT: No.

THE COURT: Has anyone forced or threatened you in any manner to get you to make this decision?

THE DEFENDANT: No.

THE COURT: Are you making this decision freely and voluntarily?

THE DEFENDANT: Yes, on my own.

THE COURT: Do you wish for any other witnesses to be called on your behalf?

THE DEFENDANT: No.

THE COURT: I'll accept your decisions in this regard. I believe that they are freely and voluntarily and knowingly made."

¶ 5 The parties continued to the jury instruction conference. Defense counsel requested a second degree murder instruction "based upon sudden and intense provocation." She argued that the instruction was appropriate where there was no sign of forced entry, defendant had access to the apartment because he would visit his children there, and defendant did not bring any weapons into the apartment but, rather, used knives from the apartment's kitchen. Further, when defendant entered the apartment, he found his ex-girlfriend in bed with another man. The trial court denied counsel's request.

¶ 6 The jury found defendant guilty of first degree murder, home invasion, and aggravated battery, and the trial court imposed consecutive prison terms of 60, 10, and 5 years, respectively.

¶ 7 On direct appeal, defendant contended that (1) his sentences were excessive; (2) the trial court penalized him for exercising his right to trial; and (3) the trial court considered an improper aggravating factor at sentencing, namely, that defendant planned the offenses for a time when his children would not be present. We affirmed. *People v. Izaguirre*, 2020 IL App (1st) 171789-U.

¶ 8 On November 10, 2021, defendant, through private counsel, filed a petition for postconviction relief. Defendant alleged that trial counsel was ineffective for not calling defendant to testify that he acted in self-defense. In an attached affidavit, defendant averred that he "insisted" to trial counsel that he wished to testify that he was in his "wife's" apartment when he was confronted by a man he did not know, fought with the man, was struck on the head, lost consciousness, woke to find his "wife" on the floor with a knife in her throat, and was attempting CPR when the police arrived. Defendant asserted that trial counsel "said it was not necessary that [he] testify and refused to put [him] on the stand despite [his] repeated requests."

¶ 9 The State filed a motion to dismiss. The circuit court denied the State's motion and advanced defendant's petition for a third-stage evidentiary hearing.

¶ 10 At the hearing, conducted by the same judge who presided at trial, defendant testified that he had wanted to assert self-defense at trial. Prior to trial, he and his public defender, Lisa Boughton, met five to seven times. Defendant told Boughton he wanted to testify, but she said she would not call him "to take the stand." In addition, defendant told Boughton that he wanted her "to call other witnesses," but she "said it was not needed." When asked if Boughton told him why she would not call him to testify, he answered, "She told me she wouldn't, she would not call me if I wanted to."

¶ 11 Defendant acknowledged that, at trial, he conversed with the court about his right to testify. He told the court that he understood the admonishments and would not be testifying, but maintained that he stated this not because he did not wish to testify, but, instead, "because that was the direction of [his] lawyer."

¶ 12 Defendant said that he attempted to explain his reason for electing not to testify to the court, "but the judge did not want to hear" what defendant and his lawyer talked about. Defendant stated that, had he testified, he would have asserted self-defense. He denied that his lawyer ever talked with him about self-defense or mutual combat.

¶ 13 On cross-examination, defendant stated that a second public defender was present during his meetings with Boughton. Defendant acknowledged that he did not state in the affidavit attached to his postconviction petition that Boughton refused his request to call other witnesses. Defendant stated that, every time he met with Boughton, he told her he wanted to testify and wanted other witnesses called on his behalf, and she told him that she would not allow that to happen.

¶ 14 Defendant stated that he began to distrust Boughton and her representation "because the State had so many witnesses" and "she didn't put no effort on trying to put at least one or myself." Despite this distrust, he answered the court's questions exactly how Boughton had told him

"because she was the assigned attorney to [his] case." When the court asked if defendant had made a decision about testifying, he knew the court was talking to him and not Boughton. Also, he told the court that he had decided not to testify, he understood it was his choice, and he made his decision freely and voluntarily. Finally, defendant acknowledged that he told the court he did not wish for any other witnesses to be called on his behalf.

¶ 15 On redirect examination, defendant stated that he did not tell the trial court that he had told counsel that he wanted to testify because the court had specifically said it did not want to hear the contents of his discussions with counsel.

¶ 16 In response to questioning by the circuit court, defendant stated that the witnesses he wanted called were two neighbors whose names he did not know. Defendant told the court that he did not see those neighbors on the day of the incident.

¶ 17 Boughton testified that she had been a public defender since 1996. Prior to defendant's case, she had represented defendants charged with murder approximately 120 times. About two-thirds of those cases went to trial.

¶ 18 After Boughton was appointed to represent defendant in 2016, they discussed whether he wanted a bench or a jury trial and whether he would testify. Boughton did not recall the dates of those conversations. Defendant chose a bench trial and decided not to testify. Boughton denied ever refusing to call clients who wished to testify. When asked whether she told defendant she would not allow him to testify, she answered, "Absolutely not," adding, "Because he has the right to testify should he choose to." Boughton explained that it was her practice to tell clients "that they have the choice to make of whether they want a bench trial or a jury trial or whether they want to testify or not testify." She stated, "I can give my advice, I can give my opinion, but at the end, the decision is solely theirs alone."

¶ 19 Boughton denied telling defendant what to say in response to the trial court's admonishments regarding his right to testify. She stated, "He was aware the judge was going to admonish him about his right to testify, that was the conversation, and I told him he should answer the question as he felt he should."

¶ 20 On cross-examination, Boughton testified that she did not remember how many times she saw defendant prior to trial. She received discovery in defendant's case, reviewed it prior to meeting with him, and reviewed it with him when they met. Boughton recalled that the discovery showed that upon arrest, defendant told the police that the murder victim "got what she deserved for f***ing that n***." When asked whether defendant made any alleged statements that would indicate mutual combat or self-defense, Boughton answered, "I don't recall, but he was—it's a felony murder charge, so counsel—."

¶ 21 On further cross-examination, Boughton stated that her trial strategy was to raise a reasonable doubt defense. She noted that she had requested a "sudden and intense passion" instruction. When asked whether, given her request for that instruction, it would have been "helpful" to call defendant as a witness, she answered, "If he chooses not to testify, I can't force him to testify." Boughton stated that she discussed the subject of testifying with defendant more than once, but not every time they met, as her practice was to broach the topic closer to trial and have her clients think about it.

¶ 22 At the close of evidence, postconviction counsel argued, among other things, that it was "strange" for the trial court to have told defendant, during admonishments, that it did not want to hear what he and his attorneys said to each other when discussing the right to testify. Counsel also argued, regarding Boughton's performance, "I don't know how you ask for that [sudden and intense passion] instruction unless the defendant testifies to it. If you don't put on a defense, how

can you possibly argue that the defendant in the course of his conduct was provoked, that caused him to commit criminal acts." The State argued that the hearing presented "the word of [defendant] versus the word of Ms. Boughton," and asserted that defendant had not met his burden. In rebuttal, postconviction counsel reiterated that Boughton had presented "no defense, and yet they ask for that instruction."

¶ 23 Following arguments, the circuit court denied defendant's postconviction petition. In its remarks, the court first stated it had reviewed the pleadings, had "carefully" listened to the witnesses' testimony and the attorneys' arguments, and had "a specific recollection" of the trial because it "was a memorable case." The court stated that it believed Boughton. It did not believe defendant "for a variety of reasons, most especially because the manner in which the Court admonished [defendant] at the close of the State's case." The court added that it had admonished defendant in a manner consistent with its custom when a defendant elects not to testify.

¶ 24 Regarding defendant's claim that the court did not want to hear his reason for electing not to testify, the court stated as follows:

> "It's curious that [postconviction counsel] would argue that my posing of the question to [defendant] at that time that I do not want to know what [he] and his attorney said to one another that that somehow bespeaks or might suggest the fact that I don't want to know that Ms. Boughton told [defendant] not to testify, but that's simply not correct. I don't think I could ask the question in any other manner because to not ask it in that manner would presumably lead a defendant in [defendant's] position to perhaps conclude that I was seeking to ask him questions and have him reveal statements by him and by the attorney that are covered by the attorney-client privilege. Those can come out sometimes."

¶ 25 The court found that defendant was given "every opportunity with open-ended questions in an open courtroom, in public, to express to [the court] a desire to testify if he wished to." Defendant, when answering, had "sincerely and without hesitation" demonstrated a desire not to testify "not because of anything anyone, including Ms. Boughton or [her co-counsel] may have said to him but because that was his decision." The court concluded that defendant had failed to show that his constitutional rights were violated.

¶ 26 On appeal, defendant contends that the circuit court's denial of his petition was manifestly erroneous. He argues that, in finding Boughton the "more credible" witness at the evidentiary hearing, the court erred when it ignored "an apparent contradiction in [Boughton's] testimony," namely, that she said defendant decided not to testify at some point before trial, but she also asked for a "sudden and intense passion" instruction "that all but required her client to make a record on that issue." Defendant also characterizes Boughton's response, "it's a felony murder charge," to a question regarding the requested instruction as "evasive," thus rendering the circuit court's credibility finding "suspect."

¶ 27 The Act provides a procedural mechanism by which a criminal defendant may assert that his conviction resulted from a substantial denial of his constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2020). At the third stage of proceedings under the Act, at issue here, the allegations in the postconviction petition and accompanying affidavits are no longer presumed true. *People v. Gacho*, 2016 IL App (1st) 133492, ¶ 13. Instead, the circuit court conducts an evidentiary hearing, determines witness credibility, decides the weight to be given evidence, and resolves any evidentiary conflicts. *People v. Domagala*, 2013 IL 113688, ¶ 34. A defendant is not entitled to relief unless he makes a "substantial showing" that his constitutional rights were violated. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006); *People v. Brown*, 2021 IL App (1st) 180991, ¶ 70.

¶ 28 Where the circuit court holds an evidentiary hearing, its fact-finding and credibility determinations will not be reversed unless they are manifestly erroneous. *Pendleton*, 223 Ill. 2d 458, 473. This standard affords great deference to the circuit court because, having seen and heard the witnesses testify, it is in a superior position to evaluate their credibility and resolve conflicts in their testimony. *People v. Fair*, 2024 IL 128373, ¶ 80; *People v. Rovito*, 327 Ill. App. 3d 164, 172 (2001). A court's decision is manifestly erroneous only if it contains an error that is "clearly evident, plain, and indisputable" (*Fair*, 2024 IL 128373, ¶ 80) or when the opposite conclusion is clearly evident (*People v. Coleman*, 2013 IL 113307, ¶ 98).

¶ 29 The ultimate question in this appeal is whether defendant made a substantial showing that trial counsel rendered ineffective assistance by denying defendant his constitutional right to testify.

¶ 30 Claims of ineffective assistance of counsel are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Albanese*, 104 Ill. 2d 504 (1984). To establish a claim of ineffective assistance, a defendant must show both that his counsel's performance was deficient and that the deficient performance prejudiced him. *Strickland*, 466 U.S. at 687. More specifically, a defendant must demonstrate that counsel's performance was objectively unreasonable under prevailing professional norms (*id.* at 694), overcome a "strong presumption" that counsel's alleged error was part of a "sound trial strategy" (*People v. Houston*, 226 Ill. 2d 135, 144 (2007)), and establish a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (*Strickland*, 466 U.S. at 694). A reviewing court need not address both prongs of the *Strickland* inquiry if the defendant makes an insufficient showing as to one prong. *Id.* at 697.

¶ 31 Every criminal defendant has a fundamental constitutional right to decide whether to testify at trial. *People v. Knapp*, 2020 IL 124992, ¶ 46. While the decision should be made with the advice

of counsel, the ultimate decision whether to exercise the right to testify belongs solely to the defendant. *Id.* "Advice not to testify is a matter of trial strategy and does not constitute ineffective assistance of counsel unless evidence suggests that counsel refused to allow the defendant to testify." *People v. Youngblood*, 389 Ill. App. 3d 209, 217 (2009).

¶ 32 Defendant does not dispute that he was admonished in court about his right to testify. He acknowledges telling the trial court that he understood the court's admonishments regarding his rights, that he had discussed whether to testify with his attorneys, that he alone had freely and voluntarily decided not to testify, and that he had not been forced, threatened, or promised anything.

¶ 33 Defendant maintains, however, that at the evidentiary hearing, he stated that he answered the trial court in this manner not because he did not wish to testify, but instead, "because that was the direction of [his] lawyer." Defendant asserted that every time he met with Boughton, he told her he wanted to testify and wanted other witnesses called, and she refused. He also stated that he attempted to explain his reason for electing not to testify to the trial court, "but the judge did not want to hear it."

¶ 34 Boughton testified at the evidentiary hearing that she had been a public defender since 1996. She had represented defendants charged with murder approximately 120 times, and about two-thirds of those cases went to trial. Although she could not remember the dates of her pretrial conversations with defendant, she recalled having discussed with him his right to testify. She denied telling defendant she would not allow him to testify and denied directing him how to answer the trial court's questions. She also denied ever refusing to call clients to the stand when they wished to testify and described her practice of telling clients that whether to testify was their decision.

¶ 35 Presented with this conflicting testimony, the circuit court found that Boughton was credible and defendant was not. This was its prerogative as the trier of fact. See *Domagala*, 2013 IL 113688, ¶ 34. Moreover, because the same judge presided over defendant's trial and the evidentiary hearing—and thus observed defendant and Boughton at both proceedings—the court's credibility determinations are due heightened deference on review. See *People v. Hills*, 2025 IL App (4th) 241331-U, ¶¶ 14, 17.[1] Here, we cannot say that the circuit court's credibility determinations were manifestly erroneous. See *People v. Smith*, 2021 IL App (1st) 180550-U, ¶¶ 39, 43-47 (affirming postconviction court's credibility findings where the defendant and trial counsel testified contradictorily regarding whether the defendant waived his right to testify due to threats by counsel).[2]

¶ 36 Prior to announcing its credibility findings, the circuit court stated that it had "listened carefully" to defendant's and Boughton's testimony at the evidentiary hearing. The circuit court was aware of defendant's current position that Boughton's request for a "sudden and intense" passion instruction illustrated her ineffectiveness, as postconviction counsel argued that point at the conclusion of the hearing. Although the circuit court did not specifically address that argument in its comments, it is apparent from its decision that it did not find that Boughton's jury instruction request destroyed her credibility. Similarly, we cannot agree with defendant that Boughton's credibility was destroyed by an "evasive" response when, in reply to the question whether

[1]Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025) (nonprecedential orders entered on or after January 1, 2021, may be cited for persuasive purposes).

[2]Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025) (nonprecedential orders entered on or after January 1, 2021, may be cited for persuasive purposes).

defendant made any alleged statements what would indicate mutual combat or self-defense, she answered, "I don't recall, but he was—it's a felony murder charge[.]"

¶ 37 Defendant's burden in this appeal is to show that a conclusion opposite that of the circuit court is "clearly evident" from the record. See *Fair*, 2024 IL 128373, ¶ 80; *Coleman*, 2013 IL 113307, ¶ 98. We find that the circuit court's credibility determinations in favor of Boughton and against defendant were reasonable and, therefore, that defendant has failed to carry his burden in this court. See *People v. Carter*, 2021 IL App (4th) 180581, ¶ 74.

¶ 38 Based on the record and the evidence presented during the evidentiary hearing, we conclude that the circuit court did not err in finding that defendant validly waived his right to testify at trial. As such, the circuit court properly rejected defendant's claim of ineffective assistance of counsel. See *Strickland*, 466 U.S. at 694. Where defendant has failed to make a substantial showing that his constitutional rights were violated, he is not entitled to postconviction relief. See *Pendleton*, 223 Ill. 2d at 473.

¶ 39 As a final matter, we note that defendant's reliance on *People v. Barkes*, 399 Ill. App. 3d 980 (2010), for the proposition that "when a defendant alleges counsel interfered with the personal right to testify, the claim is not defeated by silence at trial," is misplaced. *Barkes* involved a petition that was dismissed at the second stage of postconviction proceedings. *Id.* at 981, 984-85. As such, the allegations in the defendant's petition and affidavit that his trial counsel refused to allow him to waive a jury trial were to be considered true, and this court found that the defendant was entitled to an evidentiary hearing on that issue. *Id.* at 986, 988.

¶ 40 Here, in contrast to *Barkes*, a third-stage evidentiary hearing was conducted. As noted, at a third-stage hearing, "the defendant no longer enjoys the presumption that the allegations in his petition and accompanying affidavits are true." *Gacho*, 2016 IL App (1st) 133492, ¶ 13. Instead, a

defendant bears the burden of presenting evidence that makes a "substantial showing" of a violation of his constitutional rights. *Pendleton*, 223 Ill. 2d at 473. The circuit court acts as a fact-finder, resolves conflicts in the evidence, and determines the credibility of witnesses. *Domagala*, 2013 IL 113688, ¶ 34. In this case, the circuit court appropriately made credibility and factual determinations at the conclusion of the evidentiary hearing. *Barkes* is not applicable in this appeal.

¶ 41 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 42 Affirmed.