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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 02—CF—3064
	)	
DOUGLAS MONROE,	)	Honorable
	)	George Bridges,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices McLaren and Hutchinson concurred in the judgment.

**ORDER**

*Held:* In his postconviction petition, the defendant failed to allege how he was prejudiced by his trial counsel's purported ineffective representation. The trial court therefore properly dismissed the defendant's postconviction petition.

The defendant, Douglas Monroe, appeals from the April 14, 2009, order of the circuit court of Lake County dismissing his petition for postconviction relief. On appeal, the defendant argues that the trial court erred in dismissing his petition because he sufficiently alleged that he was denied the effective assistance of counsel. We affirm.

The record reveals that, following a jury trial, the defendant was convicted of the predatory criminal sexual assault of his stepdaughter (720 ILCS 5/12—14.1(a)(1) (West 2002)) and the aggravated criminal sexual abuse of his stepson (720 ILCS 5/12—16(c)(1)(I) (West 2002)). He was sentenced to a total of 13 years' imprisonment. We affirmed the defendant's convictions and sentences on direct appeal. See *People v. Monroe*, 366 Ill. App. 3d 1080, 1097 (2006).

On October 1, 2007, the defendant filed a *pro se* postconviction petition. On December 23, 2008, the defendant filed an amended postconviction petition. In that petition, the defendant alleged, among other things, that his trial counsel "was ineffective for failing to consult with [him] about possibly submitting an instruction on aggravated criminal sexual abuse" regarding the charges against him pertaining to his stepdaughter. On May 5, 2009, the trial court granted the State's motion to dismiss the defendant's petition. The defendant thereafter filed a timely notice of appeal.

On appeal, the defendant argues that the trial court erred in dismissing his petition because he sufficiently alleged that his trial counsel failed to consult with him about the possibility of seeking a jury instruction on a lesser included offense of the more serious sex offense that he was charged with as to his stepdaughter. The defendant insists that had the instruction been given, his most serious conviction and sentence might have been replaced with a lesser conviction and sentence.

The Post-Conviction Hearing Act (725 ILCS 5/122—1 *et seq.* (West 2006)) creates a three-stage process for the adjudication of postconviction petitions and permits a defendant to mount a collateral attack on his conviction and sentence based on violations of his constitutional rights. *People v. Erickson*, 183 Ill. 2d 213, 222 (1998). If a petition survives first-stage review, it proceeds to the second stage, at which an indigent defendant is entitled to appointed counsel, the petition may be amended, and the State may answer or move to dismiss the petition. *People v. Gaultney*, 174 Ill.

2d 410, 418 (1996). At the second stage, a defendant must make a “substantial showing” of a constitutional violation. *People v. Addison*, 371 Ill. App. 3d 941, 946-47 (2007). Here, at the second stage, the trial court dismissed the defendant’s claims that his trial counsel was ineffective. We review a second-stage dismissal *de novo*. *People v. Adams*, 373 Ill. App. 3d 991, 993 (2007).

Generally, a defendant who alleges that his counsel was ineffective must establish that (1) his attorney’s performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *People v. Wendt*, 283 Ill. App. 3d 947, 951 (1996). However, if a defendant fails to allege that he was prejudiced, the second prong of the test, a court need not consider whether the attorney’s performance fell below an objective standard of reasonableness. *People v. Giampaolo*, 385 Ill. App. 3d 999, 1002 (2008).

In *Giampaolo*, the defendant plead guilty to charges of criminal sexual assault of a family member (720 ILCS 5/12—13(a)(3), (b)(1) (West 1998)) and solicitation to commit aggravated kidnapping (720 ILCS 5/8—1(a), 10—2(a)(1) (West 1998)) in exchange for sentences totaling 18 years’ imprisonment. The defendant did not file a direct appeal. He did file a postconviction petition, arguing that he was deprived the effective assistance of counsel. He further alleged that, but for his counsel’s errors, he might not have pleaded guilty. The trial court dismissed the defendant’s postconviction petition, and this court affirmed. We explained:

“Here, defendant failed to plead in his second amended petition that he was prejudiced by his lawyers’ actions. At no point in his second amended petition did defendant contend that he would not have pleaded guilty and would have insisted on proceeding with a trial if not for his attorneys’ errors. Rather, at best, defendant claimed that, but for his attorneys’ errors,

he *might* not have pleaded guilty. Further, defendant failed to support his claims with the requisite details and evidence.” *Giampaolo*, 385 Ill. App. 3d at 1003.

In this case, the defendant alleged that his attorney did not consult with him as to whether a lesser-included instruction should have been submitted to the jury regarding the charge that he had committed predatory criminal sexual assault against his stepdaughter. However, the defendant does not allege that, had his attorney consulted with him regarding the lesser-included instruction, he would have requested that such an instruction be given. Thus, as in *Giampaolo*, the defendant failed to allege how his attorney’s actions prejudiced him. Absent any prejudice, the defendant was not deprived of the effective assistance of counsel. The trial court therefore properly dismissed the defendant’s petition for postconviction relief. See *id.*

In so ruling, we find the defendant’s efforts to distinguish *Giampaolo* to be unpersuasive. The defendant insists that *Giampaolo* is inapposite because in that case the defendant was seeking to overturn a guilty plea based on omissions by counsel unrelated to the guilty plea. Additionally, the *Giampaolo* court found that the defendant’s allegations were lacking because he failed to support his claims with facts. Despite these factual differences, we do not believe *Giampaolo* is distinguishable from the case at bar. In *Giampaolo*, this court affirmed the trial court’s decision because the defendant failed to allege how he was prejudiced by his counsel’s representation. *Giampaolo*, 385 Ill. App. 3d at 1003. As we are confronted with the same situation here, we reach the same decision as in *Giampaolo* and affirm the trial court’s decision dismissing the defendant’s petition for postconviction relief.

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.