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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 04—CF—2215
)	
STEPHEN G. KRAEMER,)	Honorable
)	Charles D. Johnson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The trial court properly dismissed defendant’s postconviction petition alleging the ineffectiveness of trial and appellate counsel; as the claim of ineffectiveness of trial counsel could have been raised on direct appeal, that claim was forfeited, and the claim of ineffectiveness of appellate counsel was without merit, as trial counsel was not ineffective; because defendant admitted having made a prior inconsistent statement, the State did not need to introduce the statement to perfect impeachment, and trial counsel was not ineffective for failing to object to the State’s failure to do so.

Defendant, Stephen G. Kraemer, was convicted of predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a) (West 1998)) and sentenced to 13 years’ imprisonment. On direct appeal, defendant argued that the trial court erred when it admitted other-crimes evidence at trial. We

affirmed. *People v. Kraemer*, No. 2—06—0500 (2008) (unpublished order under Supreme Court Rule 23). On March 5, 2009, defendant filed a postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122—1 *et seq.* (West 2008)). In the petition, defendant alleged, among other things, that he received ineffective assistance of trial counsel when trial counsel failed to object to the State's failure to perfect the impeachment of defendant with his written statement to police and that he received ineffective assistance of appellate counsel on direct appeal when appellate counsel failed to raise the ineffectiveness of trial counsel. The trial court summarily dismissed defendant's petition, and, following an unsuccessful motion to reconsider, defendant brought this appeal. For the reasons that follow, we affirm.

At trial, defendant denied that any inappropriate contact ever took place between him and the victim. During its cross-examination, however, the State questioned defendant about a written statement that he had given to police in which defendant wrote that inappropriate contact had occurred between him and the victim. When presented with a copy of the statement, defendant acknowledged that he had written the statement and that the copy the State presented to him was an accurate copy. He also acknowledged that no additions had been made to it. Defendant testified that although the statement accurately reflected the conversation he had with the police, it did not accurately reflect the events that occurred between him and the victim. During its cross-examination of defendant, the State moved to admit defendant's written statement to police. The trial court denied the request on the basis that the State could not admit evidence during defendant's case, but stated that the State could request the statement's admission during its rebuttal case. After the State rested its rebuttal case, it informed the trial court that it would not seek the admission of defendant's written statement.

On appeal, defendant contends that the trial court erred in summarily dismissing his postconviction petition, which stated the gist of two constitutional claims: the ineffective assistance of trial counsel and the ineffective assistance of appellate counsel. The Act provides a remedy to criminal defendants who have suffered substantial violations of their constitutional rights. *People v. Barcik*, 365 Ill. App. 3d 183, 190 (2006). When the death penalty is not involved, there are three stages to the proceedings. *Barcik*, 365 Ill. App. 3d at 190. During the first stage, the trial court determines whether the defendant's allegations sufficiently demonstrate a constitutional violation that would necessitate relief. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). The trial court may summarily dismiss the petition if it finds that the petition is "frivolous or is patently without merit." 725 ILCS 5/122—2.1(a)(2) (West 2008). A petition is "frivolous or patently without merit" if it does not state the gist of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). "We review *de novo* the first-stage dismissal of a postconviction petition." *Barcik*, 365 Ill. App. 3d at 190.

Defendant first contends that he received ineffective assistance from trial counsel when counsel failed to object to the State's failure to perfect the impeachment of defendant with his written statement to police. According to defendant, the State failed to perfect the impeachment of him when it did not seek the admission of his written statement into evidence. This claim has been forfeited. Where a defendant's postconviction claim of ineffective assistance of trial counsel is based entirely on facts contained in the trial record, the claim could have been raised on direct appeal and is thus forfeited. *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010) (concluding that the defendant's postconviction claim of ineffective assistance of trial counsel was forfeited where it was based entirely on facts found in the trial record but was not raised on direct appeal). Defendant's

claim of ineffective assistance of trial counsel is based solely on facts found in the trial record, yet he did not raise the claim on direct appeal. Therefore, it is forfeited.

Defendant also argues that he received ineffective assistance from appellate counsel when counsel failed to raise on direct appeal trial counsel's ineffectiveness in failing to object to the State's failure to perfect the impeachment of defendant. As this claim could not have been raised on direct appeal, it is not forfeited.

Claims of ineffective assistance of appellate counsel are governed by the two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984). "A petitioner must show [1] that appellate counsel's performance fell below an objective standard of reasonableness and [2] that this substandard performance caused prejudice, *i.e.*, there is a reasonable probability that, but for appellate counsel's errors, the appeal would have been successful." *People v. Golden*, 229 Ill. 2d 277, 283 (2008). The failure to establish either of these prongs is fatal to a defendant's claim of ineffective assistance. *People v. Hayden*, 338 Ill. App. 3d 298, 305 (2003). Where the underlying claim lacks merit, a defendant cannot be said to have received ineffective assistance of appellate counsel for appellate counsel's failure to raise the claim on appeal. *People v. Johnson*, 206 Ill. 2d 348, 378 (2002).

Defendant's underlying claim that he received the ineffective assistance of trial counsel is without merit. Trial counsel was not ineffective for failing to object to the State's failure to introduce defendant's written statement into evidence, because the State did not need to do so to perfect the impeachment of defendant. A witness may be impeached by statements or acts that are inconsistent or at variance with his or her testimony. *People v. Purrazzo*, 95 Ill. App. 3d 886, 896 (1981). Where the witness denies making a prior inconsistent statement, claims to be unable to remember making the statement, or otherwise gives an evasive or uncertain response, extrinsic

evidence of the prior inconsistent statement must be presented. *People v. Kluppelberg*, 257 Ill. App. 3d 516, 533 (1993); *Purrazzo*, 95 Ill. App. 3d at 896. If, however, the witness admits to making the statement, extrinsic proof of the statement need not be presented to perfect impeachment. *Kluppelberg*, 257 Ill. App. 3d at 533; *Purrazzo*, 95 Ill. App. 3d at 896.

Here, defendant did not deny making the written statement, claim he could not remember making the statement, or otherwise give evasive or uncertain responses to questions about the statement. Rather, defendant admitted that he made the written statement and that the copy the State presented was an accurate copy. Although defendant claimed that portions of the statement did not accurately reflect the events that took place between him and the victim, he did admit that he prepared the entire written statement. Whether extrinsic evidence needed to be presented depended on whether defendant admitted *making* the statement, not whether he admitted the statement was true. *Kluppelberg*, 257 Ill. App. 3d at 533 (if the defendant admits making the statement, extrinsic evidence need not be presented). Accordingly, because defendant admitted making the statement, the State was not required to seek the admission of the statement, and trial counsel was not ineffective for failing to object. As defendant's claim of ineffective assistance of trial counsel is without merit, his claim that appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness is also without merit.

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

Affirmed.