

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (3d) 100287-U

Order filed September 6, 2011

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

|                                      |   |                               |
|--------------------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
|                                      | ) | of the 12th Judicial Circuit, |
| Plaintiff-Appellee,                  | ) | Will County, Illinois,        |
|                                      | ) |                               |
| v.                                   | ) | Appeal No. 3-10-0287          |
|                                      | ) | Circuit No. 07-CF-1643        |
|                                      | ) |                               |
| RODNEY BROWN,                        | ) | Honorable                     |
|                                      | ) | Robert P. Livas,              |
| Defendant-Appellant.                 | ) | Judge, Presiding.             |

---

JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Lytton and O'Brien concurred in the judgment.

---

**ORDER**

- ¶ 1 *Held:* Defendant's postconviction petition for ineffective assistance of counsel at his sentencing hearing was properly denied.
- ¶ 2 Defendant, Rodney Brown, pled guilty to unlawful possession of a stolen vehicle (625 ILCS 5/4-103(a)(1) (West 2006)). Defendant appeals the denial of his postconviction petition, arguing that his petition should not have been dismissed because he presented the gist of a claim for ineffective assistance of counsel. We affirm.

¶ 3

## FACTS

¶ 4 On August 8, 2007, defendant was charged by information with unlawful possession of a stolen vehicle (625 ILCS 5/4-103(a)(1) (West 2006)). At a pretrial hearing on October 10, 2007, defendant stated he had a psychiatric disorder and discussed with the court the medication he was taking. On April 4, 2008, defendant entered a blind plea of guilty to the charge of unlawful possession of a stolen vehicle. The trial court accepted defendant's plea.

¶ 5 Defendant's mental health was again addressed in the presentence investigation report, which reported that defendant stated he was diagnosed with "schizophrenic affect" in 1994 and received treatment at several facilities. At the sentencing hearing on April 9, 2008, defendant explained his psychiatric disorder while speaking in allocution. Defendant stated that his schizoaffective disorder is a combination of bipolar disorder and schizophrenia. Defendant reported he continuously had problems when he did not take his medication. Defense counsel also stated that defendant had mental health issues and had sought treatment.

¶ 6 After the sentencing hearing, the trial court sentenced defendant to 17 years of imprisonment. On April 21, 2008, defendant filed a motion to reduce sentence, which the trial court denied. Defendant appealed, and appellate counsel filed a motion to withdraw from defendant's direct appeal. This court granted the motion, and defendant's conviction was affirmed. *People v. Brown*, No. 3-08-0556 (2009) (unpublished order under Supreme Court Rule 23).

¶ 7 On December 1, 2009, defendant filed a *pro se* postconviction petition. Defendant alleged he received ineffective assistance of counsel at his sentencing hearing. Specifically, defendant alleged counsel failed to present medical records to support defendant's claim that he

suffered from schizoaffective disorder. Defendant claimed such evidence would be a mitigating factor in his sentence. Attached to the petition was a "Mental Health Diagnostic and Treatment Note" from a psychiatrist at the Illinois River Correction Center. It included a list of defendant's prescription orders. The assessment was dated October 31, 2009, about 1½ years after the sentencing hearing. It reported defendant suffered from schizoaffective disorder. The trial court reviewed the petition and noted that the psychiatrist's diagnosis was made after the sentencing hearing. Thus, the court concluded that it was impossible for defendant's attorney to address this matter at the sentencing hearing. Therefore, the trial court dismissed defendant's petition at the first stage as frivolous and patently without merit. Defendant appeals.

¶ 8

#### ANALYSIS

¶ 9 On appeal, defendant alleges his postconviction petition stated the gist of a claim for ineffective assistance of counsel. Defendant contends defense counsel failed to present evidence of defendant's mental health disorder at his sentencing hearing.

¶ 10 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)) provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Hodges*, 234 Ill. 2d 1 (2009). At the first stage, the trial court must independently determine whether 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 only if it has no arguable basis in law or fact. *Hodges*, 234 Ill. 2d 1. At this stage, the petition's allegations, liberally construed and taken as true, need only present the gist of a constitutional claim. *People v. Harris*, 224 Ill. 2d 115 (2007). We review the first-stage dismissal of a postconviction petition *de novo*. *People v. Morris*, 236 Ill. 2d 345 (2010).

¶ 11 To prevail in a constitutional claim of ineffective assistance of trial counsel, defendant must show both that: (1) counsel's performance was so deficient that it fell below an objective standard of reasonableness; and (2) the deficient performance prejudiced defendant's case.

*Strickland v. Washington*, 466 U.S. 668 (1984). A petition alleging ineffective assistance of counsel at the first-stage of a postconviction petition proceeding may not be dismissed if both prongs of the test are at least arguable. *People v. Brown*, 236 Ill. 2d 175 (2010).

¶ 12 Defendant claims counsel's performance was deficient when counsel failed to introduce medical records of defendant's mental health disorder at defendant's sentencing hearing. We disagree. Counsel did not act unreasonably by failing to introduce this evidence at the hearing because there is no indication such medical records existed at the time of the hearing. The only evidence that such medical records exist is based on the "Mental Health Diagnostic and Treatment Note" defendant attached to his postconviction petition. This note was created after the sentencing hearing, and therefore fails to show defense counsel had access to such records at the time of sentencing.

¶ 13 However, even if defendant can arguably state that counsel's performance fell below the minimum professional standards, defendant still must make an arguable claim that but for counsel's deficient performance, the result of his sentence would have been different. *Strickland*, 466 U.S. 668; *People v. Orange*, 168 Ill. 2d 138 (1995) (holding that the failure to offer mitigating evidence does not, in and of itself, demonstrate counsel's deficient performance because both prongs of *Strickland* must be proven). In determining whether defendant's case was actually prejudiced, it should be noted that information about a defendant's mental impairment is not inherently mitigating. *People v. Tenner*, 175 Ill. 2d 372 (1997). Such evidence can be found

either mitigating or aggravating by the trier of fact. *Id.*

¶ 14 In light of the evidence presented at defendant's sentencing hearing, we find defendant was not prejudiced by counsel's performance. The record indicates that the trial court was aware of defendant's schizoaffective disorder through various statements made by both counsel and defendant. Defendant is not arguing that he was mentally impaired during the commission of the crime or that he was unfit to plead guilty. Defendant merely argues counsel should have discovered and introduced medical records of his mental disorder at sentencing. It is unlikely the trial court would have reduced defendant's sentence based on this single mitigating factor, already referenced, in light of defendant's numerous prior convictions and offenses. We, therefore, hold that defendant's postconviction allegations, liberally construed, do not make a claim for ineffective assistance of counsel, and defendant's petition was properly dismissed.

¶ 15

#### CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the trial court of Will County is affirmed.

¶ 17 Affirmed.