

NOTICE
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2011 IL App (4th) 100550-U

Filed 11/21/11

NO. 4-10-0550

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
CHARLES L. SILAGY,)	No. 80CF47
Defendant-Appellant.)	
)	Honorable
)	Mark Goodwin,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing defendant's second postconviction petition as defendant failed to make a showing of a constitutional deprivation concerning allegedly withheld evidence of his organic brain damage.

¶ 2 In July 1980, a jury convicted defendant, Charles L. Silagy, of two murders. In July 1980, he was sentenced to death. In September 1987, our supreme court affirmed his conviction and sentence. The supreme court also affirmed the dismissal of defendant's first postconviction petition. Defendant filed a second postconviction petition, including numerous claims. In November 1998, the trial court dismissed most of them. However, while two claims of this petition were pending, the Governor of Illinois granted defendant's request to commute his death sentence to natural life in prison without the possibility of parole. The two remaining claims of the second postconviction petition were later dismissed as moot due to the commutation of defendant's death sentence. Defendant appeals and we affirm the dismissal of those

claims, although on the grounds they lack merit.

¶ 3

I. BACKGROUND

¶ 4 In February 1980, the State charged defendant with the murders of his girlfriend, Cheryl Block, and Anne Waters, a friend of Block. Defendant admitted to police he stabbed both women, in separate incidents, after several hours of drinking.

¶ 5 Defense counsel gave notice the defense of insanity would be presented. At the request of the State, Dr. Arthur Traugott interviewed defendant in June 1980. Dr. Traugott concluded defendant understood the nature of his actions and had substantial ability to conform his conduct to the requirements of the law. Dr. Traugott diagnosed defendant as suffering from alcoholism, but his report contained no indication he believed or determined defendant had organic brain damage.

¶ 6 At the jury trial in July 1980, a defense psychiatrist opined defendant could not conform his behavior to the law at the time of the offenses. Dr. Traugott testified for the State consistent with the report he submitted in June. Dr. Traugott specifically distinguished "psychotic disorders" such as "organic brain syndromes where there is a malfunction of the brain due to a physical illness" from "personality disorders which are *** patterns of behavior which are not present on an organic basis." His diagnosis of defendant was "antisocial personality disorder," a condition not considered a disease or defect.

¶ 7 The jury found defendant guilty of both murders and, after defendant waived counsel for sentencing, determined he should be sentenced to death. In 1984, the supreme court affirmed defendant's convictions and sentence on direct appeal. See *People v. Silagy*, 101 Ill. 2d 147, 461 N.E.2d 415 (1984). In 1987, the supreme court upheld the dismissal of defendant's first

petition for postconviction relief. *People v. Silagy*, 116 Ill. 2d 357, 507 N.E.2d 830 (1987).

Defendant then sought *habeas corpus* relief in federal court. The district court granted the writ in part, holding the Illinois death-penalty statute unconstitutional. *Silagy v. Peters*, 713 F. Supp. 1246, 1259-60 (CD ILL. 1989). That finding was reversed by the Seventh Circuit which upheld the state court rulings defendant received a fair trial and a constitutionally valid death sentence. *Silagy v. Peters*, 905 F.2d 986 (7th Cir. 1990).

¶ 8 On July 13, 1990, during the pendency of the *habeas* appeal, *pro bono* counsel for defendant filed a second petition for postconviction relief in state court. In 1991, that petition was amended after the results of "extensive psychiatric and neuropsychological examinations" were received that supported a claim defendant suffers, and in 1980 was suffering from, "organic brain damage," a fact not known to the trial court or jury in 1980. When a petition for writ of *certiorari* was denied by the United States Supreme Court in the *habeas* appeal, defendant sought a stay of his execution from the Supreme Court of Illinois pending proceedings on the second petition for postconviction relief. That motion was allowed on April 15, 1991.

¶ 9 On December 14, 1995, defendant filed a motion for leave to amend the postconviction petition and file supplemental claim No. 28, which alleged defendant had been administered the psychotropic drug Darvocet prior to his trial and sentencing in 1980 but was not given a fitness hearing. On November 30, 1998, the trial court granted the State's motion to dismiss as to the first 27 claims of the second postconviction petition but denied it as to claim No. 28. During April and June 1999, evidentiary hearings were conducted on claim No. 28. Dr. James Merikangas, an expert witness for defendant, testified a magnetic resonance image (MRI) developed from a scan of defendant's brain in 1991 showed shrinkage of brain tissue and

demonstrated defendant had brain damage in 1980.

¶ 10 On June 10, 1999, Dr. Traugott testified for the State. When Dr. Traugott was asked about his findings regarding defendant in June 1980, he stated his belief defendant "had organic brain damage from his alcoholism." The doctor acknowledged he had not addressed defendant's organic brain damage in his clinical exam or his report to the court in 1980. Dr. Traugott testified his diagnosis in 1980 had been (1) alcohol dependence and (2) conduct disorder (putative antisocial personality disorder). Dr. Traugott testified he had seen defendant's MRI results, which were not available to him in 1980. Defense counsel asked the doctor if he would have wanted to know whether defendant had organic brain damage if the trial court were asking him to opine whether Darvocet impaired defendant's fitness to waive counsel and seek the death penalty. Dr. Traugott replied, "One could assume from his history that he had organic brain damage."

¶ 11 Defense counsel asked Dr. Traugott if he were aware in 1980 defendant had organic brain damage. He stated he was aware but only to the extent of assuming its presence from defendant's history of alcoholism. He stated his 1980 report addressed "organic mental disorder" by diagnosing alcoholism in light of "what is known about its chemical effects on the central nervous system." The doctor stated he was familiar with the fact the mammillary bodies in the brain shrink with chronic alcoholism and defendant's 1991 MRI showed this loss of brain substance. However, he did not see any influence of the alcoholism on defendant's "decisional capacity." Dr. Traugott noted he was ruling out the significance of organic brain disorder in this case but not the disorder itself because he found no correlation between the loss of brain substance and "functional capacity."

¶ 12 Dr. Traugott's testimony prompted defendant's counsel to argue Dr. Traugott misled the trial court in 1980 by not including his finding of organic brain damage in his report and by stating defendant suffered only from a personality disorder. On July 13, 1999, counsel sought leave to amend the pleadings with two additional claims. Proposed claim Nos. 29 and 30 were attached to the motion.

¶ 13 Claim No. 30 argued a violation of due process because the State's witness, Dr. Traugott, failed to disclose a finding, the presence of organic brain damage, which would have tended to negate the guilt of defendant by bolstering his defense of insanity or it would have reduced his punishment. Claim No. 30 noted defendant's trial counsel sought discovery of any such information in possession of the State. Claim No. 29 cited the same failure to disclose the brain damage but attacked only the imposition of the death penalty.

¶ 14 On October 18, 2000, the trial court denied claim No. 28 in an eight-page letter to counsel for the State and defendant. The letter noted claim Nos. 29 and 30 were "on file" but were continued by agreement pending the decision on claim No. 28. The court asked the parties to advise whether to enter an order as to claim No. 28 or "wait until all other pending matters are determined." On October 27, 2000, the court sent another letter to counsel referencing a defense request for time to file for reconsideration of claim No. 28. The trial judge advised he would be leaving office in December 2000.

¶ 15 On November 3, 2000, defense counsel filed a motion to present additional evidence on claim No. 28. The case was reassigned to a different judge on December 22, 2000. No other pleadings were filed by counsel or any orders entered with regard to proposed claim Nos. 29 or 30.

¶ 16 On January 10, 2003, the Governor commuted defendant's death sentence to natural life without the possibility of parole. On January 13, 2003, the Prisoner Review Board notified the chief judge, State's Attorney and the circuit clerk of Vermilion County of the commutation of defendant's sentence.

¶ 17 On December 8, 2008, the circuit clerk received a handwritten letter from defendant inquiring as to the status of his case and noted his last court appearance had been in 2001. On February 3, 2009, defendant was informed his case had been reassigned to a different judge. On February 19, 2009, defendant mailed a motion for status hearing to the circuit clerk's office.

¶ 18 On March 30, 2009, a status hearing was held. The trial court stated at the start of the hearing defendant had been heard on two separate postconviction petitions and both had been through the appeals process and were concluded. The court noted defendant's death sentence had been commuted by the Governor. The court noted defendant's motion for status hearing had not requested any relief. The court noted its file did not contain a copy of the commutation certificate and asked one be placed there, which would accomplish the clarification defendant sought. The court found because defendant had two postconviction petitions which were both concluded at that time, and his sentence had been commuted to natural life, there was nothing more to be done in the case. Finally, the court noted defendant wanted to discharge any remaining defense counsel and represent himself. The court stated this could occur.

¶ 19 On April 9, 2009, defense counsel filed a motion to withdraw as counsel, stating no active issue was pending and defendant asked them to withdraw. On May 11, 2009, the trial court granted the motion, and the court noted nothing remained pending in the case.

¶ 20 On September 16, 2009, defendant filed a *pro se* motion for leave to cite additional authority, for appointment of counsel, and for a hearing on the remaining claims for postconviction relief, claim Nos. 29 and 30. On September 22, 2009, the trial court denied this motion and sent a docket entry to defendant. Nothing in the order indicated it was final, nor was defendant notified he could appeal.

¶ 21 On April 22, 2010, defendant filed a *pro se* motion for a status hearing in regard to his second postconviction petition. On May 24, 2010, the case was reassigned to a different judge as the judge assigned to the case had retired. On May 27, 2010, the trial court found the motion for status hearing was a frivolous pleading with no arguable basis in law or fact. Defendant was advised of his right to appeal.

¶ 22 On June 22, 2010, defendant mailed his *pro se* notice of appeal to the trial court to appeal his conviction, sentence, and his second postconviction petition. The office of the State Appellate Defender (OSAD) was appointed to represent defendant. On August 4, 2010, OSAD filed a motion to amend the notice of appeal, which was allowed. This notice of appeal stated the appeal was from defendant's conviction, sentence, and the denial of his status hearing as to his second postconviction petition.

¶ 23 On November 1, 2010, OSAD filed a motion for a summary remand to the trial court to resolve still pending postconviction claims. On November 18, 2010, this motion was allowed for the limited purpose of entry of a final order on defendant's second postconviction petition. *People v. Silagy*, No. 4-10-0550 (Nov. 19, 2010) (summary remand on defendant's motion). On December 16, 2010, the trial court entered a "Second Memorandum Opinion and Order" in which it related the procedural history of defendant's second postconviction petition.

The court found claim No. 28 was denied as of the October 17, 2000, letter opinion filed on October 18, 2000. The court granted leave to file claim Nos. 29 and 30 and then denied them on the grounds defendant's death sentence was commuted to life imprisonment without the possibility of parole.

¶ 24 On April 19, 2011, OSAD filed an appellate brief on behalf of defendant addressing the issue of the denial of claim Nos. 29 and 30. On June 9, 2011, the State filed its appellate brief and argued this court does not have jurisdiction to review the final judgment in this case as the notice of appeal was filed prior to the final judgment and does not address it. On July 8, 2011, OSAD filed a motion with this court for leave to file a late notice of appeal as to the final judgment. On July 12, 2011, OSAD filed its reply brief. On July 14, 2011, this court granted the motion to file a late notice of appeal.

¶ 25 II. ANALYSIS

¶ 26 This case had a long and tortuous history in the trial court. Due in part to this history, the parties argue in their respective briefs over whether this court has jurisdiction to hear this appeal from the December 16, 2010, final order of the trial court. Defendant filed a late notice of appeal, filed after the final order and specifically referencing it. The State concedes we have jurisdiction. We turn to the merits of the appeal.

¶ 27 Defendant argues this should be treated as a first-stage dismissal of his second amended postconviction. We disagree. At the trial court proceedings in the mid-to-late 1990's, defendant was represented by counsel, the State provided input, and Dr. Traugott testified on the very issues defendant then raised in claim Nos. 29 and 30. Dr. Traugott's testimony prompted defendant to file those amended claims. The unusual procedural history of this case both before

and after defendant's commutation does not somehow restore it to the first stage. Instead, it is appropriate for us to conduct a *de novo* review and to examine the allegations and the record to determine whether defendant has made a substantial showing of a constitutional deprivation.

People v. Cheers, 389 Ill. App. 3d 1016, 1024, 907 N.E.2d 44 (2009).

¶ 28 Defendant argues the issues he raises in claim Nos. 29 and 30 were properly pleaded and must be accepted as true. He contends the trial court erred in dismissing claim Nos. 29 and 30 of his second postconviction petition due to the commutation of his death sentence. Defendant argues this error is particularly egregious as to claim No. 30 because appeals challenging a defendant's conviction are not immune from judicial review after commutation of the sentence. *People v. Mata*, 217 Ill. 2d 535, 548, 842 N.E.2d 686, 694-95 (2005). Defendant contends, in regard to claim No. 30, given his reliance on an insanity defense, the "findings" by the State's psychiatric witness as to his brain damage in 1980 was a matter material to guilt. He notes jurors may "distrust" defenses of insanity based on an individual's purported mental or emotional problems but they are sympathetic to evidence of "organic problem[s] such as mental retardation" (*Brewer v. Aiken*, 935 F.2d 850, 862 (7th Cir. 1991) (Easterbrook, J., concurring)) and argues the same analysis should apply to conditions such as organic brain damage due to the disease of alcoholism. He argues a substantial probability exists such evidence would have had an effect on the outcome at trial.

¶ 29 With regard to claim No. 29, defendant admits our supreme court has held issues are moot in regard to defendant's original death sentence if a defendant's current sentence was imposed through executive clemency. *People v. Brown*, 204 Ill. 2d 422, 426, 792 N.E.2d 788, 790 (2002). However, he contends federal courts have taken a contrary view when considering

petitions for writs of *habeas corpus* from Illinois defendants who alleged constitutional violations at capital sentencing hearings and who could, in a new sentencing hearing, receive less than natural life terms imposed by gubernatorial commutations. At the time of the offenses in this case, the minimum sentence for conviction of more than one murder had not yet been raised to natural life (see 730 ILCS 5/5-8-1(c)(ii) (West 2010)), as amended by Pub. Act 81-1118 § 1 eff. July 1, 1980) and he is attempting to preserve this claim for possible future federal *habeas* review as a new sentencing hearing could result in a term of years rather than natural life. He maintains the lack of disclosure of defendant's organic brain damage likely had a material effect on the imposition of the death penalty as it was based on false material assumptions about his mental functioning.

¶ 30 We find claim No. 30 is not moot due to the commutation of defendant's sentence. At the same time in our *de novo* review, we look at the record to determine the validity of defendant's claims and, if the record contradicts the allegations made in the claims, dismissal of them is proper. See *People v. Little*, 335 Ill. App. 3d 1046, 1051, 782 N.E.2d 957, 962 (2003).

¶ 31 Defendant does not attempt to show actual innocence based on newly discovered evidence. Instead, he alleges Dr. Traugott made a "finding" of organic brain damage that was available to prosecutors but not produced to the defense at or before trial in 1980. Our *de novo* review indicates Dr. Traugott's actual findings as of 1980 do not support defendant's characterizations. His report contained diagnoses of (1) antisocial personality disorder or conduct disorder and (2) alcoholism. While his testimony in the 1999 hearing on the second postconviction petition shows he "assumed" defendant had organic brain damage because that was a result of alcoholism, nothing indicated he communicated his assumption to the State and

this evidence was somehow only available to the prosecution. Dr. Traugott testified it is common knowledge among medical professionals that alcoholism results in organic brain damage and, thus, this information was equally available to any expert witnesses consulted by defendant.

¶ 32 Dr. Traugott did not make a finding about organic brain damage in 1980, nor did he withhold anything. The State could not fail to disclose information it did not have. *Brady v. Maryland*, 373 U.S. 83, 89 (1963), is not applicable to this case.

¶ 33 Only after trial, and after he reviewed the 1991 MRI test results of defendant, did Dr. Traugott actually make a definitive finding defendant had organic brain damage. There was nothing to withhold from the defense at the time of trial. The only thing omitted from Dr. Traugott's 1980 report and testimony was the known fact, assumed but not stated, alcoholism causes organic brain damage.

¶ 34 None of the experts defendant consulted in regard to the second postconviction petition have explicitly stated defendant's organic brain damage would have caused him to lack substantial capacity to conform his conduct to the requirements of the law at the time of the murders. Although defendant argues materiality exists because his selected defense was insanity, he cites no authority for the conclusion organic brain damage is automatically material in insanity defense cases. In fact, defendant's own testimony, as cited by our supreme court, indicates (1) he pretended to kiss Block to allay suspicion when he heard a car approach his vehicle while he was stabbing her and (2) he intentionally selected a particular knife to stab Waters in their shared home. See *Silagy*, 101 Ill. 2d at 169-70, 461 N.E.2d at 426. Evidence indicated defendant could control himself in the presence of others before committing the

murders when later alone with each of the two women. Dr. Traugott testified he saw no significant connection between defendant's organic brain damage due to alcoholism and his "decisional capacity."

¶ 35 While the trial court dismissed claim Nos. 29 and 30 of defendant's second postconviction petition as moot, we may affirm that dismissal on any basis supported by the record. *Little*, 335 Ill. App. 3d at 1051, 782 N.E.2d at 962 (2003). Thus, we find while defendant's claim No. 29 was properly dismissed as moot, claim No. 30 was properly dismissed because it failed to make a substantial showing of a constitutional deprivation.

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 38 Affirmed.