

NOTICE  
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2011 IL App (4th) 100815-U

Filed 12/23/11

NO. 4-10-0815

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
SHANE S. CRUTCHFIELD,	)	No. 05CF962
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.  
Justices Steigmann and Cook concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant failed to make a substantial showing of a constitutional violation because he did not demonstrate that counsel was ineffective at trial or on appeal, the trial court did not err in dismissing his postconviction petition at the second stage.

¶ 2 In April 2006, a jury found defendant, Shane S. Crutchfield, guilty of unlawful possession of cannabis and unlawful possession of a controlled substance with intent to deliver. In June 2006, the trial court sentenced him to prison. This court affirmed his convictions and sentences. In June 2008, defendant filed a postconviction petition, which the trial court summarily dismissed. On appeal, this court reversed and remanded for second-stage proceedings. In May 2010, the State filed a motion to dismiss defendant's postconviction petition. In August 2010, the trial court granted the State's motion to dismiss.

¶ 3 On appeal, defendant argues the trial court erred in dismissing his postconviction

petition without an evidentiary hearing. We affirm.

¶ 4

## I. BACKGROUND

¶ 5 In June 2005, the State charged defendant by information with unlawful possession of a controlled substance with intent to deliver with a prior unlawful-possession-of-a-controlled-substance conviction (720 ILCS 570/401(a)(2)(A), 408(a) (West 2004)), unlawful possession of a controlled substance with a prior unlawful-possession-of-a-controlled-substance conviction (720 ILCS 570/402(a)(2)(A), 408(a) (West 2004)), and unlawful possession of cannabis with a prior unlawful-possession-of-a-controlled-substance conviction (720 ILCS 550/4(d) (West 2004)). The State also charged codefendant Brandi Hefley with various unlawful-possession offenses. Defendant and codefendant pleaded not guilty.

¶ 6 In April 2006, defendant and codefendant were jointly tried before a jury. After opening statements but before the first witness, defense counsel made an oral motion *in limine*, stating, in part, as follows:

"We would make a motion *in limine* about presenting the guns as they are not relevant. They're not charged with a gun offense, and we would object to that because we believe that it's a tactic that would prejudice the jury against my clients, and it's not relevant. They're charged with drug offenses. No gun charge is presented before the jury."

The trial court reserved ruling on the motion.

Decatur police sergeant Randy Sikowski testified he initiated a drug investigation at 2540 East Olive on April 15, 2005. While conducting surveillance, Sikowski observed

defendant going in and out of the house "on a daily basis." Sikowski also saw a "high volume of traffic" going into the house and the visitors would only stay two or three minutes before leaving.

¶ 7 Decatur police detective Christopher Copeland testified he was working as a patrol officer on July 7, 2005, when he went to a residence at 2540 East Olive in Decatur. There, he observed a three-foot-tall cannabis plant growing in a green bucket behind the garage. Copeland and another officer secured the residence while a search warrant was obtained.

¶ 8 Decatur police detective Richard Hughes testified he participated in the search of the residence. He testified to several items recovered in the house, including 62.5 grams of cocaine (exhibit No. 1), a bag with cocaine residue (exhibit No. 2), a man's sock that contained cocaine (exhibit No. 3), 16.5 grams of cocaine (exhibit No. 4), packaging containing cocaine (exhibit No. 5), 54.5 grams of cannabis found in a dresser drawer (exhibit No. 6), a "muscle" T-shirt that the cannabis had been wrapped in (exhibit No. 7), \$213 in United States currency found in the dresser drawer (exhibit No. 8), \$945 in United States currency found in a glass or plastic bank inside the house (exhibit No. 9), 3.9 grams of cannabis and packaging material found on a bedroom dresser (exhibit No. 10), documents taken from the residence (exhibit No. 11), a set of digital scales (exhibit No. 12), a set of sandwich bags with empty Baggies alongside of it (exhibit No. 13), plastic bottles containing protein-type mixes (exhibit No. 14), 5.3 grams of cannabis and packaging material located just inside the front door on a small table (exhibit No. 15), "numerous" Baggies with cannabis residue in them found in a trash can (exhibit No. 16), as well as other items.

¶ 9 Detective Hughes testified the documents in exhibit No. 11 contained, *inter alia*,

Illinois identification cards for defendant and Hefley and numerous other items addressed to them at the Olive Street address. Hughes spoke with Hefley, and she stated she had lived at 2540 East Olive for approximately six months with her boyfriend, defendant.

¶ 10 At the end of the first day of trial, the trial court raised the issue of the admissibility of a gun and mentioned case law stating a gun may be relevant in a drug-dealing case. Defense counsel objected, claiming the gun was not found at the residence with the drugs. Moreover, counsel believed "the purpose of having the gun sitting there on the desk in front of the jury [was] dirtying up [his] client." The court did not make a ruling on the gun's admissibility. On the second day of trial, the State told the court the gun was recovered from a storage unit on Woodford Street. The court excluded testimony about the gun.

¶ 11 Decatur police officer Edward Root testified as an expert witness in drug distribution. He stated narcotics dealing is a "cash-and-carry business," and drugs are bought with cash as well as stolen items like stereo equipment, televisions, and guns. Drug dealers use digital scales to weigh the product and sandwich Baggies to package the drugs. Protein powders are often used as a cutting agent, *i.e.*, to dilute the cocaine but increase the amount of the product in an attempt to maximize profits. Root stated drug dealers often use multiple addresses to "hide and confuse law enforcement" as well as to protect against having their narcotics stolen. Drug dealers also place property and valuables in the names of friends or relatives to prevent seizure of the assets by law enforcement. Based on his training and experience, Root opined the drugs found in this case were intended for distribution based on the amount of cocaine, the presence of scales, and the use of sandwich Baggies.

¶ 12 Michael Cravens, a forensic scientist with the Illinois State Police, testified

exhibit No. 6 contained 43.3 grams of plant material containing cannabis. Exhibit No. 1 contained 60.7 grams of a chunky white material containing cocaine. Exhibit No. 4 measured 15.3 grams of a substance containing cocaine. Exhibit No. 22 was 150.9 grams of a white powder containing cocaine. Exhibit No. 24 was 61.7 grams of a white material containing cocaine. Exhibit No. 26 was 101 grams of a white material containing cocaine.

¶ 13 Brandi Hefley testified on her own behalf. She stated defendant had been her boyfriend and she stayed at the East Olive residence. She also stated several other males stayed at the residence. She neither possessed drugs at the residence nor sold any drugs at that location.

¶ 14 Defendant exercised his constitutional right not to testify. Following closing arguments, the jury found defendant guilty of unlawful possession of cannabis and unlawful possession of a controlled substance with intent to deliver. The jury also found Hefley guilty of unlawful possession of cannabis and unlawful possession of a controlled substance with intent to deliver.

¶ 15 In May 2006, defendant filed a posttrial motion, arguing, *inter alia*, the display of the gun on the evidence table in full view of the jury was prejudicial. In June 2006, the trial court denied the motion. Thereafter, the court sentenced him to 40 years for unlawful possession of a controlled substance with intent to deliver with a prior unlawful-possession-of-a-controlled-substance conviction. The court also imposed a concurrent term of eight years in prison for defendant's conviction of unlawful possession of cannabis with a prior unlawful-possession-of-a-controlled-substance conviction. Defendant filed several postsentencing motions, which the court denied. Defendant appealed, and this court affirmed his convictions and sentences. *People v. Crutchfield*, No. 4-06-1078 (January 23, 2008) (unpublished order under Supreme Court Rule

23).

¶ 16 In June 2008, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2006)) and set forth multiple issues therein. In the first allegation of error, defendant claimed he was deprived of his constitutional right to a fair trial and due process when the jury was exposed to the highly prejudicial and inadmissible gun without admonition. In his second claim, defendant alleged his trial counsel was ineffective for failing to move for a mistrial after the trial court determined the gun was inadmissible. In the third claim, defendant alleged appellate counsel was ineffective for failing to raise these two issues in his direct appeal.

¶ 17 The trial court dismissed defendant's postconviction petition, finding it frivolous and patently without merit. The court found defendant received a fair trial and his guilt was decided by a fair jury. The court also stated many of defendant's postconviction complaints were discussed on direct appeal.

¶ 18 On appeal, this court found it was arguable that counsel's failure to request a jury admonition or move for a mistrial was unreasonable. Moreover, we found it was arguable the gun on the table prejudiced defendant in the eyes of the jury and also prejudiced him when appellate counsel did not raise the issue on direct appeal. As we found defendant sufficiently stated a constitutional claim, we reversed the trial court's judgment and remanded the cause for second-stage proceedings. *People v. Crutchfield*, No. 4-08-0505 (October 13, 2009) (unpublished order under Supreme Court Rule 23).

¶ 19 In February 2010, defendant filed an addendum to his postconviction petition. Among other claims, the addendum alleged trial counsel was ineffective for not requesting a

mistrial or jury admonition regarding the gun that was visible to the jury. The addendum also raised the issue of appellate counsel's ineffectiveness based on the failure "to argue the prejudicial appearance of the weapon on the evidence table near the jury for much of the trial."

¶ 20 In May 2010, the State filed a motion to dismiss. The State contended the firearm issue failed on several grounds because (1) it could have been raised on direct appeal, (2) defendant could not demonstrate a cognizable violation of his constitutional rights, (3) the jury was properly instructed as to withdrawn exhibits or exhibits that were refused or stricken, and (4) the evidence at trial was overwhelming.

¶ 21 In August 2010, the trial court held a hearing on the State's motion to dismiss. In October 2010, the court issued its written ruling. The court found defendant failed to make a substantial showing of a constitutional violation as it related to the jury viewing the firearm. The court stated there was no testimony regarding the gun, it was not admitted into evidence, the jury was properly instructed as to what evidence it should consider, and the evidence against defendant was overwhelming. The court also found defendant failed to make a substantial showing of a constitutional violation as it related to trial and appellate counsels' performance. The court granted the State's motion to dismiss. This appeal followed.

¶ 22

## II. ANALYSIS

¶ 23 Defendant argues the trial court erred in dismissing his postconviction petition at the second stage where the petition alleged (1) trial counsel was ineffective for failing to ask for a mistrial or a jury admonition upon learning the handgun, which sat on the evidence table in view of the jury during a portion of the trial, was inadmissible, and (2) appellate counsel was ineffective for failing to argue on direct appeal that trial counsel was ineffective and that the

jury's viewing of the gun was a violation of due process. We disagree.

¶ 24 The Act "provides a means for a criminal defendant to challenge his conviction or sentence based on a substantial violation of constitutional rights." *People v. Beaman*, 229 Ill. 2d 56, 71, 890 N.E.2d 500, 509 (2008). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *Beaman*, 229 Ill. 2d at 71, 890 N.E.2d at 509. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights. *People v. Caballero*, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008).

¶ 25 The Act establishes a three-stage process for adjudicating a postconviction petition. *Beaman*, 229 Ill. 2d at 71, 890 N.E.2d at 509. At the first stage, the trial court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2006). If the petition is not dismissed at the first stage, it advances to the second stage. 725 ILCS 5/122-2.1(b) (West 2006).

¶ 26 At the second stage, the trial court may appoint counsel, who may amend the petition to ensure defendant's contentions are adequately presented. *People v. Pendleton*, 223 Ill. 2d 458, 472, 861 N.E.2d 999, 1007 (2006). Also at the second stage, the State may file an answer or move to dismiss the petition. 725 ILCS 5/122-4, 122-5 (West 2006). A petition may be dismissed at the second stage "only when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *People v. Hall*, 217 Ill. 2d 324, 334, 841 N.E.2d 913, 920 (2005). If a constitutional violation is established, "the petition proceeds to the third stage for an evidentiary hearing." *People v. Harris*, 224 Ill. 2d 115, 126, 862 N.E.2d 960, 967 (2007). In this case, the State filed a motion to

dismiss, and the court granted that motion.

¶ 27 At the second stage of postconviction proceedings, the trial court is concerned merely with determining whether the petition's allegations sufficiently demonstrate a constitutional infirmity that would necessitate relief under the Act. *People v. Coleman*, 183 Ill. 2d 366, 380, 701 N.E.2d 1063, 1071 (1998). At this stage, "the defendant bears the burden of making a substantial showing of a constitutional violation" and "all well-pleaded facts that are not positively rebutted by the trial record are to be taken as true." *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008. The court reviews the petition's factual sufficiency as well as its legal sufficiency in light of the trial court record and applicable law. *People v. Alberts*, 383 Ill. App. 3d 374, 377, 890 N.E.2d 1208, 1212 (2008). We review the trial court's second-stage dismissal *de novo*. *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008.

¶ 28 Claims of ineffective assistance of counsel may be raised in a postconviction petition. See *People v. Brown*, 236 Ill. 2d 175, 185, 923 N.E.2d 748, 754 (2010) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). "To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219-20, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 687). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Evans*, 209 Ill. 2d at 219-20, 808 N.E.2d at 953 (citing *Strickland*, 466 U.S. at 694). A defendant must satisfy both prongs of the

*Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

¶ 29 Claims that appellate counsel was ineffective are also evaluated under *Strickland*. *Petrenko*, 237 Ill. 2d at 497, 931 N.E.2d at 1203. "Appellate counsel is not required to brief every conceivable issue on appeal and may refrain from developing nonmeritorious issues without violating *Strickland*." *People v. Jones*, 219 Ill. 2d 1, 23, 845 N.E.2d 598, 610 (2006). Thus, "unless the underlying issue is meritorious, a defendant cannot be said to have incurred any prejudice from counsel's failure to raise the particular issue on appeal." *People v. Edwards*, 195 Ill. 2d 142, 164, 745 N.E.2d 1212, 1224 (2001).

¶ 30 In this case, defendant failed to make a substantial showing of a constitutional violation because defendant did not demonstrate counsel was ineffective at trial or on appeal. Specifically, defendant cannot show he was prejudiced by the gun being visible to the jury or by defense counsel's failure to request a mistrial or a jury admonition.

¶ 31 The handgun at issue in this case was never admitted into evidence. The trial court barred admission of the gun into evidence as well as testimony about the gun. Although the gun was present on a table in the courtroom for a portion of the trial, it was removed at some point. The jury was instructed it had a duty to determine the facts based on the evidence, which consisted "only of the testimony of the witnesses and the exhibits which the court has received." Withdrawn exhibits were to be disregarded. No discussion of the gun was made during closing arguments.

¶ 32 Here, the evidence against defendant was overwhelming, but defendant claims he

was prejudiced because the jury "most likely believed" the gun on the table was found with the other evidence that was recovered and linked to him by the State. However, "*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice." *People v. Bew*, 228 Ill. 2d 122, 135, 886 N.E.2d 1002, 1010 (2008). Defendant can only speculate as to what the jury believed, but such speculation is insufficient to demonstrate prejudice under *Strickland*. Thus, as defendant cannot demonstrate he was prejudiced by the gun or trial counsel's representation, his claim of ineffective assistance of counsel fails. Moreover, because defendant cannot establish ineffective assistance of trial counsel, he cannot establish appellate counsel was ineffective for not raising the issue on appeal. As defendant failed to make a substantial showing of a constitutional violation, the trial court appropriately dismissed his postconviction petition at the second stage.

¶ 33

### III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 35 Affirmed.