

served, and the defendant was ordered to pay court costs totaling \$590 and a \$1,000 drug-assessment fee. On direct appeal to this court, we determined that there was insufficient evidence to establish beyond a reasonable doubt that the delivery of the cocaine occurred within 1,000 feet of residential property owned, operated, or managed by a public housing agency, and so we issued an order reducing the defendant's conviction to a Class 3 felony and we remanded the case to the trial court with directions to consider an appropriate sentence for the Class 3 felony and to grant a \$300 credit against any drug-assessment fee because the defendant had served 60 days of presentencing incarceration. *People v. Monroe*, No. 5-07-0406 (May 12, 2008) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)).

¶ 3 The record reveals that on remand, the defendant filed a handwritten "motion for rehearing," which is date-stamped May 21, 2008. In the motion, the defendant outlined two contentions. First, that trial counsel provided ineffective representation in that he lied to the defendant about pretrial preparations and matters involving evidence and witnesses during the trial. Second, that a juror named Mark Jones intentionally lied during *voir dire* when he was asked whether he knew the defendant. In support of the second contention, the defendant stated that he learned sometime after his sentencing that his girlfriend, Tracey Stewart, had been engaged in a sexual relationship with Jones; that the relationship began about 30 days after his arrest; that at the time of the defendant's trial and sentencing, the defendant did not know of Jones or the relationship between Stewart and Jones; and that sometime after the sentencing Jones told Stewart that he had voted to convict the defendant with the hope that she would want him more if the defendant was sent to prison. The defendant alleged that Jones lied during *voir dire* when asked if he knew the defendant, that Jones lied so that he would not be stricken from the panel, that Jones was going to vote to find the

defendant guilty no matter what the evidence showed or did not show, and that if he had known about Jones's relationship with Stewart, he would not have left Jones on the jury. During the sentencing hearing, the trial court would not permit the defendant to address the contentions raised in his "motion for rehearing." The court directed the defendant to raise those claims in a postconviction petition. The court sentenced the defendant to 10 years' imprisonment. The court noted that the defendant was entitled to a \$300 credit against the drug-assessment fee and ordered the defendant to pay a \$200 drug-assessment fee. On appeal, the defendant challenged the propriety of the \$200 drug-assessment fee. We determined that the trial court had properly calculated the drug-assessment fee, having given the defendant a \$300 credit against the statutory fee of \$500, and we affirmed the sentencing order. *People v. Monroe*, No. 5-08-0424 (May 4, 2010) (unpublished summary order under Supreme Court Rule 23 (eff. May 30, 2008)).

¶ 4 The defendant filed a *pro se* petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)), and he claimed that his trial counsel provided substandard representation and lied to him about matters related to the investigation and the trial, and that he was deprived of a fair and honest jury. As to the latter claim, the defendant asserted that a juror named Mark Jones had lied during *voir dire* when he told the court that he did not know the defendant; that at the time of the defendant's arrest and subsequent trial, Mark Jones was involved in a sexual relationship with the defendant's girlfriend, Tracey Stewart; that the defendant had no knowledge of Jones or the relationship; and that if the defendant had been aware of the relationship, he would have asked the court to excuse Jones from the jury. A notarized, handwritten letter from Tracey Stewart, dated July 21, 2008, is attached to the postconviction petition. It reads as follows:

"To whom it concerns[,]

I[']m writing this letter because of information that I learned after the fact. Mark Jones served as a juror on LaVonn Monroe's trail [*sic*] and he was dishonest in saying he didn't know LaVonn, because he knew full well who LaVonn was. He (Mark) knew that myself and LaVonn have been going together for a few years. Mark and myself had had [a] sexuall [*sic*] relationship. Mark knew of LaVonn, but LaVonn didn't know about Mark. I didn't want LaVonn to know I was messing around on him. When he went to jail in March of [']07 Mark and myself started messing around again. When LaVonn got out I was with him of course. When he went to jail the final time in July I didn't have any contact with Mark untill [*sic*], around Aug [']07. He mentioned to me he served as a juror on Lavonn's trail [*sic*]. I said to him isn't that illegal? He said yes but just as long as you don't get caught your [*sic*] fine. I can't belive [*sic*] he was able to serve and knowing the defendent [*sic*] LaVonn Monroe."

¶ 5 The circuit court reviewed the petition and determined that it should be filed and docketed. The court appointed counsel to represent the defendant and gave the State 30 days to file a response. The defendant's court-appointed attorney filed a certificate of compliance, pursuant to Supreme Court Rule 651(c) (eff. Dec. 1, 1984), and stated that after conferring with the defendant, examining the record, and reviewing the *pro se* petition, he determined that no amendments were necessary. The State filed a motion to dismiss the defendant's petition and asserted that *res judicata* barred the ineffective assistance claims that had been raised in the direct appeal, that the other claims of ineffective assistance could have been raised on appeal and were forfeited, and that the affidavit asserting juror bias was not made by the juror at issue. After reviewing the parties' pleadings and the appellate court's order in the direct

appeal, the court granted the State's motion and dismissed the postconviction petition. The court found that the claims raised by the defendant could have been raised on direct appeal and were therefore forfeited. The court further found that other claims of ineffective assistance had been decided in the direct appeal.

¶ 6 In this appeal, the defendant contends that he is entitled to an evidentiary hearing on his un rebutted claim that a juror lied during *voir dire* and was biased against him. The defendant also contends that his postconviction petition should be reinstated because postconviction counsel failed to substantially comply with Supreme Court Rule 651(c), in that he failed to make the necessary amendments to show that the defendant was denied the effective assistance of counsel at trial.

¶ 7 A petition brought under the Act provides a method by which a defendant may challenge his conviction or sentence for violations of federal or state constitutional rights, and it is a collateral proceeding rather than an appeal from an earlier judgment. *People v. McNeal*, 194 Ill. 2d 135, 140, 742 N.E.2d 269, 272 (2000). The inquiry is limited to allegations of federal or state constitutional violations that were not and could not have been previously adjudicated. *People v. Whitfield*, 217 Ill. 2d 177, 183, 840 N.E.2d 658, 663 (2005). Any issues that were previously decided on direct appeal are barred by the doctrine of *res judicata*, and any issues that could have been raised in the original proceedings, but were not, are deemed waived. *Whitfield*, 217 Ill. 2d at 183, 840 N.E.2d at 663.

¶ 8 At the first stage of proceedings under the Act, the circuit court has 90 days to review the postconviction petition and may dismiss the petition if the court finds it to be frivolous and patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2006). A postconviction petition is considered frivolous and patently without merit where it has

no arguable basis in fact or law. *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1212 (2009).

¶ 9 At the second stage of the proceedings, the issue is the legal sufficiency of the petition, not the factual merit of the claims. *People v. Coleman*, 183 Ill. 2d 366, 380-81, 701 N.E.2d 1063, 1071-72 (1998). The trial court must determine whether the allegations of fact, liberally construed in favor of the petitioner and taken as true, make a substantial showing of a violation of constitutional rights. *Coleman*, 183 Ill. 2d at 381, 701 N.E.2d at 1071. An evidentiary hearing is required whenever the petitioner makes a substantial showing of a violation of constitutional rights, and to accomplish this, the allegations in the petition must be supported by the record or by accompanying affidavits. *Coleman*, 183 Ill. 2d at 381, 701 N.E.2d at 1071-72. When the claims are based upon matters outside the record, it is not the intent of the Act that such claims be adjudicated on the pleadings. *Coleman*, 183 Ill. 2d at 382, 701 N.E.2d at 1072. A hearing on a postconviction petition is appropriate where a resolution of the issues requires an inquiry into matters outside of the record. *People v. Beard*, 301 Ill. App. 3d 279, 284-85, 703 N.E.2d 552, 556 (1998); *People v. Smith*, 268 Ill. App. 3d 574, 578, 645 N.E.2d 313, 317 (1994). A petition is tested on the assumption that the asserted facts are true, and a petition that asserts facts capable of corroboration invites an evidentiary hearing. *Beard*, 301 Ill. App. 3d at 285, 703 N.E.2d at 556. The dismissal of a petition at the second stage of a postconviction proceeding is reviewed *de novo*. *Coleman*, 183 Ill. 2d at 388-89, 701 N.E.2d at 1074-75.

¶ 10 In his postconviction petition, the defendant claimed that a juror falsely stated during *voir dire* that he did not know the defendant, that the juror knew of the

defendant, that the juror was engaged in a sexual relationship with the defendant's girlfriend at the time of trial, and that he would have asked that the juror be excused had he been aware of that information. The allegations are supported in part by the notarized statement of the defendant's girlfriend. The defendant's claim is based on matters outside the common law record and it asserts facts capable of corroboration. A resolution of the issue requires an evidentiary hearing. The State argues that the petition was properly dismissed without an evidentiary hearing because there was no specific allegation in the petition that the juror was biased or prejudiced against the defendant at the time of the *voir dire* or at the time of trial. Here, the *pro se* petition and the handwritten, notarized statement of the defendant's girlfriend were prepared without assistance of counsel and for reasons unknown were not amended by postconviction counsel. While there is a lack of precision in the formulation of this issue, the clear import of the defendant's claim is that the juror lied under oath when he said that he did not know the defendant; that the juror lied in order to be impaneled; that because of the ongoing sexual relationship with the defendant's girlfriend, the juror could not be fair and impartial; that because of the juror's deceit, the defendant had no opportunity to strike him; and the juror served and voted to convict the defendant on the most serious charge brought against the defendant.

¶ 11 The accused has the constitutional right to an impartial jury and the failure to provide such violates due process. *People v. Olinger*, 176 Ill. 2d 326, 353, 680 N.E.2d 321, 335 (1997). Impartiality is a state of mind, and the determination of whether a prospective juror possesses the state of mind to give an accused a fair trial rests in the sound discretion of the trial court. *People v. Cole*, 54 Ill. 2d 401, 413, 298

N.E.2d 705, 712 (1973). There is a two-part standard to be applied in determining whether a defendant is entitled to a new trial due to false statements made by a juror during *voir dire*. The defendant must establish that "(1) a juror answered falsely on *voir dire* and (2) prejudice resulted therefrom." *Olinger*, 176 Ill. 2d at 353, 680 N.E.2d at 335.

¶ 12 In this case, the postconviction petition and supporting notarized statement allege that a juror was not fair and impartial. The factual allegations, when liberally construed in favor of the petition and when taken as true, make a substantial showing of a violation of constitutional rights. The factual allegations are based on matters outside the record which are capable of corroboration. Accordingly, the defendant is entitled to an evidentiary hearing on the issue.

¶ 13 Following oral arguments in this case, the defendant filed a motion to cite additional authority in support of his first point on appeal and the State filed an objection, contending that the defendant was attempting to raise a new argument. We ordered that the motion and response would be taken with the case. Given our disposition of the issue, we find resolution of that motion unnecessary.

¶ 14 The defendant also contends that his postconviction petition should be reinstated because postconviction counsel failed to substantially comply with Supreme Court Rule 651(c), in that he failed to make the necessary amendments to show that the defendant was denied effective assistance of counsel at trial. A review of the record shows that the defendant's claim that his trial counsel was ineffective in that he failed to interview and produce two witnesses at trial was presented to and rejected by the appellate court in the direct appeal, and that the other claims of

ineffective assistance raised in the postconviction petition could have been presented on direct appeal. The trial court did not err in finding that the claims of ineffective assistance of trial counsel were barred by *res judicata* or were procedurally forfeited.

¶ 15 Accordingly, the judgment of the trial court dismissing defendant's petition for postconviction relief is affirmed as to the ineffective assistance of counsel claim and reversed as to the claim of alleged juror bias. The matter is remanded to the trial court for an evidentiary hearing on the allegation of juror bias.

¶ 16 Affirmed in part and reversed in part; cause remanded with directions.