

him to 28 years in prison.

¶ 4 On June 6, 2008, defendant filed a *pro se* motion to withdraw his guilty plea "on grounds of [] misrepresentation and ineffective representation." On June 20, 2008, Randall Rosenbaum, defendant's attorney, requested new counsel be appointed to represent defendant. The trial court appointed attorney Walter Ding. On July 18, 2008, defendant filed a *pro se* amended motion to withdraw guilty plea and vacate sentence. Attached to his amended motion was his affidavit, alleging Rosenbaum led him to believe he would receive six to eight years in prison if he pleaded guilty.

¶ 5 On July 31, 2008, the trial court conducted a hearing on defendant's motion to withdraw his guilty plea. Defendant argued he was not effectively represented during plea proceedings. He testified Rosenbaum informed him that he would receive a six- to eight-year prison sentence by pleading guilty. He also stated Rosenbaum failed to relay information about the State's plea offers to him. Additionally, defendant stated he did not have enough time with Rosenbaum to discuss his case or his options.

¶ 6 Rosenbaum testified he visited defendant at the jail to review discovery and the facts of the case. He also showed defendant police reports. Further, Rosenbaum stated he kept defendant apprised of plea negotiations with the State. According to Rosenbaum, the State's original offer was for defendant to plead guilty to the charged Class X offense in exchange for an eight-year prison sentence. Rosenbaum stated he relayed the offer to defendant by telephone, in person, and possibly by letter. Defendant rejected the offer. Rosenbaum testified the offer was on the table for 1 1/2 to 2 months.

¶ 7 Later, the State altered its position and offered defendant a 12-year prison

sentence in exchange for his guilty plea to the charged offense. Defendant also rejected that offer. Rosenbaum testified defendant was concerned about pleading guilty to a Class X felony and wanted the offense reduced to a Class I or II.

¶ 8 Rosenbaum testified the parties began preparing for a jury trial. A jury was picked and the trial was about to begin with opening statements when defendant informed Rosenbaum he wanted to take a plea. Rosenbaum asked the State if it would renew one of its previous offers but the State declined. He then informed defendant that his plea would have to be open and defendant agreed and entered an open plea of guilty to home invasion. Rosenbaum testified defendant was fully admonished regarding the consequences of his plea.

¶ 9 Several days after defendant pleaded guilty, Rosenbaum received correspondence from defendant, indicating he wished to withdraw his guilty plea. In response, Rosenbaum sent defendant a letter explaining that such action would be premature and defendant would have to wait until after his sentencing. Approximately a week later, on May 23, 2008, Rosenbaum visited defendant in jail. Defendant became emotional and stated he was guilty and did not want to withdraw his plea.

¶ 10 After defendant was sentenced, Rosenbaum sent another letter, informing defendant that it was the appropriate time to file motions to withdraw his plea or to reconsider his sentence. Rosenbaum testified defendant filed a *pro se* motion to withdraw his plea and did not further communicate with Rosenbaum.

¶ 11 The trial court found defendant was properly and fully admonished as to the consequences of his plea and denied defendant's motion to withdraw his guilty plea.

¶ 12 Defendant appealed the trial court's denial of his motion to withdraw his guilty

plea, arguing he was denied a fair hearing on his motion due to judicial prejudice or bias. This court found "[t]he court's comments were a reflection of its strong opinion that defendant's testimony was incredible and his position untenable, not an expression of bias or prejudice against defendant." *People v. Wilbourn*, No. 4-08-00602, slip order at 6 (September 15, 2009) (unpublished order under Supreme Court Rule 23). Additionally, this court found defendant was effectively represented during plea proceedings, stating:

"Moreover, even if we were to find error with the trial court's comments, defendant suffered no harm because the evidence at the hearing did not show he was entitled to withdraw his guilty plea. At the hearing, Rosenbaum testified he had several discussions with defendant regarding defendant's case and relayed each of the State's plea offers to defendant. According to Rosenbaum, defendant was concerned about pleading guilty to a Class X felony and rejected the State's two initial offers of guilty pleas in exchange for eight and twelve years in prison, respectively. The record also shows defendant was fully admonished regarding the consequences of his plea and that he knowingly and voluntarily entered his plea. Defendant's own rambling testimony fell far short of showing withdrawal of his plea was warranted under the facts of his case." *People v. Wilbourn*, No. 4-08-00602, slip order at 6-7 (Sept. 15, 2009) (unpublished order under Supreme Court Rule 23).

¶ 13 On August 16, 2010, 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 2008)), claiming, in pertinent part, that he was not effectively represented during plea proceedings. In dismissing defendant's postconviction petition, the trial court stated:

"The Defendant's remaining contention is that Mr. Rosenbaum failed to properly relay the plea agreements in the case. A hearing was held on July 31, 2008[,] on this issue and the trial court found that the Defendant's contentions were without merit. The trial court's decision was upheld by the Appellate Court."

¶ 14 This appeal followed.

¶ 15 Defendant argues the trial court erred in dismissing his postconviction petition because he stated the gist of a constitutional claim, "that guilty plea counsel was ineffective in failing to properly advise him of the details of entering a guilty plea and advising him accurately about a plea offer from the prosecution."

¶ 16 The Act "provides a remedy for defendants who have suffered a substantial violation of their constitutional rights at trial." *People v. Edwards*, 197 Ill. 2d 239, 243-44, 757 N.E.2d 442, 445 (2001). An action for postconviction relief is a collateral attack on the proceedings, not an appeal on the merits. *People v. Harris*, 206 Ill. 2d 1, 12, 794 N.E.2d 314, 323 (2002). "The purpose of a post-conviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal." *Harris*, 206 Ill. 2d at 12, 794 N.E.2d at 323. "Issues that were raised and decided on direct appeal are barred by the doctrine of *res judicata*. [Citations.] Issues that could have been presented on direct appeal, but were not, are waived."

Harris, 206 Ill. 2d at 12-13, 794 N.E.2d at 323. "[W]here *res judicata* and forfeiture preclude a defendant from obtaining relief, such a claim is necessarily "frivolous" or "patently without merit." " *People v. Alcozer*, 241 Ill. 2d 248, 258-59, 948 N.E.2d 70, 77 (2011) (quoting *People v. Blair*, 215 Ill. 2d 427, 445, 831 N.E.2d 604, 616 (2005)). An otherwise meritorious claim has no basis in law if *res judicata* or forfeiture bar the claim. *Blair*, 215 Ill. 2d at 445, 831 N.E.2d at 615-16.

¶ 17 Defendant's ineffective assistance of counsel claim is barred by the doctrine of *res judicata*, as it has already been raised and decided on direct appeal. See *People v. Rissley*, 206 Ill. 2d 403, 412, 795 N.E.2d 174, 179 (2003) (an appellate court will not consider issues that it has already ruled on). A defendant may not avoid the bar of *res judicata* simply by rephrasing issues that have been previously addressed on direct appeal. *People v. Simpson*, 204 Ill. 2d 536, 559, 792 N.E.2d 265, 282 (2001). On direct appeal, this court rejected defendant's claim that he was entitled to withdraw his guilty plea. A claim barred by *res judicata* has no basis in law and is necessarily frivolous and patently without merit. *Alcozer*, 241 Ill. 2d at 258-59, 948 N.E.2d at 77; *Blair*, 215 Ill. 2d at 446, 831 N.E.2d at 615-16.

¶ 18 Defendant's claim in his postconviction petition was raised on direct appeal. Therefore, his claim is barred by the doctrine of *res judicata*. However, even if the claim was not barred, the trial court properly found the claim to be frivolous and patently without merit.

¶ 19 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.

¶ 20 Affirmed.