



now grant the motion of the State Appellate Defender to withdraw as counsel, we deny the defendant's motion to substitute counsel, and we affirm the judgment of the circuit court of Randolph County based on the following.

¶ 3

### BACKGROUND

¶ 4 On July 7, 2008, the defendant was charged with aggravated fleeing or attempting to elude a peace officer. A jury found him guilty of that charge. The circuit court sentenced the defendant to six years' imprisonment. The defendant appealed, arguing only that the circuit court erred in *sua sponte* instructing the jury pursuant to *People v. Prim*, 53 Ill. 2d 62 (1972). This court affirmed his conviction. *People v. Young*, No. 5-09-0060 (2010) (unpublished order under Supreme Court Rule 23). On February 1, 2010, while his direct appeal was still pending, the defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)), and the circuit court dismissed the defendant's petition *sua sponte* on September 9, 2010. The defendant timely filed a notice of appeal.

¶ 5

### ANALYSIS

¶ 6 The purpose of a section 2-1401 petition is " ' "to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and the court at the time of trial, which, if then known, would have prevented the judgment." ' " *People v. Coleman*, 206 Ill. 2d 261, 288 (2002) (quoting *People v. Berland*, 74 Ill. 2d 286, 314 (1978) (quoting *Ephraim v. People*, 13 Ill. 2d 456, 458 (1958))). It is not designed to provide a general review of all trial errors. *People v. Haynes*, 192 Ill. 2d 437, 460-61 (2000). Rather, postjudgment relief is limited to matters relating to evidence that did not appear in the record of the original proceedings and were discovered after the trial was completed. *Berland*, 74 Ill. 2d at 314-15. The petition must be supported by affidavit or other appropriate documentation as to matters not of record. 735 ILCS 5/2-1401(b) (West 2008). Because proceedings under section 2-

1401 are subject to the usual rules of civil practice, failure to file a responsive pleading results in an admission of all well-pleaded facts and renders the petition ripe for adjudication. *People v. Vincent*, 226 Ill. 2d 1 (2007). At that point, the petition is subject to *sua sponte* dismissal if it fails to state a cause of action. *Id.* A trial court's dismissal of a section 2-1401 petition is reviewed *de novo*. *Id.* at 18.

¶ 7 In his postjudgment petition, the defendant claimed first that Officer McPherson perjured herself several times at trial and further claimed that had he been privy to the call log that the court ordered the State to turn over, he would have been able to show such perjury at trial. In support of his perjury claim, he points to numerous alleged discrepancies between McPherson's testimony and the call log, as well as discrepancies between her testimony and the testimony of two State's witnesses, Patricia and Gerald Hock.

¶ 8 A claim that a conviction was obtained by the use of perjured testimony is cognizable in a proceeding under section 2-1401. *People v. Moore*, 2012 IL App (4th) 100939, ¶ 28. To prevail, the defendant must show by clear and convincing evidence not only that the testimony in question was false, but also that it was material to the issue tried and that it probably controlled the determination. *People v. Sanchez*, 115 Ill. 2d 238, 286 (1986).

¶ 9 With respect to the alleged discrepancies between Officer McPherson's testimony and the testimony of the Hocks, it is well-settled that inconsistencies between witnesses' testimony do not constitute perjury. *People v. Craig*, 334 Ill. App. 3d 426 (2002). With respect to the discrepancies between Officer McPherson's testimony and the call log, we note that the defendant did not attach the call log to his postjudgment petition, nor does it appear anywhere in the record. Assuming, *arguendo*, that the alleged discrepancies existed, they were not material. These alleged inconsistencies concerned matters such as the exact timing of when Officer McPherson attempted to initiate the stop, whether she had actually "clocked" his speed at 72 miles per hour, whether he had one or two accidents, and whether she

mentioned the fact that he was wearing an ankle bracelet. Because the defendant failed to support his postjudgment claim of perjury with the call log and because the allegedly false testimony was not material to any issue at trial, the defendant failed to state a cause of action for perjury.

¶ 10 The defendant next claimed that the State failed to disclose certain material evidence in response to his motion for discovery, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). In a criminal case, the State is required to disclose evidence that is favorable to the accused and material to either guilt or punishment. *Id.* at 87. Evidence is material if there is a reasonable probability that the result of the trial would have been different had it been disclosed to the defense. *People v. Harris*, 206 Ill. 2d 293, 311 (2002). A reasonable probability that the result would have been different is one that is sufficient to undermine the trial's actual outcome. *People v. Thomas*, 364 Ill. App. 3d 91, 101 (2006).

¶ 11 The defendant alleged first that the State failed to disclose the names and addresses of two children who were allegedly observed along the route taken by the defendant and McPherson. He contended that they might have been able to identify or describe the driver of the vehicle McPherson was pursuing. However, the defendant did not allege that police knew the identity of these children, and nothing in the record suggests that police ever located these children or learned their identity. Moreover, the defendant's allegation that the children might have been able to identify the driver is mere conjecture. In the absence of any allegations that police knew who these children were and that they could have provided information beneficial to the defense, this claim failed to state a cause of action for a *Brady* violation.

¶ 12 The defendant next alleged that the State failed to disclose details of McPherson's conversation with the Hocks, preventing him from knowing what her testimony would be at trial. The record demonstrates that the State disclosed that the Hocks would be witnesses at

trial, however, and the defendant did not allege that the defense was in any way prevented from interviewing them and learning what their testimony would be. The defendant also alleged that the State failed to disclose the Hocks' address but, as the Appellate Defender points out, the court file contained subpoenas for both Patricia and Gerald Hock, and these subpoenas contain their addresses. Thus, the record establishes that this information was available to the defendant.

¶ 13 The defendant alleged that the State "suppressed the execution of Officer Starr McPherson searching [his] home for clothes [he] was wearing and not finding them." He argued that this fact should have been disclosed pursuant to his discovery request that the State inform defense counsel of any evidence acquired as a result of the execution of any legal process. It cannot be reasonably argued, however, that this discovery request encompassed evidence that was *not* found as a result of a search. Moreover, there is no reasonable probability that the outcome of the trial would have been different had the State disclosed that police did not find the defendant's clothes during a search of his home.

¶ 14 The defendant next alleged that the State failed to disclose the names and addresses of all officers who would testify at trial. The record refutes this allegation. In its response to the defendant's discovery motion, the State disclosed that it might call "all witnesses whose names are found in the attached reports." The witnesses the State called are all listed in those reports.

¶ 15 The defendant also alleged that the State failed to disclose the names of witnesses who would be favorable to the defense "clearly and on a separate list," including Tabitha Cole, whose testimony he alleged could have potentially been beneficial to him. Neither Supreme Court Rule 412 (eff. Mar. 1, 2001) nor *Brady* and its progeny require that disclosure of the names of potentially favorable witnesses be on a separate list, and Cole's name was mentioned in the police reports attached to its discovery response.

¶ 16 Finally, the defendant claims that the State failed to turn over witness Gerald Hock's criminal record. The defendant claims that, had the State produced Hock's criminal record, it would have revealed that "he has criminal history such as driving offen[s]es [l]ike these charges." The defendant is correct that the State has "a continuing duty \*\*\* to disclose relevant criminal records of its witnesses against the accused" for the purpose of impeachment. See *People v. Simon*, 2011 IL App (1st) 091197, ¶ 99 (citing Ill. S. Ct. R. 412(a) (eff. Mar. 1, 2001); R. 415(b) (eff. Oct. 1, 1971); *People v. Tonkin*, 142 Ill. App. 3d 802, 804-05 (1986)). However, to constitute reversible error for the failure to disclose the criminal record of a witness, the defendant must show that the undisclosed evidence would be both "favorable \*\*\* and material." *Id.* ¶ 100 (citing *People v. Barrow*, 195 Ill. 2d 506, 534 (2001)). "Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (Internal quotations omitted.) *Id.* (quoting *Barrow*, 195 Ill. 2d at 534). First, the defendant has failed to provide any support for the allegation that Hock even has a criminal record. The defendant's only assertion regarding the materiality of Hock's record is that it would reveal driving offenses. The impeachment value of driving offenses is doubtful, and the defendant points to nothing else that would demonstrate that Hock's criminal record, if he in fact has one, would have been beneficial to his ability to impeach the witness. Therefore, the circuit court was correct in dismissing this claim.

¶ 17 In his response to the State Appellate Defender's motion to withdraw as counsel, the defendant asserts that the circuit court should have granted his motion to amend his petition for relief from judgment, which was filed 16 days after the petition. The record does not reveal that the circuit court ever ruled on the defendant's motion to amend the petition for relief from judgment, although the circuit court later dismissed the initial petition *sua sponte*. Any error was harmless however, because the defendant did not set forth any additional

claims in his motion, nor did he point to any purpose in amending or give any valid reason why an amendment would be either helpful or necessary. Rather, his chief complaint is lack of access to the prison's law library.

¶ 18 The defendant also asserts that it was improper for the court to dismiss his petition for relief from judgment *sua sponte* as the dismissal occurred seven months after the motion was filed, and without an evidentiary hearing. However, "Illinois cases \*\*\* recognize that a trial court may, on its own motion, dispose of a matter when it is clear on its face that the requesting party is not entitled to relief as a matter of law." *People v. Vincent*, 226 Ill. 2d 1, 12 (2007) (citing *Mitchell v. Norman James Construction Co.*, 291 Ill. App. 3d 927 (1997); *Rhodes v. Mill Race Inn, Inc.*, 126 Ill. App. 3d 1024 (1984)). The circuit court is not required to follow any "uniform procedure" in doing so. *Id.* In the present case, it was clear as a matter of law that the defendant was not entitled to relief, and the circuit court did not err in dismissing the petition *sua sponte*.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Randolph County, grant the State Appellate Defender's motion to withdraw as counsel, and deny the defendant's motion to substitute counsel.

¶ 21 Motion to withdraw granted; motion to substitute counsel denied; judgment affirmed.