

No. 1-11-0656

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 02 CR 28899
	)	
NELSON CALDERON,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Justices Cunningham and Rochford concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Summary dismissal of defendant's *pro se* postconviction petition affirmed where defendant failed to establish the gist of a meritorious claim that he received ineffective assistance of appellate counsel. The record shows no procedural impropriety in the circuit court's written order dismissing defendant's petition in its entirety.

¶ 2 Defendant, Nelson Calderon, appeals the summary dismissal of his *pro se* petition seeking relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)). He contends the circuit court erred by dismissing his petition at the first stage of proceedings because he had set forth the gist of a meritorious claim of ineffective assistance of appellate counsel. Defendant argues appellate counsel was ineffective for failing to challenge trial

counsel's decision to decline the circuit court's offer to give the jury dictionary definitions of the terms, "detain," "confine," and "secretly," after the jury requested definitions of these words during deliberations over whether to find defendant guilty of aggravated kidnaping or unlawful restraint. Defendant also asserts the court issued an improper partial summary dismissal because it did not specifically rule in writing on two of the six claims included in his petition.

¶ 3

### BACKGROUND

¶ 4 Defendant was charged by indictment with five counts including: (1) the aggravated kidnaping of David Vasquez for the purpose of obtaining a ransom; (2) the aggravated kidnaping of Vasquez based on the commission of robbery against him; (3) the robbery of Moises Guzman; (4) the robbery of Vasquez; and (5) the residential burglary of Guzman's dwelling. The State *nolle prossed* the first count and the matter proceeded to a jury trial on the remaining four counts. The facts underlying this case were fully discussed in *People v. Calderon*, 393 Ill. App. 3d 1 (2009) and are repeated here only as necessary to resolve the issues currently on appeal.

¶ 5 At trial, the State presented evidence of a series of events that occurred on June 21, 2002, culminating with defendant taking jewelry and money from Vasquez and money from Guzman. Vasquez and Guzman had identified defendant as the offender in a lineup on November 1, 2002. Defense counsel's opening statement set forth misidentification as the defense theory.

¶ 6 Vasquez testified on direct examination that he drove a friend's car to a gas station at Archer Avenue and 47th Street in Chicago to purchase cigarettes. When Vasquez returned to the car, defendant, whom he had never seen before, was sitting in the passenger's seat. Vasquez told defendant to get out of the car. Defendant refused and told Vasquez to get in the car or else

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defendant's friends in a nearby black sports utility vehicle (SUV) would beat him. Vasquez did as he was told and entered the driver's side of the car.

¶ 7 Defendant told Vasquez that he and his friends believed Vasquez was in a gang of undocumented immigrants known as "Brazeros." Defendant explained that the Brazeros had stolen money from him and his friends. Because the money had been marked in a special way, defendant asked to see Vasquez's money. Vasquez told defendant he did not belong to a gang, but gave him the \$150 he was carrying. After ascertaining the money was not marked, defendant returned it to Vasquez.

¶ 8 Defendant and Vasquez remained in the car in front of the gas station for what Vasquez described as "an hour and a half or two," until defendant told Vasquez to drive to a specific three-flat building near 55th Street and Lawndale Avenue in Chicago. Vasquez testified he previously resided in an apartment in that building and his friend, Guzman, currently lived there. Vasquez did as he was told because he was scared. The black SUV followed.

¶ 9 After arriving at Guzman's building, Vasquez and defendant knocked on the door to Guzman's apartment. Guzman answered and allowed Vasquez and defendant to enter. Defendant related the story about the Brazeros and asked Guzman for his money. Guzman gave defendant the money he had on him, which defendant kept. Defendant threatened that if Guzman and Vasquez did not look in the other rooms for more money, his friends in the SUV would come in and search. Defendant threatened to beat Guzman if he failed to turn over more money. Guzman then remembered that he had additional money in a shirt pocket and gave it to defendant.

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¶ 10 Defendant and Vasquez left Guzman's apartment. Once outside the building, defendant began walking away from Vasquez and toward the black SUV. Defendant stopped, returned to Vasquez, and ordered Vasquez to give him his money and the jewelry he was wearing. Vasquez complied, after which defendant entered the SUV and drove away. Vasquez did not call the police because he was scared and "didn't want any more problems."

¶ 11 On cross-examination, Vasquez acknowledged that he parked the car he was driving near the gas station's entry, with its glass doors and numerous windows. Vasquez also acknowledged the car's windows were clear, the initial encounter with defendant occurred at approximately 4:00 p.m., during daylight hours, other people were in and around the gas station, and there was a lot of traffic at the intersection of Archer Avenue and 47th Street, where the gas station was located. Vasquez testified he did not try to reenter the gas station or flag down a passerby for help because he was afraid of defendant's friends in the nearby SUV. Vasquez stated that he never saw defendant holding a weapon, but believed defendant was armed because he kept one hand in his pocket the entire time they were in the car together.

¶ 12 Guzman provided testimony consistent with Vasquez's testimony with regard to what occurred inside Guzman's apartment. Guzman testified that the day after the incident, his landlord called the police. Guzman described the incident to Chicago Police Officer Juan Hernandez, telling the officer that defendant arrived at his apartment with Vasquez and took his wallet.

¶ 13 At the conclusion of the State's case-in-chief, defendant moved for a directed verdict on all four charges. Defendant argued there was no evidence of specific intent to secretly confine

Vasquez in the car. Defendant contended that when he and Vasquez were in the car for "one and a half to two hours," defendant did not try to secrete Vasquez in any way because he did not put him in the trunk, back seat, or on the floor of the vehicle. Vasquez was clearly visible to anyone walking or driving by the gas station.

¶ 14 In response, the State argued that defendant secretly confined Vasquez because no one at the gas station knew Vasquez was being held against his will. The State contended Vasquez was afraid to leave. The circuit court denied defendant's motion for directed verdict. Defendant did not testify.

¶ 15 During the jury instruction conference, defendant requested an instruction for unlawful restraint as a lesser-included offense for the aggravated kidnaping charge. The circuit court conducted its own research prior to admitting the instruction. The court ruled the jury instruction for unlawful restraint was appropriate to be tendered to the jury.

¶ 16 In its closing argument, the State told the jury that after reading the instructions for unlawful restraint and aggravated kidnaping, "it will be clear to you that this was definitely not an unlawful restraint." The State asked the jury to "take your common sense back with you, not get caught up on small words, not get caught up on the distractions that the Defense tried to put in this case to throw you off."

¶ 17 Defendant in his closing argument requested that the jury carefully look at the instructions for unlawful restraint and aggravated kidnaping. "The State wants to diminish the language that's contained in those instructions. They're telling you not to get caught up on the little words." Defendant pointed out that there was no evidence from Vasquez that defendant

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forced him physically to do anything. The defense continued, "even if you may have a problem or a concern or an issue with any of the language contained in those instructions, again that needs to be set aside because those reflect the law as it exists in the State of Illinois." Defendant requested that the jury "take a look at the language that's contained in the instruction. We're talking about imminent force." Defendant also told the jury to use its common sense and presented a scenario illustrating imminent force, "where you're walking home late at night, and someone comes up to you with a knife in hand and demands your money." Defendant questioned whether someone sitting in a car outside of a gas station with another person sitting beside him, "and this offender is talking about a couple of guys in a van that's several feet away, is that really imminent force? It's not."

¶ 18 In addition, defendant asked the jury to consider another element of aggravated kidnaping as to whether the offender had the intent to secretly confine the person involved. Defendant argued there was no intent to secretly confine Vasquez. Defendant reminded the jury that Vasquez sat in the car with him in front of a gas station for nearly two hours. The defense argued, "You didn't hear any evidence of this offender trying to put David Vasquez in the trunk. You didn't hear any evidence of the offender trying to secrete, if you will, David Vasquez in the back seat on the floor, or even in the front seat of the car." The defense also argued the State presented no evidence of the intent to secretly confine Guzman. "And again, the State wants you to disregard that little word, secret. But again, that's the language contained in the jury instruction, and use your common sense as to what you would consider that to mean."

¶ 19 After deliberating for about 90 minutes, the jury sent out a note to the trial judge

requesting legal definitions of the words, "detain," "confine," and "secretly." The defense told the trial judge, "we propose as an answer that they've been given the instructions to the law in this case, and they should continue to deliberate." The State agreed with the defense's position. The parties were also in agreement that there were no legal definitions for the terms requested in the Illinois Pattern Jury Instructions (IPI). The State then suggested giving the jury dictionary definitions of the words. The trial judge offered to give dictionary definitions of the terms to the jury, but the defense declined. The trial judge wrote on the jury's note, "you have all of the instructions in this case. Please continue to deliberate."

¶ 20 Following deliberations, the jury found defendant guilty of aggravated kidnaping, two counts of robbery, and residential burglary. Defendant moved for a new trial, which was denied. Based on his background, the circuit court sentenced defendant to natural life imprisonment for aggravated kidnaping under the Habitual Criminal Act (720 ILCS 5/33B-1 *et seq.* (West 2006)), 14 years' imprisonment for each robbery, and 30 years' imprisonment for residential burglary. The sentences were to run concurrently. Defendant appealed his convictions and sentences.

¶ 21 On appeal, defendant argued, among other things, that the evidence was insufficient to support a finding of guilty beyond a reasonable doubt. He also contended he was denied a fair trial because the circuit court failed to comply with the supreme court's directive in *People v. Medina*, 221 Ill. 2d 394 (2006), and inquire of counsel, in the presence of defendant, whether he consented to the tender of the lesser-included offense instruction on unlawful restraint. The supreme court in *Medina* held that such a discussion is necessary because when a lesser-included offense instruction is offered, a defendant "is exposing himself to potential criminal liability,

which he otherwise might avoid, and is in essence stipulating that the evidence is such that a jury could rationally convict him of the lesser-included offense." *Medina*, 221 Ill. 2d at 409.

¶ 22 This court affirmed defendant's convictions. *Calderon*, 393 Ill. App. 3d at 13. According to the *Calderon* court, the evidence adduced at trial was sufficient to allow the jury to draw an inference of defendant's intent to secretly confine the kidnaping victim from the circumstances surrounding defendant's acts. The court noted defendant was not convicted of the lesser-included offense of unlawful restraint and, therefore, no error under *Medina* occurred. *Id.* at 12. The court vacated defendant's extended-term sentences for robbery and remanded for resentencing. *Id.* at 12-13.

¶ 23 On November 23, 2010, defendant filed a timely *pro se* postconviction petition. In his petition, defendant argued the circuit court erred by failing to give the jury "a dictionary answer to its questions concerning elements of the charge which could have shifted the burden of proof during deliberation" for aggravating kidnaping. Defendant claims the failure to provide dictionary definitions of the terms requested by the jury denied him his right to a fair trial. Defendant also asserted that trial counsel was ineffective by declining to accept the trial judge's offer to give the jury dictionary definitions of the terms requested. Defendant contended appellate counsel was ineffective for failing to raise the issue of ineffective assistance of trial counsel. In addition, defendant argued his convictions and sentences must be vacated because the circuit court failed to follow Supreme Court Rule 431(b). Finally, defendant asserted his life sentence for aggravated kidnaping was void because the Habitual Criminal Act was repealed in 2009. According to defendant, his sentence should be voided or reduced from a Class X to a

Class 2 conviction.

¶ 24 On January 27, 2011, the circuit court summarily dismissed defendant's petition in an 11-page, written order. On the issue of tendering dictionary definitions of the terms requested by the jury, the court held the plain language of the instruction given was clear and understandable to an average person. The court noted the trial judge was not required to answer the jury's questions "when the jury instructions explain the point of law in plain language which the average person could understand," citing *People v. Blalock*, 239 Ill. App. 3d 830, 842 (1993). The court rejected defendant's argument that Rule 431(b) was violated. The court also found effective assistance of both trial and appellate counsel. According to the court, because trial counsel was not ineffective for any of the reasons alleged by defendant, appellate counsel likewise was not ineffective for failing to argue trial counsel's ineffectiveness. The written order, however, did not address defendant's arguments that his aggravated kidnaping conviction should be voided or reduced from a Class X to a Class 2 conviction, or that the repeal of the Habitual Criminal Act rendered his life sentence void. Defendant timely appeals the summary dismissal of his petition.

¶ 25

#### ANALYSIS

¶ 26 On appeal, defendant argues the circuit court erred by summarily dismissing his petition where he stated an arguable claim of constitutional deprivation. He claims appellate counsel was ineffective for failing to challenge trial counsel's decision to decline giving the jury dictionary definitions of "detain," "confine," and "secretly." Defendant also argues reversal is appropriate because the court issued an improper partial summary dismissal of the petition, as it did not address every issue raised in the petition.

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¶ 27 Section 122-2 of the Post-Conviction Hearing Act requires that a postconviction petitioner set forth the respects in which his constitutional rights have been violated. 725 ILCS 5/122-2 (West 2010). A *pro se* petition may be dismissed as frivolous and patently without merit only if the petition has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). Our review of the summary dismissal of a postconviction petition is *de novo*. *Id.* at 9.

¶ 28 Ineffective Assistance of Appellate Counsel

¶ 29 Defendant asserts the jury should have been given the definitions it requested where its understanding of the terms in question was critical. He claims that trial counsel was ineffective by arguing against giving the jury these definitions and appellate counsel was, thus, ineffective for failing to raise the issue on direct appeal. Defendant asserts the jury's understanding of each of the words requested was pivotal as to its decision of whether defendant was guilty of aggravated kidnaping versus unlawful restraint. According to defendant, such definitions would have ensured the jurors had a correct and uniform understanding of the relevant concepts underlying the offenses at issue.

¶ 30 The State responds trial counsel's decision not to provide the jury with dictionary definitions was not objectively unreasonable and, therefore, defendant failed to meet his burden under *Strickland v. Washington*, 466 U.S. 668 (1984) as to appellate counsel's performance. The State points out that, during closing argument, defense counsel urged the jury to pay careful attention to the language contained in the jury instructions and to use its common sense and understanding in interpreting that language. Defense counsel argued that if the jurors used their

common sense in interpreting the jury instructions, there was no evidence of secret confinement because Vasquez and defendant were sitting in a car in a gas station, near a busy intersection with people and traffic surrounding them. Defense counsel asserted there was no evidence that defendant tried to hide or secrete Vasquez in the trunk or the back seat of the car. The State maintains defense counsel's argument was premised upon the jurors' common understanding of the words, "detain," "confine," and "secretly." Defense counsel specifically pointed out in her closing argument that the State wanted the jury to "disregard that little word, secret" and urged the jurors to "use your common sense as to what you would consider that to mean." The State argues it was defense counsel's strategy to have the jury rely on its common sense understanding of the words in question. Defense counsel spent a substantial amount of time explaining to the jury how the evidence did not fit into the common understanding of those words. The State contends that, by providing the jury with dictionary definitions of the terms at issue, defense counsel would have asked the jury to ignore its common understanding of those words in favor of a dictionary definition, thereby negating defense counsel's entire strategy.

¶ 31 The State further argues that the jury asked for legal definitions of the terms, "detain," "confine," and "secretly." The State asserts there are no legal definitions for these words and, as such, defense counsel was more than reasonable in deciding to decline the dictionary definitions and to have the jury instructed that "they've been given the instructions to the law in this case and they should continue to deliberate."

¶ 32 Claims of ineffective assistance of appellate counsel are evaluated using the two-prong test handed down by the United States Supreme Court in *Strickland* and adopted by our supreme

court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To succeed, a defendant must show that counsel's failure to raise the issue on direct appeal was objectively unreasonable, and that he was prejudiced by this decision. *People v. Petrenko*, 237 Ill. 2d 490, 496-97 (2010); *People v. Harris*, 206 Ill. 2d 293, 326 (2002). In other words, a defendant must establish that, but for counsel's error, there is a reasonable probability that his appeal would have been successful. *Petrenko*, 237 Ill. 2d at 497. Appellate counsel is not required to raise every conceivable issue on direct appeal and, if counsel concludes an issue is without merit, then his or her decision to refrain from raising it is not incompetence, unless appraisal of the merits was patently erroneous. *People v. Smith*, 195 Ill. 2d 179, 190 (2000). Generally, counsel's decision not to raise an issue on appeal is given substantial deference. *Harris*, 206 Ill. 2d at 326. Unless the underlying issue is meritorious, a defendant is not prejudiced by counsel's failure to raise it on direct appeal. *People v. Barrow*, 195 Ill. 2d 506, 523 (2001). In short, a petition alleging ineffective assistance of appellate counsel may not be summarily dismissed if: (1) it is arguable that counsel's performance fell below an objective standard of reasonableness; and (2) it is arguable that the defendant was prejudiced. *Petrenko*, 237 Ill. 2d at 497.

¶ 33 This court has previously held that trial counsel's decision regarding whether to provide a jury with definitions of particular terms in jury instructions is a matter of trial strategy immune from ineffective assistance claims. In *People v. Douglas*, 362 Ill. App. 3d 65, 74 (2005), the defendant asserted his trial counsel was ineffective by failing to request that the jury receive instructions including the definitions of the terms, "brutal," "heinous," and "wanton cruelty," for purposes of determining whether the defendant was eligible for an extended-term sentence for

first degree murder. The jury was instructed that if it found the defendant guilty of first degree murder, it was then required to determine whether the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. At the jury instructions conference, the State offered an instruction that provided definitions of the terms in question, using widely accepted descriptions. Defense counsel asked that the instruction defining "brutal" and "heinous" not be given.

¶ 34 On appeal, the defendant argued that without being instructed as to those definitions, the jury could not have uniformly concluded that his behavior met that standard because each juror's own view of those terms likely varied. The State responded that defense counsel's decision not to instruct the jury on those definitions constituted trial strategy and, given the physical evidence and eyewitness testimony linking the defendant to the offense, defense counsel's best tactic was to try to minimize his culpability. The State contended the defendant's best hope was that the jurors would disagree on the definitions of "brutal," "heinous," and "wanton cruelty," and whether the defendant's conduct fit those terms.

¶ 35 The *Douglas* court found that defense counsel engaged in reasonable strategy by foregoing the instruction to minimize the emphasis on the victim's injuries and direct as little attention as possible to the details of the crime. *Id.* at 75. "Counsel's decision as to what jury instructions to tender is one of several determinations widely recognized as matters of trial strategy that are generally immune from ineffective assistance claims." *Id.* (citing *People v. Lowry*, 354 Ill. App. 3d 760, 766 (2004)).

¶ 36 In his reply brief, defendant argues that *Lowry* rather than *Douglas* is applicable here

because *Lowry* "demonstrates counsel could not have been acting strategically under these circumstances." Defendant emphasizes that in *Douglas*, the jury did not tender a question to the trial judge specifically requesting definitions of key terms to determine whether the defendant was guilty of a lesser-included offense, whereas in *Lowry*, the jury was confused after receiving an instruction and requested a legal definition for the term "knowingly."

¶ 37 The defendant in *Lowry* was found guilty of aggravated battery and armed robbery by a jury. During deliberations, the jury sent a note to the trial judge questioning the meaning of "knowingly," and defense counsel agreed with the State and the judge to tell the jury to keep deliberating. On appeal, the defendant contended his trial counsel was ineffective when he failed to tender the pattern jury instruction defining the mental state for "knowingly" in response to the jury's question. *Lowry*, 354 Ill. App. 3d at 763. The defendant argued the jury's question as to the definition of "knowingly" related to a substantive issue of law.

¶ 38 The *Lowry* court noted defense counsel had the benefit of IPI Criminal 4th No. 5.01B "to clear up the jury confusion as to the meaning of 'knowingly.'" *Id.* at 765. That instruction was specifically added to the IPI as a result of *People v. Brouder*, 168 Ill. App. 3d 938 (1988), which found reversible error where the circuit court did not provide an instruction to the jury defining "knowingly," after the jury expressed confusion. According to the *Lowry* court, "IPI Criminal 4th No. 5.01B would have provided the jurors with the guidance they were requesting." *Id.* at 766. The court held defense counsel's performance could not be excused as mere trial strategy and that "the failure to offer an instruction essential to the fair determination of the case by the jury cannot be excused as trial strategy." *Id.* "Defense counsel's failure to offer the proper

instruction in response to the question by the jury was not trial strategy, but the result of his own confusion regarding the question asked by the jury." *Id.* at 767. The court found the failure to offer the instruction resulted in deficient representation. *Id.*

¶ 39 In this case, there was no confusion on the part of defense counsel regarding the question asked by the jury. The record makes clear that defense counsel, as part of her trial strategy, attempted to minimize the language found in the aggravated kidnaping instruction in order to steer the jury towards the possibility of considering the lesser-included offense of unlawful restraint. Unlike *Lowry*, defense counsel did not have the benefit of an IPI defining the terms, "detain," "confine," and "secretly," and, indeed, emphasized to the jury during closing argument to use the common sense meanings of those terms as applied to the evidence presented in the case. Defense counsel specifically requested during closing argument for the jury to "disregard that little word, secret." Providing the jury with dictionary definitions of the terms was in direct opposition to defense counsel's request for the jury to use its common sense meaning of the words. The *Lowry* case is distinguishable because there, defense counsel could have provided the jury with the legal definition of the term, "knowingly." Here, no legal definitions of the terms in question existed and, thus, the concerns raised in *Lowry* are simply not present in this case. Defendant insists *Lowry* is applicable, as opposed to *Douglas*, because the jury in *Douglas* did not present a question to the trial judge. Our determination of whether defense counsel's performance was objectively reasonable at trial is not focused upon the actions of the jury, but rather upon defense counsel's representation of defendant. In this case, the record supports defense counsel's efforts were objectively reasonable and that her decision to decline providing

dictionary definitions of "detain," "confine," and "secretly," to the jury was trial strategy that precludes defendant's ineffective assistance claim. *Douglas*, 362 Ill. App. 3d at 75; *Lowry*, 354 Ill. App. 3d at 766. Accordingly, appellate counsel's decision to not raise an ineffective assistance of trial counsel claim on this issue likewise did not fall below an objective standard of reasonableness.

¶ 40 Defendant must satisfy both prongs of the *Strickland* test to claim ineffective assistance of appellate counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010). We already found defendant failed to satisfy the first prong of the *Strickland* test. As to the second prong, unless the underlying issue is meritorious, a defendant is not prejudiced from appellate counsel's failure to raise it on direct appeal. *People v. Edwards*, 195 Ill. 2d 142, 164 (2001). Defendant's underlying ineffective assistance of trial counsel claim lacked merit, as trial counsel's performance was objectively reasonable. Therefore, appellate counsel's failure to raise ineffective assistance of trial counsel on direct appeal did not prejudice defendant. *Id.* at 164.

¶ 41 Partial Summary Dismissal of Petition

¶ 42 Defendant contends the circuit court failed to rule on all the allegations contained in his postconviction petition and, therefore, partial summary dismissal was improper. Defendant's argument is based on the written order's failure to explicitly address two of the six claims in his petition. The State responds that, under *People v. Porter*, 122 Ill. 2d 64 (1988), the Post-Conviction Hearing Act does not mandate that the circuit court detail each of its findings in a written order when summarily dismissing a petition. Defendant replies that *Porter* is inapposite because it is based on the complete lack of a written court order, whereas here, the circuit court

failed to address two specific allegations in the petition.

¶ 43 Initially, we observe that it is the summary dismissal of the petition that is under review on appeal and not the circuit court's reasoning. *People v. Lee*, 344 Ill. App. 3d 851, 853 (2003).

That said, we agree with the State that it is clear that a written order dismissing the petition is mandatory; however, the written explanation is permissive. *Porter*, 122 Ill. 2d at 84-85; *People v. Leason*, 352 Ill. App. 3d 450, 452 (2004); *People v. Ross*, 339 Ill. App. 3d 580, 584 (2003).

Although it is advisable for a circuit court to state its reasons for dismissing a postconviction petition, it is not mandatory and a defendant is not prejudiced because the dismissal will be reviewed *de novo* on appeal. *Leason*, 352 Ill. App. 3d at 452. Our supreme court has specifically held, "the failure to specify the findings of fact and conclusions of law in the written order does not require reversal of the dismissal order." *Porter*, 122 Ill. 2d at 82.

¶ 44 The circuit court in this case clearly intended to dismiss the entire petition as the written order specifically states, "the issues raised and presented by petitioner are frivolous and patently without merit." In addition, the court summarily dismissed the petition within the statutory 90-day period under 725 ILCS 5/122-2.1(a)(2) (West 2010). Accordingly, we find the court committed no error by summarily dismissing defendant's *pro se* postconviction petition without explicit written analysis of two of defendant's six claims.

¶ 45 CONCLUSION

¶ 46 We affirm the decision of the circuit court to summarily dismiss defendant's *pro se* postconviction petition because it failed to state the gist of a meritorious constitutional claim for relief. Defendant failed to meet his burden under *Strickland* that appellate counsel did not render

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effective assistance. The circuit court did not issue a partial dismissal of defendant's petition and specifically dismissed the entire petition by written order dated January 27, 2011.

¶ 47 Affirmed.