

Nos. 1-11-1309 and 1-11-2810
(CONSOLIDATED)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 00 CR 27953
)	
ARMANDO GUTIERREZ,)	Honorable
)	Thomas V. Gainer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed defendant's postconviction petition alleging that his trial counsel was ineffective for failing to present a defense of voluntary intoxication: defendant's trial testimony recalling in detail that he acted in self-defense contradicted his postconviction claim of severe intoxication.

¶ 2 Defendant Armando Gutierrez appeals the dismissal of his amended petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)).

Defendant contends the circuit court erred in dismissing his petition because it made a substantial

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showing that his trial counsel was ineffective for failing to present a defense of voluntary intoxication at his 2002 jury trial. We affirm.

¶ 3 Defendant was charged by indictment, *inter alia*, with the first degree murder of Jorge Castaneda and attempted first degree murder of Nester Castaneda. Defense counsel's written pretrial response to the State's discovery request stated that the defense would rely on the State's inability to prove defendant guilty beyond a reasonable doubt and "[i]n addition the defendant may assert the defense of Intoxicated or Drugged Condition. The defendant may also assert the defense of self defense." The offenses occurred in October 2000, when voluntary intoxication was still available as an affirmative defense to an accused.¹

¶ 4 It was undisputed at trial that defendant shot and killed Jorge and shot and wounded his brother Nester, with defendant testifying that he shot the victims while acting in self-defense. The trial testimony revealed that the shooting victims considered defendant a good friend. In October 2000, defendant had crashed his truck in an accident with another truck. The shooting occurred a few days later on the evening of October 25, 2000, at the Castaneda home on South Richmond in Chicago, where Nester and his 14-year-old sister Melissa resided. Defendant brought his damaged truck to the back yard of the residence to work on it. In the evening, defendant, Jorge, Jorge's cousin Antonio Castaneda, and two men known as Goofy and Trigger were in the back yard, drinking a few beers. Nester had been with them earlier but had gone inside the residence. At about 9:30 p.m. a car drove through the alley behind the residence and the occupants shouted rival gang slogans.

¶ 5 Antonio Castaneda testified at trial that when the car drove through the alley, he and defendant went inside to the basement where Nester was sleeping, opened a safe defendant and

¹ The legislature subsequently removed voluntary intoxication as an affirmative defense. Pub. Act 92-466 § 5 (eff. Jan. 1, 2002) (amending 720 ILCS 5/6-3 (West 2000)).

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Nester shared, and removed a 9-millimeter handgun. Defendant returned to the back yard and placed the gun on top of his truck. He, Goofy and Trigger were sharing a "rolled cigarette," and then defendant was stumbling around and mumbling to himself. The other men told him to sit down. They did not want him to drive himself home because he had crashed his truck a couple of days earlier. Defendant became enraged, grabbed his gun from his truck, and began yelling at the other men and calling them names. Then he cocked the gun and began shooting. Antonio ran into the garage where he heard six or seven gunshots. He heard Jorge telling defendant to stop shooting and to put the gun down. After the shooting stopped, Antonio looked out from the garage and saw defendant pacing up and down with the gun in his hand and yelling, "Mother fuckers, I hate all you's." Jorge was lying on the ground. Antonio, Trigger, and Goofy fled.

¶ 6 Melissa Castaneda testified that defendant (who was 10 years older and was married with two children) had made comments of a sexual nature to her in the past that made her uncomfortable. He would tell her he wanted to be with her and marry her. She told her brother Nester about it, and her brother told defendant "to chill out, to calm down." On the evening of the incident, Melissa heard seven gunshots, and she ran to Nester's room in the basement. Nester asked her what was happening. Defendant then kicked in the bedroom door and began yelling. Nester told defendant to calm down and asked him what was going on. Defendant pointed the gun at Nester and shot him. Nester fell to the floor, and defendant continued to shoot him. Melissa ran upstairs to call for help. Defendant grabbed her, banged her head against the wall, and told her repeatedly that he loved her. Melissa got away and ran to her bedroom from where she heard Nester arguing and struggling with defendant. The police arrived, and Melissa identified defendant as the man who shot her brother.

¶ 7 Nester testified that before the shooting, he and defendant were good friends and saw each other daily. Nester and defendant shared a safe in Nester's bedroom. One week before the

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shooting, defendant purchased a gun which he loaded and placed inside the safe. At about that time defendant's truck was damaged when he collided with another truck. Defendant sustained injuries to his forehead, cheek, and teeth in the crash and his face was still bruised on the night of the shooting. Two days before the shooting, defendant told Nester that he liked Melissa. Nester was not happy to hear that and told defendant to stop doing that if he wanted to remain Nester's friend. Nester and Jorge were protective of their sister.

¶ 8 On the evening of the shooting, Nester was in his basement bedroom. Defendant knocked on Nester's door and said he wanted to get the gun because someone was passing through the alley. Defendant took the gun from the safe and left. About 25 or 30 minutes later, Nester heard several gunshots. Melissa came into the room looking scared and said that defendant was shooting. Defendant came into the room, pointed the gun at Nester, and shot him in the chest, stomach, and groin. Melissa went upstairs and defendant followed her. Defendant was mumbling to himself but he was holding himself upright and not stumbling. Nester heard defendant tell Melissa that he cared about her and did not want anything to happen to her. Nester managed to climb the stairs and grabbed defendant. The two men struggled, and defendant threw punches at Nester. Nester was able to shove defendant out the door. Police officers arrived, and Nester told them defendant had shot him.

¶ 9 Detective Halloran testified that he visited the scene of the shooting and observed Jorge's body in the back yard. Halloran spoke with defendant at the police station within two hours of the shooting incident. He observed a cut on defendant's forehead and other bruises and injuries. Defendant told Halloran the injuries had occurred five days earlier when he crashed his truck. Defendant appeared calm and coherent and did not slur his words.

¶ 10 Defendant testified that on the day of the shooting he was at the Castaneda residence working on his truck which he had wrecked in an accident with a semi-trailer truck two days

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earlier. In the early evening, he was in the back yard with Jorge, Antonio, Goofy, and Trigger when some Latin Kings passed through the alley and started shouting "gang things" at the group. Antonio asked defendant for his keys to get the gun from the safe in Nester's room. Defendant denied that he accompanied Antonio into the basement to get the handgun. He also denied that the gun was his, claiming it belonged to Nester.

¶ 11 Antonio returned to the yard where Jorge took the gun from Antonio and placed it in his waistband. Trigger lit a marijuana cigarette and passed it around, and defendant "took a couple of drags off of it." He also drank about two beers. According to defendant, Antonio told Jorge that defendant was trying to "hook up" with Melissa. Jorge became furious and told defendant that he had better not hook up with Melissa or he would kill defendant. The two men stood up, face to face, and Jorge struck defendant in the forehead with the gun. Jorge and Antonio jumped on him and the three men struggled for the gun, which ended up in defendant's possession.

¶ 12 Jorge told Antonio to get his gun from the car, and Antonio ran into the garage. Jorge picked up a steel rod from the ground and advanced toward defendant, who thought the others were going to kill him. Defendant fired the gun at them and then ran to the basement where Nester jumped out in front of him. He testified that Nester "came at me, and I just shot at him." Defendant had had a conversation with Nester a few weeks earlier about Melissa. Nester had told defendant to stay away from Melissa or he would kill defendant. After shooting Nester, defendant ran up the stairs and found Melissa screaming. Defendant grabbed her, and told her he was not going to do anything. He returned to the back yard where he found Jorge lying lifeless on the ground. Defendant told Jorge to wake up. He ran back into the house and to the front porch, where police arrested him.

¶ 13 At the police station, defendant initially refused to cooperate with the detectives. He denied using drugs or alcohol that day. He lied to the detectives, telling them he had no conflict

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with anyone that evening. He denied shooting anyone and told detectives he was just hanging out in the back yard, and there was a "gap" in his memory before he was arrested. Defendant told the detectives that the cut on his forehead and other injuries had happened in the vehicle accident two days earlier. That was not true; only the bruises were from that accident. The cut on his forehead resulted from Jorge striking him with the gun. Defendant was married and had two children. He testified he never made any improper comments to Melissa, who was like a little sister to him. He admitted that Melissa was an attractive girl. He had told her that when she was older, the two of them "could probably get together."

¶ 14 The court instructed the jury on first degree murder and second degree murder in the death of Jorge Castaneda. The jury returned verdicts of guilty to first degree murder, attempted first degree murder, and aggravated battery with a firearm. The court merged the aggravated battery count with the attempted first degree murder count and sentenced defendant to consecutive prison terms of 40 years for first degree murder and 20 years for attempted first degree murder. On that date, August 21, 2002, the court appointed the State Appellate Defender to represent defendant on appeal. No timely notice of appeal was filed.

¶ 15 Defendant filed a late notice of appeal on July 13, 2004, but later moved to dismiss it. We dismissed the appeal. *People v. Gutierrez*, No. 1-03-3035 (2004) (dispositional order). Defendant again attempted to file a late notice of appeal, which we denied as untimely. *People v. Gutierrez*, No. 1-04-1797 (2004) (dispositional order). On June 23, 2005, attorneys for defendant filed a petition for postconviction relief, charging that the State Appellate Defender, after having been appointed to represent defendant on direct appeal, had failed to file a notice of appeal from defendant's conviction.

¶ 16 On November 2, 2005, more than three years after defendant was sentenced, the circuit court granted defendant leave to file a late notice of appeal. In that appeal, No. 1-05-3633, we

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held in our initial review that we lacked jurisdiction because the late notice of appeal did not comport with Supreme Court Rule 606 (eff. Sep. 1, 2006). *People v. Gutierrez*, 376 Ill. App. 3d 182, 183 (2007). Subsequently, our supreme court directed us to vacate our opinion and reconsider the case in the light of its recent decision in *People v. Ross*, 229 Ill. 2d 255 (2008). Upon reconsideration, we noted that appointed counsel never contacted defendant and never filed a notice of appeal on his behalf and, based on *Ross*, determined we had jurisdiction to consider defendant's direct appeal from his 2002 convictions. We reached the merits of defendant's appeal and affirmed the circuit court judgment, rejecting defendant's claim that his trial testimony was more credible than that of Antonio and holding that the evidence was sufficient to support defendant's convictions. We also held that the circuit court acted within its discretion in imposing consecutive sentences. *People v. Gutierrez*, 387 Ill. App. 3d 1 (2008).

¶ 17 In November 2009, defendant's counsel filed an amended petition for postconviction relief. The circuit court treated the amended petition as defendant's first petition, not as a successive petition, because the previous petition filed in 2005 merely secured defendant's right to a direct appeal. The amended petition alleged, *inter alia*, that defendant's trial counsel was ineffective for failing to investigate and present a voluntary intoxication defense where evidence showed that defendant was intoxicated on PCP, marijuana and beer, and could not form the requisite intent to murder Jorge or attempt to murder Nester.

¶ 18 Attached to the petition was defendant's affidavit stating that he regularly smoked marijuana laced with PCP and did so on the night of the shooting, that he also consumed beer and marijuana that night and could not remember everything that happened. Defendant's affidavit also averred that he had given that information to his trial counsel, who instructed him not to mention it at trial because it would not help his claim of self-defense.

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¶ 19 Also attached to the postconviction petition were two letters defendant had sent to his trial counsel before trial. One letter instructed his counsel to locate Goofy and Trigger, who would confirm that on the night of the shooting he was high on PCP, marijuana, and beer, and that defendant was "jumped on" by Jorge and Antonio. In the second letter, defendant stated that on the night of the shooting he was high on PCP and just wanted to leave, and he had no intent to do anything to anybody. Defendant suggested that a doctor of pharmacology testify to the effects of PCP.

¶ 20 The petition also included an affidavit from Trigger (Marco Canas) stating that after the Latin Kings drove by, Antonio went to the basement and came back with a gun, which he gave to Jorge. Canas stated that before the shooting, he passed around a marijuana joint, everyone except Jorge smoked it, and no one knew it was laced with PCP. Canas heard Antonio tell Jorge that defendant was "messing with" his sister. His affidavit stated: "At that time I knew something bad was going to happen as I personally was aware of this issue of Armando and [Jorge's] sister Melissa as I was present one time when Armando said things to Melissa ***." His affidavit also stated that defendant shot Jorge in self-defense after Jorge became enraged upon learning that defendant had a romantic interest in Melissa. Defendant also attached to the postconviction petition a printout of a website describing the effects of PCP.

¶ 21 Defendant later filed a supplemental *pro se* petition alleging additional claims. The State moved to dismiss both the postconviction petition and the *pro se* supplemental petition, and the circuit court granted the State's motion. Defendant's counsel filed a notice of appeal, which was docketed in this court as No. 1-11-1309. Meanwhile, defendant filed a *pro se* motion for reconsideration, which the court denied, and defendant's appeal from the court's denial of his *pro se* motion was docketed as No. 1-11-2810. We have consolidated the two appeals.

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¶ 22 On appeal, defendant asserts that the dismissal of his amended postconviction petition was error because it made a substantial showing of a constitutional violation of his right to effective assistance of counsel for failing to present a defense of voluntary intoxication. Defendant contends that the self-defense theory pursued at trial by his counsel was implausible and that the failure to present a voluntary intoxication defense was objectively unreasonable given the trial evidence of defendant's inebriated condition at the time of the shooting. For the following reasons, we conclude that defendant's trial counsel was not ineffective where his presentation of a self-defense theory was the product of sound trial strategy compelled by defendant's detailed recollection of the shooting and that a trial defense based on voluntary intoxication was not warranted.

¶ 23 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 (2001). If the petition survives the first stage of the postconviction process and advances to the second stage, the defendant bears the burden of making a substantial showing of a constitutional violation throughout that stage. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). To accomplish this, the defendant must support the allegations in his petition by accompanying affidavits or by the record in the case. *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). Nonspecific and nonfactual assertions which merely amount to conclusions are not sufficient to require a hearing under the Act. *Id.* A defendant is not entitled to an evidentiary hearing as a matter of right. *People v. Gacho*, 2012 IL App (1st) 091675, ¶ 16. At the second stage, all well-pled facts in the petition and accompanying affidavits that are not positively rebutted by the record are to be taken as true. *Pendleton*, 223 Ill. 2d at 473. A petition will be dismissed at the second stage where "the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *Id.* The dismissal of a postconviction petition at the

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second stage, without an evidentiary hearing, is reviewed *de novo*. *Coleman*, 183 Ill. 2d at 388-89; *Pendleton*, 223 Ill. 2d at 473.

¶ 24 In determining whether defendant has made a substantial showing that he was denied the effective assistance of counsel, we are guided by *Strickland v. Washington*, 466 U.S. 668 (1984). Under the *Strickland* test, a defendant must show that (1) counsel's representation "fell below an objective standard of reasonableness," and (2) counsel's deficient performance prejudiced the defendant. *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). As to the first prong of *Strickland*, a defendant asserting a claim of ineffective assistance of counsel must overcome a strong presumption that the challenged action or inaction of counsel was the product of sound strategy and not of incompetence. *People v. Olinger*, 176 Ill. 2d 326, 356 (1997).

¶ 25 Defendant asserts that a voluntary intoxication defense was imperative because the only possible motive for defendant shooting his good friends Jorge and Nester was his extreme inebriation. "[M]otive is not an essential element of murder and the State is not required to prove it in order to sustain a murder conviction." *People v. Gonzalez*, 388 Ill. App. 3d 566, 586 (2008). However, in this case the State did present a motive to murder. As we stated in defendant's direct appeal, that motive was provided by defendant's infatuation with the victims' 14-year-old sister Melissa. "Antonio's account, in which defendant suddenly flew into an unprovoked murderous rage, seems credible. Defendant in court admitted he found Melissa attractive. Both Melissa and Nester confirmed that Melissa and her brothers disapproved of defendant's attention to her. Defendant's disappointment at rejection and his awareness of the brothers' disapproval may best explain his alcohol-influenced decision to shoot his friends." *Gutierrez*, 387 Ill. App. 3d at 7.

¶ 26 The trial testimony does indicate that defendant had consumed both beer (two) and marijuana. The trial testimony of both defendant and Antonio indicated that at the time of the occurrence defendant had consumed moderate amounts of both beer and marijuana. Antonio

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testified that he observed defendant stumbling around and mumbling to himself. Nevertheless, the decision of defense counsel to argue self-defense rather than voluntary intoxication was a matter of sound trial strategy where defendant's memory of the details of the shooting incident supported self-defense and indicated his inebriation was not so extreme as to render him incapable of forming a specific intent to commit murder or attempted murder.

¶ 27 The sole evidence at trial that defendant acted in self-defense was presented in defendant's own testimony. The decision to testify was his alone to make (*People v. Medina*, 221 Ill. 2d 394, 403, 407-08 (2006)), whereas "the defense theory to be presented is not one of the matters that a defendant has the ultimate right to decide." *Id.* at 403, citing *People v. Ramsey*, 152 Ill. 2d 41, 54 (1992).

¶ 28 In exercising his right to testify in his own behalf, defendant testified Jorge became furious when Antonio told Jorge that defendant, a married father of two, was attracted to Jorge's 14-year-old sister; that Jorge struck defendant in the forehead with the butt of the gun; and that Jorge and Antonio jumped on him. A struggle for the gun ensued and defendant gained control of the weapon. When Jorge picked up a steel rod and advanced toward defendant, defendant thought the others were going to kill him and fired the gun at them. Defendant testified that he ran to the basement where Nester "came at" him, and defendant shot him. Defendant later told the police that injuries to his face resulted from an earlier vehicle accident, but he claimed at trial that was a lie; the injuries occurred when Jorge struck him on the head with the gun.

¶ 29 The self-defense theory presented at trial was later supported by a postconviction petition affidavit from Marco Canas which stated that defendant shot Jorge in self-defense after Jorge became enraged on learning of defendant's romantic interest in Melissa. Canas's affidavit gave the same detailed version of the shooting as defendant's trial testimony, undermining any possible argument that defendant's memory of the shooting was a PCP-induced hallucination.

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¶ 30 Defendant's self-defense testimony was an affirmative defense which, if believed, could have established that his use of force was justified, resulting in an acquittal. 720 ILCS 5/7-1(a) (West 2000). In contrast, a defense based on voluntary intoxication, if successful, would not have resulted in an acquittal, but, rather, a conviction on the lesser included offense of involuntary manslaughter. *People v. Lucas*, 132 Ill. 2d 1007, 1013 (1990). Consequently, the record supports the conclusion that pursuit of the self-defense theory was the product of sound trial strategy.

¶ 31 On this point defendant contends that it would be premature to presume at the second stage that counsel's decision to pursue self-defense instead of voluntary intoxication was a matter of trial strategy and that such a determination should be made at an evidentiary hearing. We disagree. Defendant's postconviction petition attacked his trial counsel's strategy in failing to present a voluntary intoxication defense. On appeal, defendant raises the question of trial strategy, arguing that the self-defense theory was implausible and that "counsel's failure to present the obvious voluntary intoxication defense was objectively unreasonable given the trial evidence and his actions cannot be explained as a matter of trial strategy."

¶ 32 In appeals from second-stage dismissals without an evidentiary hearing that present a *Strickland*-based challenge to trial counsel's competence, our review is *de novo*. *Pendleton*, 223 Ill. 2d at 473. In the context of a claim of ineffective assistance of counsel, an evidentiary hearing is required only if the allegations of the petition, supported by the trial record and any affidavits attached to the petition, make a substantial showing of a violation of the right to effective counsel. *People v. Hobley*, 182 Ill. 2d 404, 450-51 (1998). To determine whether defendant has made the required second-stage substantial showing, reviewing courts are consistently called upon to, and do make *de novo* determinations as to whether decisions by trial counsel evidence sound trial strategy or incompetence. For example, in *Hobley*, our supreme

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court considered defendant's claim of ineffective assistance of trial counsel based on counsel's failure to file a motion to suppress. The supreme court affirmed the trial court's second-stage dismissal of defendant's postconviction petition without an evidentiary hearing on that issue after determining that trial counsel's decision to present the pertinent information at trial rather than in a pretrial motion to suppress was "a sound strategic decision." *Id.* at 454.

¶ 33 Here, our *de novo* review has included a thorough review of defendant's amended petition and the attached affidavits, as well as the trial record, in reaching our decision that trial counsel's decision to pursue a trial theory of self-defense was sound trial strategy. We find the two cases cited by defendant inapposite, as in those cases this court ordered a third-stage evidentiary hearing only where the record was not sufficiently clear to make a determination whether counsel's decision was a matter of trial strategy. *People v. Tate*, 305 Ill. App. 3d 607, 612 (1999); *People v. Cabrera*, 326 Ill. App. 3d 555, 564-65 (2001). Here the record supports the conclusion that trial counsel was aware of the possible intoxication defense and that his decision to present a self-defense theory to the jury was sound strategy.

¶ 34 Moreover, we can dispose of defendant's claim of ineffectiveness of counsel on the ground that he did not suffer prejudice. See *People v. Salas*, 2011 IL App (1st) 091880, ¶ 91. It was uncontested at trial that defendant shot and killed Jorge and wounded Nester. The trial record is sufficient to enable us to conclude that a voluntary intoxication defense would not have succeeded had it been presented. A defense based on voluntary intoxication was unavailable when the record indicated the accused acted with any purpose or rationality. *People v. Roesler*, 195 Ill. App. 3d 1007, 1013 (1990). To assert the defense, an accused was required to show that his inebriated state was so extreme that it suspended his power of reason and rendered him incapable of forming a specific intent to commit the offense. *People v. Anderson*, 325 Ill. App. 3d 624, 633 (2001), citing *Roesler*, 195 Ill. App. 3d at 113.

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¶ 35 Here, defendant's postconviction claim of a defense based on extreme intoxication was not supported by affidavits of witnesses or by the record. The affidavit of Marco Canas attached to the postconviction petition stated that he passed around a PCP-laced marijuana cigarette before the shooting and that defendant was among the individuals who smoked the joint; but Canas did not state what effect, if any, the marijuana joint had on defendant, or state that defendant was impaired by either the PCP-laced marijuana or alcohol. On the contrary, Canas's affidavit supported the self-defense theory that counsel advanced at trial. While defendant claimed that the individual known as Goofy could have supported a voluntary intoxication defense, defendant's postconviction petition did not include an affidavit from Goofy. Finally, although defendant's petition attached a print-out from a website regarding the effects of PCP, the petition attached no affidavit attesting to that matter and offered no reason why defendant was unable to supply such evidence.

¶ 36 Defendant's affidavit stated he had told his trial counsel that on the night of the shooting he had consumed beer and smoked marijuana laced with PCP and, as a result, could not remember everything that happened. But defendant's affidavit is contradicted by his trial testimony in which he gave a detailed recollection of his specific intent to shoot Jorge and Nester, each of whom he claimed posed a physical threat to his safety. A defendant may not rely on the defense of voluntary intoxication if he admits remembering the offense. *People v. McCoy*, 281 Ill. App. 3d 576, 584 (1996).

¶ 37 Dismissal of a postconviction petition is consistently upheld when allegations are contradicted by the record of proceedings in the trial court. *Coleman*, 183 Ill. 2d at 381-82; *People v. Torres*, 228 Ill. 2d 382, 394 (2008); see *People v. Jones*, 399 Ill. App. 3d 341, 356-57 (2010). We cannot conclude that the outcome of defendant's trial would have been different but

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for counsel's failure to present a defense of voluntary intoxication. Defendant has therefore failed to meet the prejudice prong of *Strickland*.

¶ 38 We must uphold the dismissal of defendant's petition where the decision of defense counsel to pursue a theory of self-defense was sound trial strategy and not deficient representation, and where defendant suffered no prejudice in counsel's failure to present a defense of voluntary intoxication. Consequently, defendant has failed to make a substantial showing that defendant's trial counsel's decision not to pursue voluntary intoxication as a defense constituted deficient representation. We affirm the circuit court order dismissing defendant's amended postconviction petition.

¶ 39 Affirmed.