

No. 1-12-0895

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	99 CR 16846
	)	
DARRYL HAMILTON, SR.,	)	Honorable
	)	Brian Flaherty,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Hyman and Justice Pucinski concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where the trial court's comments in a bench trial show that the production of withheld evidence would not have affected the outcome of the trial, the defendant has not made a substantial showing of a *Brady* violation.
- ¶ 2 A trial court found Darryl Hamilton guilty of aggravated kidnaping. Hamilton filed a postconviction petition. The trial court appointed an attorney to help Hamilton, and the attorney amended the petition. In the amended petition, Hamilton alleged that the prosecution withheld

exculpatory evidence, the trial court should not have permitted Hamilton to waive his right to a jury trial, and he received ineffective assistance of counsel. The trial court dismissed the petition without holding an evidentiary hearing. Hamilton appeals. We find that Hamilton has not made a substantial showing of a violation of his constitutional rights, and therefore we affirm the dismissal of his petition.

¶ 3

### BACKGROUND

¶ 4 Around noon on June 29, 1999, James Williams and Monique Griffith walked out of Williams's apartment building and headed towards Williams's car. Two men jumped out of a van and ordered Williams and Griffith, at gunpoint, to get into the van. One man ordered Griffith to tape Williams's hands and ankles with duct tape. Police, responding to a call, soon found the van and chased it. The van sped onto a highway with police following. The van's driver and a passenger got out of the van near the moment the van crashed into a median on the highway. An officer arrested Hamilton near the van after a brief chase. Another officer opened the van and helped Griffith and Williams get out.

¶ 5 Prosecutors charged Hamilton with aggravated kidnaping. 720 ILCS 5/10-1(a), 5/10-2(a)(5) (West 1998). Defense counsel filed a motion for production of evidence from the State to prove that Williams held a high rank in a gang, and that he earned his income from selling narcotics. At the hearing on the motion, defense counsel said he was ready for trial as long as he received the evidence about Williams before Williams testified. The trial court ordered the State to provide the materials defense counsel sought. Defense counsel agreed to start the trial before he received the ordered materials.

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¶ 6 On the day set for trial, November 25, 2003, defense counsel told the court that Hamilton had a broken jaw, so he had some difficulty speaking. The court asked Hamilton about his medication. Hamilton said he had taken Tylenol III, but he did not expect to have trouble staying awake or understanding the proceedings. In answer to further questions, Hamilton said he had received a GED and taken some college courses. The court explained jury trials and bench trials, and Hamilton said he wanted a bench trial. Hamilton signed a jury waiver. The court accepted the waiver.

¶ 7 At the trial, Griffith identified Hamilton as one of the men who pointed guns at her and Williams and ordered them into the van. She also identified Hamilton as the man who ordered her to secure Williams's hands and ankles with duct tape. Williams did not testify. The State did not produce the evidence defense counsel sought concerning Williams's role in a gang and his source of income. However, the State stipulated that federal agents obtained a warrant to search Williams's home for drugs.

¶ 8 Hamilton testified that before noon on June 29, 1999, members of the Vice Lords, a street gang, accosted Hamilton and told him to call Williams and arrange to purchase half a kilogram of cocaine. When Hamilton refused, four of the gang members pointed guns at him, and one struck him with a gun. Hamilton ran, but the gang members caught him and dragged him to their van, where they beat him, and threatened to kill his children. Hamilton called Williams to arrange the transaction. He called again to say he had arrived at the agreed meeting place near Williams's apartment. Five minutes later, Griffith and Williams walked out of Williams's apartment. Hamilton watched as two of the gang members pointed guns at Griffith and Williams and ordered them to get into the back of the van. Hamilton ran at his first opportunity, when the van crashed during the

police chase. Defense counsel presented two federal agents as witnesses. Both testified that under federal law concerning ongoing investigations, they could not answer any questions about any possible federal investigation into Williams and his role in drug transactions.

¶ 9 In its findings of fact, the trial court expressly found that Williams sold drugs. The court found Hamilton guilty of aggravated kidnaping. Defense counsel conceded that, in 1980, a court sentenced Hamilton to seven years in prison for the class X felony of armed robbery, and another court sentenced him to six years in prison in 1995 for the class X felony of home invasion. Because of the prior convictions, the trial court held that the Habitual Criminal Act (Act) (720 ILCS 5/33B-1 (West 1998)) required a sentence of natural life in prison. The appellate court affirmed the trial court's judgment. *People v. Hamilton*, No. 1-06-1610 (2008) (unpublished decision under Supreme Court Rule 23).

¶ 10 Hamilton filed an extensive postconviction petition. In August 2010, with the assistance of counsel, Hamilton filed an amended postconviction petition, in which he claimed that (1) the prosecutor violated his constitutional rights by failing to produce the evidence concerning Williams; (2) the trial court violated his constitutional rights by accepting his jury waiver; and (3) his counsel violated his constitutional rights by providing ineffective assistance. The State moved to dismiss the amended petition for failing to make a substantial showing of any violation of his constitutional rights. The trial court granted the State's motion. Hamilton now appeals.

¶ 11 ANALYSIS

¶ 12 We review *de novo* the dismissal of a postconviction petition without an evidentiary hearing. *People v. Coleman*, 183 Ill. 2d 366, 387-88 (1998). At the second stage of postconviction

proceedings, we must determine whether the petition and its accompanying documents make a substantial showing of a violation of the defendant's constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001).

¶ 13 Withheld Evidence

¶ 14 Hamilton argues first that the prosecutor violated his rights under *Brady v. Maryland*, 373 U.S. 83 (1963), because the prosecutor failed to produce the evidence Hamilton requested to prove Williams's status as a gang leader and a drug dealer. "To establish a *Brady* violation, suppressed evidence must be both favorable to the accused and material. Favorable evidence is material in this context 'only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *People v. Hobbey*, 182 Ill. 2d 404, 432 (1998) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

¶ 15 The trial court ordered the prosecution to produce evidence of Williams's status as a drug dealer and a gang leader for Hamilton to use to impeach Williams. However, Williams did not testify at trial. The prosecution relied on Griffith's identification of Hamilton as a man who pointed a gun at her and Williams and ordered them into the van. We do not see how evidence of Williams's crimes and status affects the credibility of Griffith's testimony or of Hamilton's testimony that members of the Vice Lords beat him and threatened to kill his family if he did not participate in the kidnaping. The trial court expressly accepted, as credible, the evidence that Williams sold drugs. We cannot say that Hamilton has made a substantial showing that the trial court would have reached a different result if it heard the additional, largely redundant evidence about Williams that Hamilton

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sought from the State. Accordingly, the allegation in the postconviction petition concerning withheld evidence does not warrant an evidentiary hearing.

¶ 16

#### Jury Waiver

¶ 17 Next, Hamilton argues that the trial court violated his constitutional rights when it accepted his jury waiver without an inquiry to determine the extent to which Hamilton's broken jaw and his pain medication might impair him.

¶ 18 Every defendant has a right to a jury trial, but the defendant may waive that right. 725 ILCS 5/103-6(i); 5/115-1 (West 2002). The trial court here asked Hamilton about his medication and his understanding of the right to a jury trial. The transcript shows that Hamilton informed the court about his pain medication and his education, and told the court he wanted a bench trial. Hamilton relies on case law concerning the court's duty to determine a defendant's fitness to stand trial while taking psychotropic medication. See *People v. Jones*, 291 Ill. App. 3d 231 (1996). Hamilton has not presented any evidence that his pain medication, Tylenol III, had significant psychotropic effect, or that he did not actually understand his right to a jury trial when he waived it. Therefore, Hamilton has not made a substantial showing that the trial court violated his constitutional rights by failing to inquire further when Hamilton waived his right to a jury trial.

¶ 19

#### Ineffective Assistance of Counsel

¶ 20 For this court to order an evidentiary hearing on the claim that Hamilton received ineffective assistance of counsel, Hamilton must make a substantial showing that "his attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but

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for counsel's errors, the result of the proceeding would have been different." *People v. Patterson*, 192 Ill. 2d 93, 107 (2000). Hamilton alleges that at trial his attorney (1) unreasonably proceeded to trial without receiving the evidence the court ordered the State to produce about Williams; (2) failed to interview and present evidence from exculpatory witnesses; and (3) misunderstood the law restricting the testimony of federal agents. Hamilton also alleges that at sentencing his attorney's failure to challenge the use of Hamilton's two prior class X felony convictions amounted to ineffective assistance of counsel.

¶ 21 The record does not support an inference that Hamilton suffered any prejudice from the lack of evidence of Williams's gang status and drug income. Hamilton has not presented statements from other witnesses that counsel did not present, so we do not know what the witnesses would have said or how the evidence could have helped Hamilton. Thus, we cannot say that the failure to investigate further had any prejudicial effect. See *People v. Enis*, 194 Ill. 2d 361, 380 (2000). Hamilton sought to use the testimony of the federal agents to show that Williams sold drugs. The trial court accepted other evidence as proof that Williams sold drugs, and the court found that the evidence had no effect on the conclusion that Hamilton kidnaped Griffith. Thus, the record shows that counsel's alleged lack of preparation had no prejudicial effect. We find that Hamilton has not made a substantial showing of ineffective assistance of counsel at trial.

¶ 22 At the sentencing hearing, defense counsel conceded that Hamilton had two prior class X felony convictions within the applicable period, and therefore the Act mandated imposition of a sentence of natural life in prison. See 720 ILCS 5/33B-1 (West 1998). Hamilton contends that

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counsel provided ineffective assistance at sentencing because counsel should have known that neither of the prior convictions met the requirements of the Act.

¶ 23 Hamilton alleges that the 1980 conviction for armed robbery resulted from a plea bargain in which a prosecutor told him that if he stayed out of trouble for 10 years after the conviction, the State would not use the conviction for enhancing any future sentences. Hamilton has provided no evidence to support the allegation about the plea bargain, not even an affidavit from his attorney. See *People v. Hall*, 217 Ill. 2d 324, 332-33 (2005). The unsubstantiated allegation concerning the 1980 conviction does not require an evidentiary hearing.

¶ 24 Hamilton also claims that the 1995 home invasion conviction does not qualify as a conviction for a class X crime. Hamilton pled guilty to the charge in exchange for a sentence of six years in prison. He now alleges that the trial court accepted the plea and imposed the sentence without admonishing him that he would need to serve a three-year term of mandatory supervised release following the completion of the six year sentence. See 730 ILCS 5/5-8-1(d)(1) (West 1994). In *People v. Whitfield*, 217 Ill. 2d 177 (2005), our supreme court held that the State violated its plea agreement with a defendant when the State failed to admonish the defendant that he would need to serve a three year term of mandatory supervised release after he completed the agreed sentence. *Whitfield*, 217 Ill. 2d at 196. The court held that the State had a duty to give the defendant the benefit of the bargain by subtracting three years from the agreed sentence and having the defendant serve those final three years in his mandatory supervised release. *Whitfield*, 217 Ill. 2d at 205.

¶ 25 We agree with the State that *Whitfield* does not help Hamilton. First, we note that Hamilton

has not presented any evidence that the trial court in 1995 failed to admonish him about the requirement of a three year period of mandatory supervised release. Second, the *Whitfield* court did not indicate that the alteration of the agreed sentence would change the classification of the crime. Finally, our supreme court held that *Whitfield* does not apply to cases finalized before 2005. *People v. Morris*, 236 Ill. 2d 345, 366 (2010). Thus, *Whitfield* came too late to change any aspect of the 1995 conviction for the class X crime of home invasion. The record shows that Hamilton has two prior convictions for class X crimes within the statutory period, and therefore the Act required a sentence of natural life in prison. Hamilton has not made a substantial showing of ineffective assistance of counsel at sentencing.

¶ 26

#### CONCLUSION

¶ 27 Hamilton has not made a substantial showing that prosecutors violated his constitutional rights by withholding evidence that Williams, one of the kidnaping victims, held a high rank in a gang and sold drugs. Hamilton also has not shown that the trial court inadequately questioned him when he chose to have a bench trial. Finally, he has not made a substantial showing of ineffective assistance of counsel. Accordingly, we affirm the trial court's judgment dismissing his postconviction petition without an evidentiary hearing.

¶ 28 Affirmed.