

FOURTH DIVISION
November 26, 2014

1-13-0065

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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 |
| Respondent-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 07 CR 22600 |
| |) | |
| SHANTRELL TUCKER, |) | Honorable |
| |) | Timothy Joseph Joyce, |
| Petitioner-Appellant. |) | Judge Presiding. |

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court of Cook County dismissing the petition for postconviction relief as frivolous and patently without merit is affirmed; petitioner does not have a right to second stage review of a postconviction petition based on a delay by the clerk of the court in docketing the petition; petitioner's claim of ineffective assistance of trial counsel is meritless because the decision not to impeach two eyewitnesses was a matter of reasonable trial strategy.

¶ 2 The State charged petitioner, Shantrell Tucker, with the 2007 shooting death of Smith. A jury found petitioner guilty and the circuit court of Cook County sentenced him to a statutorily required term of natural life in prison. This court affirmed petitioner's conviction on direct appeal. In 2012, petitioner sought relief pursuant to the Illinois Post-Conviction Hearing Act (Act) (725 ILCS 122/1 *et seq.* (West 2012)). Petitioner's *pro se* petition for postconviction relief alleged, in pertinent part, that petitioner received ineffective assistance of counsel based on trial counsel's failure to impeach two State eyewitnesses with their out-of-court statements recanting their identifications of petitioner. The circuit court dismissed the petition as frivolous and patently without merit. Petitioner appeals.

¶ 3 For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 On May 25, 2007, Smith suffered multiple gunshot wounds while sitting in the front passenger seat of Lane's car while parked on a Chicago street. At the time of the shooting Lane sat in the driver's seat and Vernon sat in the back seat. Jennifer and Wooten were outside the vehicle. The three men in Lane's car were drinking alcohol and smoking marijuana when a sport utility vehicle (SUV) pulled alongside them. After a brief exchange of words, gunfire erupted from the SUV killing Smith. The State indicted petitioner for Smith's death. The circuit court of Cook County conducted a joint trial of two of the SUV's occupants. At petitioner's jury trial the following evidence was produced:

¶ 6 Vernon and Lane denied they were intoxicated at the time of the shooting because they had only recently returned from purchasing alcohol when the SUV arrived.

¶ 7 Wooten testified that while the others were sitting in Lane's vehicle, he drove up in his car with his wife and two stepdaughters. Wooten parked his car, walked over to Lane's car, and started talking to Lane, Smith and Vernon. Wooten said he had drunk Cognac and smoked marijuana before he arrived at Lane's. An SUV drove past Lane's vehicle shortly after Wooten arrived then reversed and stopped so the vehicles were side by side. Vernon saw petitioner in the driver's seat of the SUV and Antonio Cox, a codefendant at trial, in the front passenger seat. Lane, Vernon, and Wooten testified that although they did not recognize the SUV, they recognized petitioner as the driver because they had grown up with him. Lane and Wooten also testified they recognized Alonzo Campbell, whom they had also grown up with, as the passenger in the rear passenger seat of the SUV. Jennifer testified she did not know anyone in the SUV, but she identified petitioner at trial as the driver of the SUV. Jennifer also identified Alonzo Campbell as the passenger in the rear of the SUV. Jennifer was not able to see the person sitting in the front passenger seat.

¶ 8 According to Vernon, Lane, and Wooten, they all had a friendly conversation with petitioner and Cox because they were all familiar with each other. Campbell stuck his head out of the SUV's window while the others talked. Petitioner then asked Lane whether he (Lane) knew who had previously shot at petitioner's van. After Lane said he did not know anything, petitioner asked him who else he had in the car. After Lane said "what difference [does] it make who I have in my car," shots were fired from the front and back seats of the SUV. Vernon said that although he did not know who shot from the back seat, he saw petitioner pull out a gun and start shooting. Vernon also testified he saw shots coming from

the back seat of the SUV. Wooten testified he did not see the shooting because his back was to the SUV.

¶ 9 After the shooting stopped, the SUV drove away. Jennifer then saw that Smith had been shot multiple times. Lane testified he had also been shot and saw a puddle of blood in his lap. Vernon suffered a graze wound to his arm and was shot in his finger. Smith subsequently died at the hospital.

¶ 10 On cross examination, Jennifer admitted her statement to the police indicated she saw five people in the SUV. She admitted that she did not know anyone in the SUV, and that she made her identifications based on petitioner and Campbell's eyes since she could not tell their facial features or whether they were black or white. She also admitted that her identification of petitioner was based on a glance because she was on her phone at the time, and that she never saw petitioner with a gun.

¶ 11 Vernon admitted on cross-examination that his statement to police indicated petitioner was the only person he saw fire from the front of the car. Vernon admitted describing petitioner as five feet tall and weighing 160 pounds in his statement to police, though he described petitioner as being 5' 9" or 5' 11" tall in court. Vernon admitted he had prior convictions for possession of a controlled substance, delivery of a controlled substance and unlawful use of a weapon by a felon. Wooten admitted on cross-examination that he had a prior conviction for possession with intent to deliver.

¶ 12 Chicago Police Detective Dan Gallagher testified Jennifer, Vernon, and Wooten all identified petitioner and Campbell as involved in the shooting during a photo array. Vernon and Wooten also identified Cox from a photo array.

¶ 13 Chicago Police Detective Tom Crain testified he and his partner met assistant state's attorney (ASA) Emily Stevens at Mt. Sinai Hospital on May 27, 2007, in order to interview Lane. Detective Crain said that although Lane was recovering from surgery, he was able to converse and respond appropriately to the detectives' questions. After recounting the details of the shooting, Lane agreed to document his statement. Once ASA Stevens wrote out his statement, Lane was allowed to review it and make corrections. Lane then initialed each page and signed the written statement. Detective Crain said that in the statement, Lane said petitioner asked "who's that over there" while gesturing to Smith. Lane also said in his statement that he saw Campbell holding a gun in the SUV's backseat.

¶ 14 ASA Stevens testified she did not doubt Lane's ability to understand her when she interviewed him in the hospital. She said Lane made corrections to the statement and was treated well. ASA Stevens testified Lane did tell her that he saw Campbell holding a gun, and that he saw shots being fired from the front seats of the SUV.

¶ 15 At trial, Lane denied seeing a gun from the SUV and did not remember saying to police that Campbell was holding a gun or that he saw gunfire from the front of the SUV. Lane also denied telling the ASA that petitioner asked who was in the car. Although Lane testified he made the statement voluntarily, he noted he was on pain killers and disoriented at the time. Lane admitted testifying to the grand jury that he saw Campbell in the backseat holding a gun, and that his handwritten statement was true.

¶ 16 Michael Bellamey, an assistant manager at an Enterprise Rent-a-Car (Enterprise) branch located in Forest Park, testified that at around 9:28 a.m. on May 26, 2007, Lukeina Strong tried to exchange a rented Toyota Forerunner SUV for a different vehicle. After

Bellamey refused to allow her to exchange vehicles, Strong became upset and Bellamey ended the rental agreement. Enterprise re-rented the SUV a number of times over the next few weeks. An Enterprise employee, Lamar Barnes, testified he delivered the vehicle to the Chicago Police Department. Barnes said there had been a man with Strong when she rented the SUV, but it was not petitioner. Police recovered one latent fingerprint from the SUV that matched Strong. Two samples taken by police from the backseat of the SUV also tested positive for the presence of gunshot residue (GSR).

¶ 17 The jury found petitioner and one codefendant guilty of first degree murder and one codefendant not guilty. The circuit court of Cook County denied petitioner's posttrial motions and sentenced him to a term of natural life imprisonment.

¶ 18 On July 26, 2012, petitioner mailed a *pro se* petition for postconviction relief under the Act from the Illinois Department of Corrections to the clerk of the circuit court of Cook County. The only allegation in the petition that is a subject of this appeal is that petitioner's trial counsel provided ineffective assistance of counsel. Petitioner's claim is based on trial counsel's failure to impeach Lane and Vernon with their statements to a defense investigator recanting their identifications of petitioner as the driver of the SUV. Petitioner attached three memoranda signed by Lane, Vernon, and a defense investigator. Vernon says in his statement that his identification of petitioner "was a case of mistaken identity" and that he "is now sure that [petitioner] wasn't in the vehicle from which he was shot ***." Lane's memorandum states that his identification "was a case of mistaken identity" and that "he is positively certain that [petitioner] wasn't in the vehicle from which he was shot."

¶ 19 The petition for postconviction relief bears a stamp that reads “Received” with the date August 1, 2012. The clerk of the circuit court of Cook County filed the *pro se* postconviction petition on September 14, 2012. The trial court summarily dismissed the petition on November 9, 2012.

¶ 20 This appeal followed.

¶ 21 ANALYSIS

¶ 22 “The Post-Conviction Hearing Act [(Act)] (725 ILCS 5/122-1 *et seq.* (West 2010)) provides a mechanism by which a criminal defendant can assert that his conviction and sentence were the result of a substantial denial of his rights under the United States Constitution, the Illinois Constitution, or both.” *People v. English*, 2013 IL 112890, ¶ 21. The Act creates a three-stage process for resolving claims of constitutional violations. *People v. Kennebrew*, 2014 IL App (2d) 121169, ¶ 18. At the first stage, the trial court reviews a petition for relief under the Act to determine whether the claim is frivolous or is patently without merit. *Id.* If, taking the claims as true and liberally construed in the petitioner’s favor, the claims in the petition are frivolous or patently without merit the petition will be dismissed. *Id.* “A *pro se* petition seeking postconviction relief under the Act for a denial of constitutional rights may be summarily dismissed as frivolous or 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). We review the decision to dismiss a postconviction petition at the first stage *de novo*. *People v. Wilson*, 2014 IL App (1st) 113570, ¶ 31.

¶ 23 Petitioner argues the trial court’s first-stage dismissal of his *pro se* postconviction petition should be reversed because the clerk of the circuit court of Cook County waited six

weeks to docket his petition which resulted in the trial court entering its order of dismissal more than 106 days from the date of filing the petition. Petitioner argues this delay by the clerk constitutes a violation of section 122-1(b) of the Act (725 ILCS 5/122-1(b) (West 2012)) and the proper remedy for the violation is to reverse the dismissal and remand for second-stage proceedings on the petition. Substantively, petitioner argues that the petition has an arguable basis in law and fact for the claim that petitioner received ineffective assistance of counsel at trial. Petitioner argues counsel was ineffective in failing to impeach Vernon and Lane with statements they made recanting their identifications of petitioner.

¶ 24

1. Violation of Section 122-1(b)

¶ 25 Section 122-1(b) of the Act states, in pertinent part, as follows:

“The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place a petition (together with a copy thereof) verified by affidavit. *** The clerk shall docket the petition for consideration by the court pursuant to Section 122-2.1 upon his or her receipt thereof and bring the same promptly to the attention of the court.” 725 ILCS 5/122-1(b) (West 2012).

¶ 26 Petitioner argues this court should reverse the trial court’s summary dismissal of his postconviction petition because the Act “contains interlocking provisions designed to ensure that summary review of a petition occurs promptly” and the failure to comply with those interlocking provisions “renders the summary dismissal of a petition void.” Petitioner argues that the dual requirements that (1) the clerk of the court docket the petition upon receipt

thereof and bring the same promptly to the attention of the court (725 ILCS 5/122-1(b) (West 2012)) and (2) the court enter an order within 90 days either summarily dismissing the petition or docketing the same for further consideration (725 ILCS 5/122-2.1(a) (West 2012)) are both mandatory and the failure to comply with either renders the summary dismissal of a postconviction petition void.

¶ 27 Our supreme court has held that strict compliance with the 90-day limit on a first-stage dismissal under section 122-2.1(a) is required and that the failure to do so requires that a postconviction petition proceed to second-stage proceedings. See *People v. Perez*, 2014 IL 115927, ¶¶ 23, 29 (reversing first-stage dismissal and remanding for second-stage proceedings because section 122-2.1(a) requires the trial court to enter an order within 90 days, the court signed the order dismissing petition on the 90th day, and the clerk filed the order thereby “entering” it on the 91st day). However, our supreme court has also held that the 10-day service provision in section 122-2.1(a)(2) is a directory provision and a failure to comply with that provision does not require reversal of a trial court’s summary dismissal of a postconviction petition or remand for second-stage proceedings. *People v. Robinson*, 217 Ill. 2d 43, 58-59 (2005). Thus, the courts have not found that less than strict compliance with every procedure under the Act at the first stage automatically requires that a petition proceed to the second stage.

¶ 28 Petitioner concedes that no court has interpreted the “prompt docketing requirement” in section 122-1(b) as a mandatory provision but argues that “logic dictates that it should be treated similarly” to the 90-day limitation on first-stage dismissals. Petitioner argues that both provisions address the same subject: ensuring that a petitioner receives prompt action in

response to a petition; therefore, the provisions should be read harmoniously. See *People v. Rinehart*, 2012 IL 111719, ¶ 26 (“If a statute’s language is unclear or ambiguous, if it is susceptible of more than one reasonable reading, we must resort to other sources to aid our inquiry. [Citation.] Such sources include the maxim of *in pari materia*, under which two statutes, or two parts of one statute, concerning the same subject must be considered together in order to produce a ‘harmonious whole.’ ”).

¶ 29 Although what constitutes “promptly” bringing a petition to the attention of the court is not defined petitioner argues that section 122-1(b) requires that the clerk docket a petition “reasonably quickly” and the six-week delay in this case was not reasonable. Moreover, petitioner argues, section 122-1(b) uses “shall” when directing the clerk to docket the petition upon receipt and bring it promptly to the attention of the court and “shall” in this context should be construed to be mandatory language rather than directory language. See *Robinson*, 217 Ill. 2d at 52 (“The mandatory-directory dichotomy *** concerns the consequences of a failure to fulfill an obligation.”).

¶ 30 Petitioner argues section 122-1(b) should be construed as mandatory “to ensure the legislature’s goal that petitioners receive quick action in response to petitions” and that the consequence for failure to comply with the mandatory command is to move the petition to second-stage proceedings. We do not need to decide whether the clerk’s action did in fact violate section 122-1(b) because doing so will have no impact on the resolution of this appeal. *Pickering v. Owens-Corning Fiberglas Corp.*, 265 Ill. App. 3d 806, 829 (1994) (“Courts of review will generally not consider issues where the results are not affected regardless of how the issues are decided”). We find dispositive our determination that any violation of section 122-

1(b) that may have occurred in this case does not require reversal of the trial court's summary dismissal of petitioner's postconviction petition or remand for second-stage proceedings because the requirements of section 122-1(b) are directory.

¶ 31 Section 122-1(b) "is a procedural command to a government official. As such it is presumptively directory." *Robinson*, 217 Ill. 2d at 58. The command will be found to be mandatory if "the official's failure to follow the procedure will 'generally' injure the right the procedure was designed to protect" or if the statutory command is "accompanied by negative words importing that the acts required shall not be done in any other manner or time."

(Internal quotation marks omitted.) *Id.* at 56-57. The only right petitioner had and which section 122-1(b) protects is a statutory right to assert that his conviction and sentence were the result of a substantial denial of his constitutional rights. *English*, 2013 IL 112890, ¶ 21. While the right to have the court consider a postconviction petition might be injured by the clerk's remissness in performing his or her duties in a given case, there is no reason to believe that the right generally would be injured by the clerk's delay in performing his or her duties. See *Robinson*, 217 Ill. 2d at 57 (holding that a violation of the 10-day service requirement is not so likely to prejudice the right to appeal as to require an exception to the general rule that procedural commands to government officials are directory). Further, petitioner's right to have the trial court consider his petition was not injured in this case. Petitioner has not and cannot point to any effect on the trial court's review of his petition based on the clerk's delay.

¶ 32 Section 122-1(b) is also lacking in "negative words importing that the acts required shall not be done in any other manner or time." *Robinson*, 217 Ill. 2d at 57. The Act does not state that a postconviction petition may not be dismissed by the trial court at the first stage

unless the condition precedent of prompt docketing is satisfied. Had the legislature intended for a failure to comply with section 122-1(b) to move a petition to second-stage proceedings it could have written that (1) if the clerk fails to timely docket the petition the court shall order the petition to be docketed for further consideration or (2) no summary dismissal shall be effective unless the petition was timely docketed. See *Robinson*, 217 Ill. 2d at 58 (discussing “negative words” exception to presumptively directory statutory language vis-à-vis Act’s 10-day service requirement). We hold that the “negative language” exception to the general rule that procedural commands to government officials are directory does not apply in this case.

¶ 33 We note that the statutory provisions for commencing a proceeding under the Act (725 ILCS 5/122-1 (West 2012)) are in a separate section from the provisions for determining whether the petition will proceed to an evidentiary hearing (725 ILCS 5/122-2.1 (West 2012)) and that only the latter requires action within a specified time frame. Whether or not section 122-1(b) and section 122-2.1 are read *in pari materia* does not affect our holding that remand for second stage proceedings is not required. Even when sections of a statute are considered *in pari materia*, “[o]ur function is to interpret the statutes as enacted by the legislature, not to inject new provisions, limitations or conditions not found therein.” *Greve v. County of DuPage*, 177 Ill. App. 3d 991, 996 (1988). If the provision in section 122-1(b) was construed to implicate a right to have a petition asserting a denial of constitutional rights considered in a timely fashion there is nothing in the language of the statute which dictates that the consequence of a failure to do so should be to progress the petition to second-stage proceedings. Compare *People v. Porter*, 122 Ill. 2d 64, 84 (1988) (“[s]ection 122–2.1(b) prescribes the result when a trial court fails to dismiss a petition within” the time prescribed).

Thus, although section 122-2.1(a) is a mandatory provision in the Act we hold that section 122-1(b) is a directory provision.

¶ 34 Because neither exception to the general rule applies and the clerk's duty to docket the petition and to bring the same promptly to the attention of the court is directory, "the clerk's tardiness did not invalidate the judgment of the circuit court." See *Robinson*, 217 Ill. 2d at 58-59. The clerk's duty ensures that a postconviction petition will be considered by the trial court. Petitioner had a right to have his petition docketed and brought to the court's attention. Regardless whether the clerk erred in delaying six months to do so, petitioner does not require a remedy because he was not prejudiced by the clerk's error--the court considered his petition and dismissed it as frivolous and patently without merit. See *Robinson*, 217 Ill. 2d at 60.

¶ 35 The timing of the docketing of petitioner's postconviction petition does not, itself, require reversal. Accordingly, we turn to a consideration of the merits of the petition.

¶ 36 2. Ineffective Assistance of Counsel

¶ 37 Next, petitioner argues that the trial court's judgment should be reversed because the petition sets forth an arguable claim that petitioner's trial counsel was ineffective in failing to impeach Vernon and Lane with their statements recanting their identifications of petitioner as the driver of the SUV and stating positively that petitioner was not present when the crime occurred.

"Claims of ineffective assistance are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).

[Citation.] To prevail on a claim of ineffective assistance of

counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant. [Citation.] More specifically, a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. [Citation.] At the first stage of proceedings under the Act, a petition alleging ineffective assistance of counsel may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." (Internal quotation marks omitted.) *People v. Cathey*, 2012 IL 111746, ¶ 23.

¶ 38 Petitioner argues that reasonable counsel would have impeached both witnesses because their history of making unreliable statements would have undermined their credibility before the jury. Petitioner asserts trial counsel was aware of their recantations and that there was no significant disadvantage to using those statements to impeach the witnesses. Petitioner asserts it is arguable he was prejudiced because if counsel had impeached the witnesses there is a reasonable probability the jury would have found the State failed to prove his guilt beyond a reasonable doubt.

¶ 39 The State responds that in light of the overwhelming evidence of guilt, the potentially harmful (to the theory of the defense) impeachment evidence does not establish a reasonable probability that the jury would have found petitioner not guilty. Petitioner replies that the allegedly overwhelming evidence is the eyewitnesses' identifications, and that undermining Vernon and Lane's identifications with their recantations would have led the jury to conclude that the witnesses all were willing to change their stories depending on their own self-interests and that the State's witnesses "could not be credited beyond a reasonable doubt."

¶ 40 The State also responds trial counsel's performance was not objectively unreasonable because counsel "vigorously presented petitioner's trial defense, including a thorough cross-examination of the prosecution's witnesses." The State argues petitioner's trial counsel presented a viable defense that Vernon and Lane were incredible witnesses based on discrepancies in their testimony and the fact they were intoxicated due to alcohol and marijuana consumption at the time of the shooting. The State argues that impeaching them with the statements in which they expressed certainty that petitioner was not in the SUV would have contradicted that defense theory at trial and not doing so does not remotely constitute an egregious tactical or strategic mistake but instead was a sound trial strategy.

¶ 41 Petitioner admits that the recantation statements are unbelievable and notes that neither recantation denies that Vernon or Lane was intoxicated. Petitioner argues reasonable counsel still would have used the recantations to impeach Vernon and Lane to demonstrate that both witnesses were willing to lie if doing so was to their own advantage thereby undermining their credibility. In reply to the State's argument, petitioner's appellate counsel concedes that impugning the witnesses' credibility with evidence of their intoxication was in

fact a trial strategy but argues it was just not a very good strategy. Petitioner argues on appeal that trial counsel's strategy "had no chance of success" because it would require finding that Vernon and Lane's intoxication caused them to misidentify the driver of the SUV as petitioner even though both knew petitioner since childhood. Petitioner argues that because it is implausible that someone, no matter how intoxicated, could confuse a person for another person they know so well, counsel's strategy to do exactly that was either unreasonable in the first instance or using evidence that contradicted that strategy would have been harmless to trial counsel's chosen defense strategy--which petitioner argues "could do nothing to shake their identifications of the driver ***." On the contrary, petitioner argues, "[t]he very implausibility of both recantation statements--that, though drunk, they were certain that [petitioner] was not in the car [citation]--would demonstrate to a jury that both witnesses were willing to say anything to anyone regarding the shooting" (emphasis omitted) and would have undercut the reliability of their testimony.

¶ 42 "Decisions such as what evidence to present, whether to call a certain witness and what theory of defense to pursue are matters of trial strategy. [Citation.]" *People v. Morris*, 2013 IL App (1st) 110413, ¶ 74. Thus, petitioner's postconviction attack on trial counsel's performance is actually an attack on trial counsel's strategy to discredit the State's witnesses' identifications with evidence of the witnesses' extreme intoxication rather than with the inconsistency of their statements. Petitioner is simply advocating for a different trial strategy: petitioner asserted that evidence of the recantations would have "opened up to the jury an entirely new and different reason to disbelieve Vernon and Lane that was 'not otherwise before the jury.'" [Citation.]"

¶ 43 “Because effective assistance refers to competent and not perfect representation, mistakes in trial strategy or judgment will not, of themselves, render the representation incompetent.” *People v. Steele*, 2014 IL App (1st) 121452, ¶ 38.

“Matters of trial strategy are generally immune from claims of ineffective assistance of counsel. [Citation.] A defendant may overcome the ‘strong presumption’ that the challenged action or inaction of counsel was a matter of sound trial strategy by showing that counsel’s decision was so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy. [Citation.]” (Internal quotation marks omitted.) *People v. Morris*, 2013 IL App (1st) 110413, ¶ 74.

¶ 44 Petitioner called trial counsel’s strategy “unbelievable” and argued for the first time in reply that the strategy was unreasonable. The only argument that trial counsel’s strategy was unreasonable is the assertion that “in the absence of any evidence suggesting that the SUV’s driver was a person who outright *impersonated* [petitioner,] simply suggesting that [Vernon and Lane] were drunk could do nothing to shake their identifications of the driver as [petitioner.]” We disagree.

¶ 45 Intoxication is a valid method of attacking the credibility of a witness. See, e.g., *People v. Yuknis*, 79 Ill. App. 3d 243, 248 (1979) (“We agree that evidence of [witnesses’] use of hallucinogenic drugs on the night in question might well affect the validity of their identification testimony.”). As to Vernon and Lane’s intoxication, petitioner admits that

“[v]oluminous evidence established [they] had been drinking and smoking marijuana before the shooting and were intoxicated at the time ***.” “The reasonableness of counsel’s actions must be evaluated from counsel’s perspective at the time of the alleged error, and without hindsight, in light of the totality of circumstances, and not just on the basis of isolated acts.” (Internal quotation marks omitted.) *People v. Mabry*, 398 Ill. App. 3d 745, 753 (2010), as corrected (May 13, 2013). In light of the evidence, we find nothing unreasonable or irrational with trial counsel’s chosen trial strategy even though it proved unsuccessful. We will not use hindsight “to second-guess trial counsel’s strategy or the ways in which he implemented that strategy.” *Id.*

¶ 46 Vernon and Lane both allegedly stated that their prior identifications were “a case of mistaken identity” and that they were now “sure” and “positively certain” that petitioner was not in the SUV. Vernon and Lane made those statements despite the intoxication that originally led to the allegedly mistaken identification. Trial counsel’s choice not to impeach was objectively reasonable because placing the recantations before the jury would have not only been inconsistent with the reasonable strategy to discredit the witnesses with evidence of their intoxication but also may have had an independent deleterious effect on petitioner’s defense. As petitioner admits, these statements are unbelievable; but rather than convincing the jury that Vernon and Lane were lying when they identified petitioner, placing decidedly unbelievable proclamations of petitioner’s innocence before the jury could have led a reasonable trier of fact to conclude that the witnesses lied to the defense after talking to police to hide petitioner’s guilt. The jury would not have needed to accept the truth of the later statements because even when used only to impeach the witnesses’ trial testimony the

recantations could have had the opposite effect and bolstered Vernon and Lane's prior identifications. See, e.g., *People v. Jimerson*, 127 Ill. 2d 12, 33-34 (1989) ("Efforts to impeach Paula with the full range of her prior testimony could well have invited the jury to conclude that her testimony in this case was believable precisely because of the unbelievable character of her earlier assertions that she knew nothing about the crimes").

¶ 47 We hold that petitioner's claim that trial counsel was ineffective in failing to impeach Vernon and Lane with their statements recanting their identifications of petitioner, where those statements were inconsistent with trial counsel's reasonable strategy to discredit the witnesses' testimony with evidence of their intoxication, lacks an arguable basis in fact or law because the decision was a matter of trial strategy which was not so unreasonable or irrational that we can say that no reasonably effective defense attorney facing similar circumstances would not have pursued such a strategy. Because we hold that petitioner cannot satisfy the "objectively unreasonable performance" prong of the *Strickland* analysis, we need not address the prejudice prong or the State's argument the petition is not sufficiently supported by affidavit as required by the Act. See *People v. Albanese*, 104 Ill. 2d 504, 527 (1984). The trial court's judgment summarily dismissing the postconviction petition is affirmed.

¶ 48

CONCLUSION

¶ 49 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 50 Affirmed.