

**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(e)(1).

2014 IL App (3d) 120317-U

Order filed June 4, 2014

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D. 2014

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0317 No. 08-CF-97
JOHN STUFFLEBEAM,	)	Honorable Scott Shore and David Dubicki, Judges, Presiding.
Defendant-Appellant.	)	

---

JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice Lytton concurred in the judgment.  
Justice Schmidt dissenting.

---

**ORDER**

¶ 1 *Held:* To survive dismissal at the first stage of post conviction proceedings, a petition need only present the gist of a constitutional claim. This is a low threshold and a defendant need only present a limited amount of detail in the petition.

¶ 2 Defendant, John Stufflebeam, appeals from an order of the trial court of Tazewell County summarily dismissing his petition for postconviction relief. For the reasons that follow, we

reverse and remand for second stage proceedings. Because the facts of this case are set forth adequately in the order concerning defendant's direct appeal, we state here only those facts necessary to the disposition of defendant's post conviction appeal.

¶ 3

#### FACTS

¶ 4 On April 3, 2008, the State charged defendant with two counts of predatory criminal sexual assault of a child. 720 ILCS 5/12-14.1(a)(1) (West 2008). The charges stemmed from sexual contacts defendant had with M.B., a four year-old male, on June 20, 2007.

¶ 5 Prior to defendant's jury trial, defense counsel filed a motion for a psychiatric examination and a motion for additional discovery, asking the State to produce "[a]ny and all records concerning previous accusations made by the alleged victim \*\*\* including all that have been determined to be unfounded by the Illinois Department of Children and Family Services." At a status hearing thereafter, defense counsel again asked the State to provide "DCFS reports surrounding prior accusations made by the victim in this case." At a hearing several months later, defense counsel indicated that all discovery matters had been taken care of.

¶ 6 Before the trial court ruled on defendant's request for a psychiatric examination, defense counsel filed a motion to dismiss, alleging a violation of defendant's right to a speedy trial. The trial court denied the motion. The trial court also denied the defendant's request for a psychiatric examination.

¶ 7 The jury convicted defendant as charged. Defendant appealed, contending that the circuit court: (1) abused its discretion when it admitted evidence of the defendant's prior acts of sexual contact with children other than the instant minor because the prejudice of the evidence substantially outweighed its probative value; (2) erred because it failed to strictly comply with Supreme Court Rule 431(b); and (3) violated defendant's fifth amendment privilege against self-

incrimination and Illinois statutory law by ordering him to undergo a sex offender evaluation and then using statements the defendant made during the evaluation in fashioning his sentence. We affirmed. *People v. Stufflebeam*, No. 3-08-1038 (2011) (unpublished order pursuant to Supreme Court Rule 23).

¶ 8 On March 5, 2012, defendant filed a postconviction petition asserting that (1) trial counsel provided ineffective assistance in failing to present impeachment evidence regarding M.B.'s reputation for untruthfulness, and (2) trial counsel provided ineffective assistance by erroneously informing defendant about his speedy trial status, thus causing defendant to reject a plea offer.<sup>1</sup> Attached to the petition were affidavits from defendant, his father and his brother.

¶ 9 In his affidavit, defendant stated that the State had agreed to a plea bargain of 14 years in prison, which he rejected because, based on his counsel's representations, he believed his right to a speedy trial had been violated, and he would win on appeal, making him "unwilling to negotiate."

¶ 10 Defendant's father's affidavit stated that defense counsel told him that he "was sure the judge would grant the motion for psychiatric examination" because "then the clock on a speedy trial would be extended and more time would be afforded." Defendant's brother provided an affidavit that averred that defense counsel told him that the judge would most likely grant defendant's request for a psychological evaluation to "stop the clock." Otherwise, "they would violate [defendant]'s right to a speedy trial."

¶ 11 The trial court summarily dismissed defendant's petition. Defendant appeals.

---

<sup>1</sup> The petition contained other allegations of constitutional violations. These allegations, however, are not relevant as defendant has chosen here on appeal to focus solely on the two discussed above.

¶ 12

## ANALYSIS

¶ 13 Defendant argues that the trial court should not have summarily dismissed his post conviction petition because he stated the gist of an ineffective assistance claim based on his counsel's (1) failure to present impeachment evidence of M.D.'s reputation for dishonesty, and (2) erroneous advice that his case would be dismissed for a speedy trial violation.

¶ 14

### Impeachment Evidence

¶ 15 Issues that could have been presented on direct appeal, but were not, are deemed waived for purposes of post conviction review. *People v. Barrow*, 195 Ill. 2d 506 (2001) 518-19, *People v. Haynes*, 192 Ill. 2d 437,465 (2000), *People v. Towns*, 182 Ill. 2d 491, 503 (1998), *People v. Griffin*, 178 Ill. 2d 65, 73 (1997). Procedural default, however, will be excused where (1) fundamental fairness so requires; (2) the alleged waiver stems from the incompetence of appellate counsel; or (3) the facts relating to the claim do not appear on the face of the original appellate record. *People v. Munson*, 206 Ill. 2d 104, 118 (2002), *People v. Mahaffey*, 194 Ill. 2d 154, 171 (2000), *People v. Whitehead*, 169 Ill. 2d 355, 371-72 (1996).

¶ 16 Defendant's allegation that trial counsel provided ineffective assistance by failing to present impeachment evidence could have been raised on direct appeal. Thus, we deem this issue waived for purposes of post conviction proceedings. Upon review of the record, we find no basis for excusing defendant's waiver.

¶ 17

### Speedy Trial

¶ 18 While defendant did not present his speedy trial claim on direct appeal, we excuse defendant's waiver because the facts relating to the claim do not appear on the face of the original appellate record. Conversations defendant had in private with his counsel would not be

present on the record. Thus, we will examine whether defendant has stated the gist of a claim with respect to this issue. *People v. Porter*, 122 Ill.2d 64, 74 (1988).

¶ 19 At the first stage of post conviction proceedings, a petition alleging ineffective assistance of counsel may not be summarily dismissed if it is arguable that counsel's performance fell below an objective standard of reasonableness and it is arguable that the defendant was prejudiced. *People v. Barghout*, 2013 IL App (1st) 112373, ¶ 13. At the first stage of proceedings, we must accept as true all facts alleged in the postconviction petition unless the record contradicts those allegations. *Barghout*, 2013 IL App (1st) 112373, ¶ 16.

¶ 20 A defendant's right to effective assistance of counsel extends to plea negotiations. *People v. Hale*, 2013 IL 113140, ¶ 16. When a defendant claims that he rejected a plea agreement because of erroneous advice from counsel, the defendant must show (1) that defense counsel's performance during plea negotiations was objectively unreasonable, and (2) resulting prejudice. *Hale*, 2013 IL 113140, ¶ 16.

¶ 21 When defendant filed his postconviction petition, *People v. Curry*, 178 Ill. 2d 509, 530 (1997), was the controlling law. In that case, the supreme court held that in order to establish ineffective assistance of counsel based on a defendant's refusal to accept a plea bargain, the defendant must show that (1) counsel's performance fell below an objective level of reasonableness during plea bargaining, and (2) but for counsel's deficient advice, he would have accepted the plea offer. *Curry*, 178 Ill. 2d at 529-31. The supreme court refused to impose an additional requirement that a defendant show that there is a reasonable probability that the trial court would have accepted the plea bargain. *Curry*, 178 Ill. 2d at 535.

¶ 22 The law changed on March 21, 2012, when the U.S. Supreme Court decided *Lafler v. Cooper*, 132 S. Ct. 1376 (2012), and *Missouri v. Frye*, 132 S. Ct. 1399 (2012). In those cases,

the Supreme Court announced: To establish prejudice, the defendant must show there is a reasonable probability that (1) the defendant would have accepted the plea offer had he been afforded effective assistance of counsel, (2) the plea would have been presented to the court (i.e. that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), (3) the court would have accepted its terms, and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that were in fact imposed. *Lafler*, 132 S. Ct. at 1385; *Frye*, 132 S. Ct. 1399, 1409. We are bound to follow those cases. *Hale*, 2013 IL 113140, ¶ 20.

¶ 23 Here, defendant alleged in his postconviction petition that he received ineffective assistance because his counsel told him that the State violated his right to a speedy trial, causing him to reject a 14-year plea deal offered by the State. He further alleged that he would have accepted the plea if he had not received the erroneous advice. Finally, he alleged that the sentence he actually received (2 consecutive 14-year terms of imprisonment) was longer than the 14-year sentence he would receive under the plea agreement.

¶ 24 While these allegations arguably would not have been sufficient to establish ineffective assistance after March 21, 2012, defendant's post conviction petition was filed before *Lafler* and *Frye* were decided; therefore, *Curry* applies. Under *Curry*, defendant adequately alleged facts showing that, arguably, his trial counsel provided ineffective assistance and that he arguably suffered prejudice because, absent counsel's erroneous information, he would have accepted the plea bargain. See *People v. Barghout*, 2013 WL 6800292, ¶ 18. Thus, the trial court's summary dismissal of defendant's petition was improper.

¶ 25 In coming to this conclusion, we reject the trial court's reasoning, as our supreme court did in *Curry*, that a defendant cannot be prejudiced by erroneous advice from counsel during plea

bargaining because a defendant has no right to be offered the opportunity to plea bargain. *Curry*, 178 Ill. 2d at 530. The court explained:

"[I]n this case, the State did engage in plea bargaining with defendant. Thus, what is at issue here is whether, having received a plea offer from the State, defense counsel's deficient performance deprived defendant of his right to be reasonably informed as to the direct consequences of accepting or rejecting that offer. Defendant is not asserting that he had a right to be offered a plea bargain, nor is he asserting that his attorney's ineffectiveness deprived him of such a right." *Curry*, 178 Ill. 2d at 530.

¶ 26 We believe that the same concern addressed in *Curry* is comprehended in defendant's argument. He asserts, in essence, that his ability to adequately evaluate and complete the plea negotiation in which he and the State were actively engaged was usurped or short-circuited by his attorney's erroneous advice that he would go free because the State violated his right to a speedy trial. The decision in *Curry* is dispositive on this issue and inasmuch as *Curry* framed defendant's pleading requirement at the time he filed, it would be fundamentally unfair at this stage (1st stage) to bar his claims for failure to comply with a later-adopted standard (*Lafler/Frye*).

¶ 27 For the foregoing reasons, we reverse the trial court's judgment and remand the matter for second stage proceedings. We hold that the standard set forth in *Lafler* and *Frye* are applicable for all proceedings moving forward.

¶ 28 Reversed and remanded.

¶ 29 JUSTICE SCHMIDT, dissenting.

¶ 30 Defendant did not allege that he would have accepted the plea had he not received erroneous advice. His postconviction petition alleged that he would have "continued

negotiating." It is hornbook contract law that any counteroffer by the defendant would have rendered the State's original offer withdrawn. The State had no duty to negotiate. Therefore, even under *Curry*, defendant fails to allege or state the gist of a constitutional claim. We do not even get to the *Lafler/Frye* standard. However, even if we apply the *Lafler* and *Frye* standards, the defendant still fails to state the gist of a constitutional claim because he did not allege that he would have accepted the plea offer, only that he would have "continued negotiating."

¶ 31 For that reason, I would affirm the trial court's dismissal of defendant's postconviction petition and, therefore, respectfully dissent.