2015 IL App (1st) 122552-U

FIRST DIVISION
Rule 23 Order filed March 31, 2015
Modified upon granting of rehearing September 14, 2015

No. 1-12-2552

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. ACC 70090
	)	
JEREMY HOUSE,	)	Honorable
	)	Carol Howard,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LIU delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

O R D E R

HELD: Second-stage dismissal of defendant's postconviction petition is affirmed where defendant did not make a substantial showing that his guilty plea was involuntary or that his counsel was ineffective for failing to investigate his mental health history. Contrary to defendant's arguments, the unlimited sentencing range for direct criminal contempt does not violate constitutional rights; direct criminal contempt is not an unclassified offense for purposes of sentencing; and defendant's sentence was not void for lack of a presentence investigation report.

¶ 1 Defendant, Jeremy House, appeals from the second-stage dismissal of his petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2012). For

the first time on appeal, he raises several challenges to his 13-year sentence for direct criminal contempt. He also contends that the circuit court erred in dismissing his postconviction petition where he made a substantial showing of an involuntary guilty plea and ineffective assistance of counsel.[1] For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 In 2008, defendant entered a negotiated plea of guilty to the charge of direct criminal contempt. He was sentenced to 13 years' imprisonment and did not file a motion to withdraw his plea or a direct appeal.

¶ 4 A. The Contempt Charge

¶ 5 Defendant's contempt charge stemmed from his refusal to testify in the murder trial of his half-brother, Steven Hebron. On April 9, 2008, defendant was called as a witness at Hebron's trial, and he surprised the State by pleading the Fifth Amendment to even basic questions, such as his name. The State immediately moved for an order of use immunity pursuant to section 106-2.5 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/106-2.5 (West 2012)). The order was entered without objection, and the court allowed counsel to confer with defendant about its effect. Following a recess, defendant returned to the witness stand and continued to plead the Fifth Amendment. At that point in the proceedings, counsel for defendant noted that he had explained to defendant the consequences of continuing to assert his Fifth Amendment right, particularly "with relation to the contempt charge that's already pending before your Honor." Counsel was referring to the fact that a petition for rule to show cause was pending against defendant for his previous failure to appear pursuant to a subpoena. Counsel stated that,

[1] Defendant also raised a claim of unreasonable assistance of postconviction counsel in his opening brief, but later filed a motion to withdraw the issue. We allowed his motion.

notwithstanding the consequences of defendant's refusal to testify, defendant desired to assert his Fifth Amendment right.

¶ 6 The court asked defendant whether he understood that he had been granted immunity. Defendant responded that he did, at which point the following colloquy occurred:

> "THE COURT: And do you understand that because of that because you have immunity and because I find that you are not in jeopardy of your 5th amendment right to privilege I am ordering you to answer questions as it relates to that particular portion of your testimony.
>
> Do you understand that, sir[?]
>
> THE WITNESS: Yes, sir.
>
> THE COURT: That's a court order. Sir, I want you also to understand that there will be certain questions that will be asked of you that have nothing to do with your privilege. Like your name, and like whether you know a particular individual, or things like that. And you cannot assert your 5th amendment privilege as to those questions.
>
> Do you understand that?
>
> THE WITNESS: Yes, sir.
>
> THE COURT: Do you understand, sir, that when I order you to testify you must testify; otherwise, you will be, according to the statute in Illinois, in contempt of this Court.
>
> Do you understand that?
>
> THE WITNESS: Yes, sir.

THE COURT: Do you understand that I have a variety of different remedies available to me if I do find that you are in contempt of court?

Do you understand that?

THE WITNESS: Yes, sir.

The State then proceeded with its questioning and asked defendant if he knew Hebron and also whether he knew his own father's name. In response to both questions, defendant asserted his Fifth Amendment right. At that point, the court found defendant to be in contempt and continued the case to allow defendant an opportunity to purge.

¶ 7 At a subsequent hearing on July 10, 2008, the State again called defendant as a witness. Similar to before, defendant provided his name, but asserted his Fifth Amendment right when asked his age. The court, at this point, gave defendant another opportunity to confer with his counsel. When proceedings resumed, the State asked defendant his age again, and defendant again asserted his Fifth Amendment right. The court ordered defendant to testify and answer, and asked him, "Do you refuse my court order?" Defendant responded, "Yes, sir," at which point he was removed from the witness stand. The court continued the case again to give defendant another opportunity to purge his contempt.

¶ 8 At a hearing on August 22, 2008, the court asked defendant if he desired to purge his contempt by testifying. He responded that he did, and the court stated that it would give him "that opportunity" and continued the case to September 25. In the meantime, the State filed a petition to hold defendant in direct criminal contempt.

¶ 9 At the hearing on September 25, the State called defendant to the witness stand again. When asked his name and age, defendant provided his name, but asserted his Fifth Amendment right with respect to his age. The court asked defendant if he was refusing to answer the

question, and defendant responded, "Yes, sir." The court, at this point, transferred the State's contempt petition for assignment.

¶ 10 On December 3, 2008, the court informed defendant of the contempt charge against him and the potential penalty. Defendant informed the court that he wished to plead guilty to the charge, and the court provided the necessary admonishments. The court adopted the facts set forth in the State's petition and found that "defendant understands the nature of the charge, the possible penalties, knowingly waives his rights, and there's a factual basis for a finding of guilty." The court then accepted defendant's waiver of a presentence investigation report (PSI) and heard evidence in both aggravation and mitigation. Following the presentation of this evidence, the court sentenced defendant to 13 years' imprisonment. As pertinent here, the court noted during the proceedings that the "matter [wa]s subject to a[n] agreement between the State and the Defense." Counsel for defendant likewise noted that defendant had "negotiate[d] a plea with the State *** without any further court involvement."

¶ 11 B. Postconviction Proceeding

¶ 12 On November 18, 2010, defendant filed a *pro se* petition for postconviciton relief. He alleged: (1) that he should have been sentenced pursuant to section 5-4.5-85 of the Unified Code of Corrections (730 ILCS 5/5-4.5-85 (West 2012)); (2) that his sentence exceeded the statutory guidelines for a Class 4 felony under the statute; (3) that his attorney was ineffective for failing to properly investigate his case and for failing to advise him on various matters; and (4) that his attorney was ineffective for failing to investigate his mental history and his mental state at the time of his plea. Eventually, his petition was docketed and counsel was appointed to represent him.

¶ 13 On April 25, 2012, counsel filed an amended petition for postconviction relief. In the amended petition, counsel alleged that defendant's guilty plea was involuntary due to his conditions of attention deficit disorder, mood disorder, and impulse disorder. Allegedly, defendant had not been receiving treatment or medication for these disorders at the time of his plea. His grandmother had also died about a week before his plea, which "contributed to [his] feelings of depression and wanting to plead guilty."

¶ 14 In an affidavit attached to the petition, defendant stated that he had "felt stressed" and "very depressed and upset" at the time of his guilty plea. He stated that he "felt like [he] had no choice" when he pleaded guilty and that he would not have done so if he had been taking medication for his mental health issues. He stated that he told his plea counsel about his mental history, but that his plea counsel did not ask or do anything about it. He also stated that he asked plea counsel to request a Supreme Court Rule 402 conference, but that plea counsel refused on the ground that "the State did not want one."

¶ 15 Counsel attached to the amended petition a report from Dr. Henry Conroe, a psychiatrist who had examined defendant. Dr. Conroe stated that he had interviewed defendant and reviewed various medical records and the report of defendant's plea hearing. He concluded, to a reasonable degree of medical certainty, that defendant suffered from attention deficit disorder, a mood disorder, and an impulse disorder at the time of his guilty plea. He stated that defendant was not receiving treatment for his disorders at the time he entered his plea. He opined that defendant's "chronic psychiatric impairments should have been evaluated at the time of sentencing to assess their impact on his decision making abilities specifically as it relates to his capacity to voluntarily waive his rights leading to his pleading guilty." Further, he opined that "the impulsivity emanating from his mental disorders led to his not rationally understanding that by

controlling his impatience and by waiting for a more favorable forum, the outcome could have been materially better."

¶ 16 On June 28, 2012, the State moved to dismiss defendant's petition. The State asserted that defendant had not pointed to anything in the record showing that he did not voluntarily waive his rights when he pleaded guilty.

¶ 17 On August 7, 2012, the court heard argument on the State's motion. The court found that defendant had not presented a "sufficient basis" that his plea was involuntary. On the contrary, the court found that the transcripts of the plea hearing showed that defendant's plea was voluntarily given. The court thus granted the State's motion and dismissed defendant's petition.

¶ 18 ANALYSIS

¶ 19 On appeal, for the first time, defendant raises several challenges to his 13-year sentence for criminal contempt. He also claims that the circuit court erred in dismissing his postconviction petition. We begin by addressing his newly raised sentencing claims.

¶ 20 A. Proportionate Penalties Challenge

¶ 21 Defendant argues that the unlimited sentencing range for direct criminal contempt violates both the proportionate penalties clause of the Illinois Constitution and the Eighth Amendment to the United States Constitution. Although he has raised this argument for the first time on appeal, a defendant may challenge a sentencing scheme as unconstitutional, and void *ab initio*, at any time. See *People v. Guevara*, 216 Ill. 2d 533, 542 (2005). He may even raise such a constitutional challenge despite having failed to file a motion to withdraw his guilty plea. *Id.* at 543.

¶ 22 Article I, section 11 of the Illinois Constitution states that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring

the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "Courts frequently refer to the first [of these] requirement[s] as the 'proportionate penalties clause,' a reference to the language contained in our earlier state constitutions that '[a]ll penalties shall be proportioned to the nature of the offense.' " *People v. Clemons*, 2012 IL 107821, ¶ 37 (citing Ill. Const. 1870, art. II, § 11).

¶ 23 The Eighth Amendment to the United States Constitution similarly prohibits "cruel and unusual punishments." US. Const., amend. VIII. Included in this prohibition are grossly disproportionate sentences. *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003).

¶ 24 "To succeed on a proportionate penalties claim, a defendant must show either that the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense that it shocks the moral sense of the community; or that it differs from the penalty imposed for an offense containing the same elements." *People v. Klepper*, 234 Ill. 2d 337, 348 (2009). We review *de novo* the constitutionality of a defendant's sentence. See *id.*

¶ 25 In this case, defendant argues that the unlimited sentencing range for criminal contempt is "wholly disproportionate to the offense and shocking to the moral sense of the community." He claims that this is so because a defendant may be sentenced more harshly for contempt than for a similar or greater offense. Defendant acknowledges that, in *People v. Sharpe*, our supreme court held that "[a] defendant may no longer challenge a penalty under the proportionate penalties clause by comparing it with the penalty for an offense with different elements." *People v. Sharpe*, 216 Ill. 2d 481, 521 (2005). He nonetheless requests us to allow him to do just that, arguing that any concern that we will be second-guessing the legislature is not present here and that our consideration of other offenses will help us understand the "moral sense of the community." Predictably, the State responds that defendant's cross-comparison challenge is precluded by the supreme court's decision in *Sharpe*.

¶ 26 We decline to undertake the cross-comparison analysis that defendant has proposed. The supreme court has expressly rejected cross-comparison analysis as a framework for addressing proportionate penalties challenges. *Sharpe*, 216 Ill. 2d at 521. We are bound by that decision and have no authority to overrule it. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 23.

¶ 27 That being said, we are not persuaded that the unlimited sentencing range for criminal contempt is "so wholly disproportionate to the offense that it shocks the moral sense of the community." Defendant argues that "offenses that deprive the court system of evidence do not call for such extreme punishment" as the unlimited sentencing power available to the courts for contempt convictions. We, however, believe that defendant has oversimplified the issue. If courts lacked the authority to implement punitive measures when faced with deliberate non-compliance with its rules, the judiciary would be at the mercy of parties, counsel, and witnesses who could sidetrack proceedings often and at whim. Courts necessarily need flexibility to impose whatever punishment may be required in the many possible situations in which a contempt penalty may be required. Contempt orders allow the contemnor to "remedy" the misconduct and is a court's most effective remedy for obtaining compliance with its orders and maintaining the integrity of the tribunal. This is not to say that exercises of the court's power to punish one for contempt are not subject to any guidelines. Quite to the contrary, our supreme court has noted that a court may only provide "such reasonable punishment as it determines is required" in punishing one for contempt. *In re G.B.*, 88 Ill. 2d 36, 41 (1981). "A sentence imposed for direct criminal contempt, like any other sentence, is [also] subject to review for an abuse of discretion." *People v. Geiger*, 2012 IL 113181, ¶ 27. Notably, "appellate courts have a 'special responsibility for determining that the [contempt] power is not abused, to be exercised if necessary by revising themselves the

sentences imposed.' " *Id.* (quoting *Green v. United States*, 356 U.S. 165, 188 (1958)). Given these restrictions on the courts' contempt power, we are not persuaded that there is any merit to defendant's proportionate penalties challenge.

¶ 28 To the extent defendant is claiming that his sentence is excessive, we find his claim to be waived. Illinois Supreme Court Rule 604(d) provides that "[n]o appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014). The rule provides that any issue not raised by defendant in his motion to withdraw his plea "shall be deemed waived." *Id.* Here, defendant waived any issue regarding the excessiveness of his sentence because he entered a negotiated plea of guilty and did not timely file a motion withdraw his guilty plea.

¶ 29 B. Proper Sentencing Range

¶ 30 Defendant next contends that he was sentenced under the wrong sentencing guidelines. He argues that direct criminal contempt based on the refusal to testify after being granted use immunity is a statutorily defined offense under section 106-3 of the Code (725 ILCS 5/106-3 (West 2008)). Because section 106-3 does not contain any sentencing classification, he argues that he should have been sentenced in the Class 4 felony range pursuant to the statute on unclassified offenses (730 ILCS 5/5-5-2 (West 2008)).

¶ 31 Defendant's claim cannot stand in light of our supreme court's ruling in *Geiger*. There, the supreme court recognized that "a court *** has the inherent power to punish for contempt. *Geiger*, 2012 IL 113181, ¶ 24. The supreme court noted that "because the power to punish for contempt is inherent and does not depend on a constitutional or legislative grant, the legislature may not restrict its use." *Id.* "Accordingly, contempt has no sentencing classification or

sentencing range set by the legislature." *Id*. We do not consider defendant's claim any further in light of this clear precedent.

¶ 32 C. Waiver of Presentence Investigation Report

¶ 33 Defendant contends that his sentence is void because the court allowed him to waive his PSI in violation of section 5-3-1 of the Unified Code of Corrections (730 ILCS 5/5-3-1 (West 2008)). Although he has raised this issue for the first time on appeal, it is well settled that a void order may be challenged at any time. *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). We review *de novo* the trial court's compliance with section 5-3-1. *People v. Walton*, 357 Ill. App. 3d 819, 822 (2005).

¶ 34 Section 5-3-1 states that "[a] defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court." 730 ILCS 5/5-3-1 (West 2008). It also states, however, that "the court need not order a presentence report of investigation where both parties agree to the imposition of a specific sentence, provided there is a finding made for the record as to the defendant's history of delinquency or criminality." 730 ILCS 5/5-3-1 (West 2008).

¶ 35 Defendant maintains that the record does not show an agreement with the State as to the specific sentence he was to receive. He thus maintains that it was error for the court to accept the waiver of his PSI. The State acknowledges that the record does not show the details of the plea deal struck with defendant, but argues that it suffices that the record showed defendant entered into a negotiated plea. There is no dispute that the court considered defendant's criminal history.

¶ 36 The record of defendant's plea hearing shows that there was some type of agreement between the parties. The court noted that defendant's guilty plea "[wa]s subject to a[n] agreement between the State and the Defense." Likewise, counsel for defendant noted that defendant had

"negotiate[d] a plea with the State." There is no evidence one way or the other as to the details of the agreement. However, it is presumed that the trial court knew the law and applied it properly absent strong affirmative evidence to the contrary. *People v. Howery*, 178 Ill. 2d 1, 32 (1997).

¶ 37 The only evidence cited by defendant to show that there was not an agreement as to a specific sentence was the transcript of the plea hearing where the court heard evidence in aggravation and mitigation. Defendant argues that it "would have been wholly unnecessary" to hear evidence in aggravation and mitigation had there been an agreement between the State and him as to a specific sentence. We disagree. The record shows that the court was not involved in the plea discussions between defendant and the State. Therefore, it was not required to go along with a plea deal if it found any agreed upon sentence too lenient or too harsh. See Ill. S. Ct. R. 402(d)(2) (eff. Jul. 1, 1997) (allowing court to receive evidence in aggravation and mitigation so that it may indicate to the parties whether it will agree with a proposed disposition). The court may have wanted to hear evidence in aggravation and mitigation precisely for that reason. We will not infer from the mere presentation of such evidence that there was no agreement as to a specific sentence for defendant. We thus presume that the court properly accepted the waiver of defendant's PSI in compliance with section 5-3-1. See *Howery*, 178 Ill. 2d at 32.

¶ 38 While we recognize that Rule 402 requires the terms of a plea agreement to be stated in open court (Ill. S. Ct. R. 402(b)), we find that defendant has forfeited any issue regarding noncompliance with Rule 402(b) where he has failed to raise the issue at any time, or argue for plain error review. *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010) (finding that the failure to argue either of the two prongs of the plain error doctrine results in forfeiture of plain error review). Based on the record before us and the arguments presented, we have no basis to

conclude that the court failed to comply with section 5-3-1. Accordingly, we reject defendant's claim.

¶ 39 D. Involuntary Plea

¶ 40 Defendant next contends that the circuit court erred in dismissing his postconviction petition. First, he argues that he made a substantial showing that his guilty plea was involuntary. He points to the evidence attached to his petition showing that he suffered from various untreated mental disorders at the time of his plea.

¶ 41 The State argues that the record affirmatively shows that defendant entered his guilty plea knowingly and voluntarily. The State also argues that defendant's evidence does not support his assertion that his guilty plea was involuntary.

¶ 42 At the second stage of postconviction proceedings, defendant has the burden of making a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). A petition may be dismissed at this stage only when the allegations, liberally construed in light of the trial record, fail to make such a showing. *People v. Hall*, 217 Ill. 2d 324, 334 (2005). All well-pleaded facts that are not positively rebutted by the record are taken as true. *Pendleton*, 223 Ill. 2d at 473. We review *de novo* the dismissal of a postconviction petition without an evidentiary hearing. *Hall*, 217 Ill. 2d at 334.

¶ 43 "Due process requires that a plea of guilty not be accepted unless it appears from the record that the plea was made knowingly, intelligently and voluntarily." *People v. Williams*, 97 Ill. 2d 252, 267-68 (1983) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Here, the transcript of defendant's plea hearing shows that he was, at all times, responsive to the court's inquiries. Defendant acknowledged that he understood the charge against him and stated that he wanted to plead guilty. He affirmatively waived his right to a jury, his right to a trial, his right to confront

witnesses, and his right to testify on his own behalf, and he denied that anybody had threatened or made him any promises in exchange for his plea of guilty. The court thus found that defendant understood the nature of the charge, the possible penalties, and that he knowingly waived his rights.

¶ 44 We have found no evidence that defendant's plea was anything but voluntary. Defendant argues that he was "stressed," "very depressed and upset," and "felt like [he] had no choice" but to plead guilty. Taking these assertions as true, however, they have no bearing on whether he voluntarily entered his plea. Anybody in defendant's position would have been experiencing these very same feelings. Even Dr. Conroe, who examined defendant, stopped short of concluding that defendant's plea was involuntary. He merely concluded that defendant "should have been evaluated" to determine what impact his mental disorders had on his capacity to voluntarily plead guilty. Nowhere does he expressly state that defendant's plea was involuntary. Dr. Conroe opined that "the impulsivity emanating from [defendant's] mental disorders led to his not rationally understanding that by controlling his impatience and by waiting for a more favorable forum, the outcome could have been materially better." Respectfully, we find this opinion to be contradicted by the record. Defendant *negotiated* his own plea deal in this case—obviously for the purpose of obtaining the lowest possible sentence he could receive. Further, he entered his plea of guilty despite stating on the record that he understood that "[d]irect contempt has a sentence range of anywhere *from one day* to whatever number one could think of." (Emphasis added.) The record affirmatively shows that defendant comprehended the consequences of his plea.

¶ 45 Defendant claims the instant case is analogous to *Shafer v. Bowersox*, 329 F.3d 637, (8th Cir. 2003). We disagree. In *Shafer*, five expert witnesses testified that the defendant's waivers

were not knowing, voluntary, and intelligent because the defendant suffered from mental disorders that caused him "to make impulsive and emotional decisions, to have frequent mind changes, and to be unable to consider rationally the consequences of his actions." *Shafer*, 329 F.3d at 645. Here, there is not a single expert who has said that defendant's guilty plea was not knowing, voluntary, and intelligent. Under the circumstances, we can only conclude that defendant has failed to make a substantial showing that his guilty plea was involuntary.

¶ 46 E. Ineffective Assistance of Counsel

¶ 47 Defendant lastly contends that his plea counsel was ineffective where he failed to investigate his mental history and thus missed an opportunity to present mitigating evidence of his mental health at the sentencing portion of the plea hearing.

¶ 48 The State responds that defendant has forfeited this issue by failing to raise it in his petition. Forfeiture aside, the State argues that there was no reason for counsel to investigate defendant's mental health history given the fact that he entered a negotiated plea.

¶ 49 We initially reject the State's argument that defendant has forfeited this issue. The record shows that defendant raised his ineffective assistance claim in his *pro se* postconviction petition. He alleged that counsel "failed to investigate his Mental History and his mental state when advis[e]d about [his] guilty plea." He also alleged that counsel "failed to argu[e] for a less[er] sentence for [him]." Accordingly, we will consider the merits of defendant's claim.

¶ 50 To establish ineffective assistance of counsel, a defendant must show that his counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). This requires a showing that counsel's representation fell below an objective standard of reasonableness. *Id.* at 688. The defendant must also show that he suffered prejudice as a result of counsel's performance. *Id.* at 687. Ordinarily, in the plea context, this means he would need to show a

" 'reasonable probability that, but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial.' " *People v. Manning*, 227 Ill. 2d 403, 418 (2008) (quoting *People v. Pugh*, 157 Ill. 2d 1, 15 (1993)). Defendant, however, does not allege that he would have gone to trial in this case. Instead, he claims that his attorney could have obtained a more lenient sentence by presenting evidence of his mental health history. Under the circumstances, we find that a more appropriate standard for prejudice is whether defendant has shown " 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Id.* (quoting *People v. Evans*, 186 Ill. 2d 83, 93 (1999)).

¶ 51 Here, we cannot say that defendant has established the prejudice prong of *Strickland*. On appeal, defendant claims that he could have received a lower sentence had counsel presented evidence of his mental health history at his plea hearing. The record shows that defendant entered a negotiated plea, however, and there is no indication in the record that it was the court, as opposed to the parties, who fashioned his sentence. Defendant did not allege in his postconviction petition that it was the court; in fact, at one point, he alleged that "the State used the wrong statutory citation to sentence [him]." We cannot say that defendant established a reasonable probability that the proceedings would have been different where he has not even shown that that the court fashioned his sentence. Defendant's ineffective assistance of counsel claim necessarily fails as a result. *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992) (noting that court need not consider deficient performance prong of *Strickland* where ineffectiveness claim can be disposed of on the ground that defendant did not suffer prejudice).

¶ 52 For the reasons stated, we affirm the order of the circuit court of Cook County dismissing defendant's postconviction petition.

¶ 53 Affirmed.