SIXTH DIVISION
May 15, 2015

No. 1-12-3274

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. 99 CR 23699
	)	
THADDEUS JONES,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

O R D E R

¶ 1 ***Held*:** The trial court did not err in the second-stage dismissal of defendant's postconviction petition.

¶ 2 Defendant Thaddeus Jones, who was convicted of first degree murder, appeals from the trial court's dismissal of his postconviction petition at the second stage of postconviction proceedings. On appeal, defendant argues he made a substantial showing that (1) new evidence provided by witnesses supports his claim of actual innocence; (2) trial counsel rendered

ineffective assistance when he failed to investigate a known witness as a possible source of evidence of the victim's violent and aggressive character to support defendant's theory of self-defense; and (3) the mittimus should be amended to credit defendant for time he spent in custody prior to sentencing.

¶3 For the reasons that follow, we affirm the trial court's summary dismissal of defendant's postconviction petition but direct the clerk of the circuit court to amend defendant's mittimus to credit him for time spent in custody.

¶4 I. BACKGROUND

¶5 On the afternoon of September 17, 1999, defendant shot and killed 19-year-old Leandre Aldrich with a gun on a street corner. At defendant's jury trial in March 2001, the State presented the testimony of the victim's father, Lyonel Herard, who testified that he woke up at 3:30 a.m. on September 17, 1999, when defendant rang Herard's doorbell, accused the victim of firebombing a neighbor's car, and threatened to kill the victim. Herard did not believe defendant's threat and told him it was impossible that the victim had started the fire because he was home sleeping.

¶6 The State also presented the testimony of four eyewitnesses at the scene of the shooting: Ronald Randolph and Lance Randle, who were repairing a car near the scene, and Junella Jackson and her child, Laquese Murphy, who were walking home from Laquese's school. The testimony of Randolph, Randle and Laquese Murphy established that defendant drove a car to the scene, parked and exited the car, and confronted the victim, who was walking. Defendant and the victim stood in the street intersection and argued with each other for a few minutes. Then the victim moved to walk away but defendant pulled out a gun and shot the victim in the right side of his head. The victim never struck defendant or made any movement indicating that

he was going to attack defendant. Defendant returned to his car and drove away. Junella Jackson testified that she had turned away from the arguing men before the shooting occurred and then looked at the men after she heard the gunshot, so she did not actually see defendant pull out the gun and shoot the victim. Lance Randle testified that he heard the victim say he could take care of himself as he was walking away from defendant, who responded that he was going to "air him out."

¶7 In addition, Chicago police detective David Fidyk testified about his investigation of the shooting. Detective Fidyk and Assistant State's Attorney Thomas Key also testified about defendant's statements during their interviews with him concerning his: claim that he was at home cutting his lawn at the time of the shooting, never left his house, and would be able to beat this case in court; involvement in a paramilitary organization; frustration about young punks taking advantage of old timers; and prior incident of shooting his nephew for stealing from his parents. Forensic evidence established that the victim had a gunshot wound to the right side of his head slightly above and in front of his ear. The victim did not have any drugs or alcohol in his system and had been wearing a short-sleeved shirt, jeans, and a long-sleeved hooded sweatshirt at the time he was shot. The absence of soot or stippling indicated that the gunshot wound occurred not less than 24 inches away from the gun. Furthermore, the recovered bullet and fragment did not have any evidence of a close-range firing of less than 24 inches.

¶8 The defense argued that defendant acted in self-defense or, alternatively, under an actual but unreasonable belief that he needed to use deadly force to defend himself. Defendant testified that he always carried a .38 snub-nosed revolver to protect himself because his neighborhood had changed and was experiencing street gang problems. Defendant had known the victim for several years as an acquaintance of defendant's daughter. According to defendant's account of

the shooting, he had parked and exited his car to do some shopping and was in the street when the victim called him. They stood about three feet apart and yelled at each other about the firebombed-car incident. Defendant believed the victim's clothing was suspicious because he was dressed too warm for the weather that day. Defendant felt scared because the victim threatened to kill him if he ever tried to inform the victim's father about what the victim and his friends were doing. The victim threatened to harm defendant's family and then made a twisting motion with his body, which defendant feared meant that the victim was trying to throw defendant off guard and pull out a weapon. Consequently, defendant pulled the revolver from his pocket and shot the victim. Defendant admitted that he did not see the victim with a gun, knife, or any weapon in his hand.

¶9 Defendant initially acknowledged that he did not see the victim firebomb the neighbor's car but later testified that he saw the victim with his two friends throw a firebomb at the car and then speed around the corner. Defendant denied telling the victim he would "air him out" after the victim threatened to "air out" defendant. Defendant denied telling detective Fidyk that he was tired of reading about young punks always "getting over" on old timers and that it was time for the old timers to teach these young dudes a lesson. Defendant denied telling Detective Fidyk that defendant shot his nephew for stealing money from his parents, but did tell Detective Fidyk that defendant would have no problem taking out one of these young punks.

¶10 The trial court allowed defendant's request to instruct the jury on self-defense and second degree murder. After deliberations, the jury found defendant guilty of first degree murder. The trial court sentenced defendant to 35 years in prison.

¶11 In 2003, this court dismissed defendant's direct appeal for want of prosecution because defendant's private counsel failed to file a brief. Thereafter, private counsel filed a

postconviction petition seeking to reinstate defendant's direct appeal, but the trial court ruled that the petition was without merit and dismissed it. Defendant filed a *pro se* appeal of the dismissal of his petition, but, in 2004, this court dismissed the appeal for want of prosecution. In 2007, defendant filed a *pro se* motion for leave to file a second postconviction petition alleging, *inter alia*, that he was wrongly denied his right to a direct appeal through ineffective assistance of counsel. The trial court appointed counsel to represent defendant, and, in 2009, the parties entered an agreed order, which granted defendant leave to file a late notice of appeal *instanter* and provided that his 2007 postconviction petition would be placed back on call to address his remaining contentions of error if he did not obtain a new trial on appeal.

¶12 On direct appeal, defendant argued that the trial court erred in allowing evidence of defendant's statements to the police about prior bad acts; the trial court failed to give the jury a limiting instruction concerning other crimes evidence; the sentence should be reduced to second degree murder because defendant established that he acted under an actual belief that he needed to use deadly force; and his prison sentence was excessive. This court affirmed defendant's conviction. *People v. Jones*, No. 1-09-2794 (March 14, 2011) (unpublished order under Supreme Court Rule 23).

¶13 Defendant's *pro se* 2007 postconviction petition raised 11 claims, including ineffective assistance of trial counsel for failing to interview and investigate available witnesses to support defendant's claim of self-defense. Although defendant did not mention the names of these witnesses in either his petition or his affidavit, he referred to their attached affidavits as exhibits 5 through 8 of the petition. Defendant asserted that he told trial counsel that some members of the victim's gang were willing to testify that the victim had threatened defendant on numerous occasions. Although trial counsel told defendant that counsel would talk to these witnesses,

counsel failed to do so. Defendant asserted that the witnesses had been willing to testify at the trial, but when defendant's private investigator talked to them when the initial 2003 postconviction petition was filed, two of the three witnesses did not want to get involved.

¶14 In Micheal Jones' affidavit, which is marked as exhibit 5, he averred that he was a friend of the victim and had known him for many years. In 1999, the victim's heavy use of drugs and alcohol made him a different person and he would start trouble with people, especially the elderly, for no reason. Micheal Jones said that the victim believed defendant was "nosey and getting into his business" and would tell defendant all the time that "he [the victim] was going to 'Air his old a** Out.' " Although Micheal Jones told the victim to leave defendant alone, the victim replied that "they were going to find the old man [defendant] stanking (meaning dead)." Micheal Jones wanted to testify on defendant's behalf, had been told by defendant's family that defendant's lawyer would contact him, and had even called the office of the public defender. Nevertheless, no one from the lawyer's office ever returned his calls or contacted him prior to the trial.

¶15 In Kitwana Knox's affidavit, which is marked as exhibit 6, he averred that the victim made numerous statements to defendant, threatening his life, for absolutely no reason. When the victim thought defendant was interfering in matters, the victim told Knox that he would kill defendant when no one was looking, and Knox warned defendant about that threat. Knox said he would have testified in defendant's case, but was in a street gang and would be subject to some violence from his gang members. When defendant's investigator contacted him, he would not talk to him due to his gang status. However, Knox came forward now because it was the right thing to do.

¶16 In Anthony Anderson's affidavit, which is marked as exhibit 7, he averred that he was a good friend of the victim, who had a serious problem with intimidating the elderly in general and defendant in particular. The victim threatened defendant many times, saying he was going to "air him out" for interfering in the victim's business. The victim also told Anderson that he would shoot and kill defendant if he got the opportunity because defendant would cause the victim to be incarcerated. Anderson had refused to talk to defendant's private investigator because Anderson "did not want to be violated" by members of his street gang. However, he now believed he needed to tell the truth and his life was not in danger anymore because he had moved from the old neighborhood.

¶17 In Marcus Henry's affidavit, which is marked as exhibit 8, he averred that he was a good friend of the victim, who said he hated defendant, believed defendant was interfering in the victim's business, and wanted to cause defendant serious bodily harm. Henry heard the victim threaten defendant on many occasions and could tell that defendant feared for his life and the safety of his family and tried to avoid confrontations with the victim. Henry told the victim to stop messing with defendant, but the victim kept tormenting defendant every time he saw him. Henry would have come forward earlier but his prior street gang involvement prevented him from getting involved in defendant's case. Henry refused to talk to defendant's private investigator because Henry did not want to suffer repercussions from his gang members. However, Henry came forward now because it was the right thing to do and he could not stand by while defendant rotted away in prison.

¶18 Defendant's appointed postconviction counsel filed a supplemental procedural history and a Rule 651(c) certificate, which stated that no further amendment to the *pro se* petition was necessary.

¶19 The State moved to dismiss the petition, arguing, *inter alia*, that defendant could not meet his burden to show ineffective assistance of trial counsel where the decision as to which witnesses to call was a matter of trial strategy. Furthermore, trial counsel could not be deemed ineffective for failing to pursue witnesses who were unavailable to testify and the affidavits of Knox, Anderson and Henry neither identified with reasonable certainty their availability to testify at defendant's trial nor provided any information as to when they overcame their fear of gang reprisals. The State also argued that Micheal Jones' affidavit was based on hearsay and failed to provide any details concerning when he contacted trial counsel, to whom he spoke, or if he was available to testify at the time of trial.

¶20 At the October 23, 2012 hearing on the motion to dismiss, postconviction counsel stood on the unamended petition and informed the court that she had advised defendant many of his 11 issues were already addressed on direct appeal and could not be raised again. In addition, she reviewed 11 additional issues he gave her and told him that she would not be responding to the State's motion to dismiss. The trial court granted the State's motion to dismiss. Defendant appealed.

¶21 II. ANALYSIS

¶22 On appeal, defendant contends that his postconviction petition should have advanced to a stage three evidentiary hearing because he made a substantial showing that (1) new evidence provided by witnesses Knox, Anderson and Henry supports defendant's claim of actual innocence; (2) trial counsel rendered ineffective assistance when he failed to investigate Michael Jones as a possible source of evidence of the victim's violent and aggressive character to support defendant's theory of self-defense; and (3) the mittimus should be amended to credit defendant for the 585 days he spent in custody prior to sentencing.

¶23 The Illinois Post-Conviction Hearing Act (Act), 725 ILCS 5/122-1 *et seq.* (West 2010), provides a means by which a defendant may challenge his conviction for "substantial deprivation of federal or state constitutional rights." *People v. Tenner*, 175 Ill. 2d 372, 378 (1997). Postconviction relief is limited to constitutional deprivations that occurred at the original trial. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). A postconviction proceeding is not an appeal of the defendant's underlying judgment but, rather, is a collateral attack on the judgment. *People v. Evans*, 186 Ill. 2d 83, 89 (1999). "The purpose of [a postconviction] proceeding is to allow inquiry into constitutional issues relating to the conviction or sentence that were not, and could not have been, determined on direct appeal." *People v. Barrow*, 195 Ill. 2d 506, 519 (2001). Thus, *res judicata* bars consideration of issues that were raised and decided on direct appeal, and issues that could have been presented on direct appeal, but were not, are considered forfeited. *People v. Blair*, 215 Ill. 2d 427, 443-47 (2005).

¶24 Except in cases where the death penalty has been imposed, proceedings under the Act are divided into three distinct stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the trial court must examine the petition independently and summarily dismiss it if it is frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 2010); *Gaultney*, 174 Ill. 2d at 418. If not summarily dismissed, the petition proceeds to the second stage, at which an indigent defendant is entitled to appointed counsel, the petition may be amended, and the State may answer or move to dismiss the petition. 725 ILCS 5/122–4, 122–5 (West 2010); *Gaultney*, 174 Ill. 2d at 418. When the State seeks dismissal of a postconviction petition instead of filing an answer, its motion to dismiss assumes the truth of the allegations to which it is directed and questions only their legal sufficiency. *People v. Miller*, 203 Ill. 2d 433, 437 (2002). At the second stage, the petition may be dismissed "when the allegations in the petition, liberally

construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *People v. Hall*, 217 Ill. 2d 324, 334 (2005). The court's focus during second-stage review is the legal sufficiency of the petition, and the court may not engage in any fact-finding or credibility determinations, but must take as true all well-pleaded facts. *People v. Domagala*, 2013 IL 113688, ¶ 35. A postconviction petitioner is not entitled to an evidentiary hearing as a matter of right; rather, to warrant an evidentiary hearing, the allegations in the petition must be supported by the record or by accompanying affidavits. *Coleman*, 183 Ill. 2d at 381. Nonspecific and nonfactual assertions that merely amount to conclusions are not sufficient to warrant a hearing under the Act. *Id*. In determining whether to grant an evidentiary hearing, all well-pleaded facts in the petition and in any accompanying affidavits that are not positively rebutted by the trial record are to be taken as true. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). A petition that is not dismissed at the first or second stage advances to the third stage, at which an evidentiary hearing is held. See 725 ILCS 5/122-6 (West 2010); *Gaultney*, 174 Ill. 2d at 418. Dismissal of a petition at the second stage, as occurred here, is reviewed *de novo*. *People v. Whitfield*, 217 Ill. 2d 177, 182 (2005).

¶25 A. Newly Discovered Evidence

¶26 Defendant argues that he should receive an evidentiary hearing on his claim of actual innocence based on newly-discovered evidence in support of his self-defense claim. He argues for the first time on appeal that the affidavits of Knox, Anderson and Henry constitute newly discovered evidence of the victim's personal vendetta against defendant that could not have been discovered sooner through due diligence. On appeal, defendant argues these witnesses were unavailable at the time of trial because they were unwilling to come forward and testify due to fear of retaliatory gang violence. However, the issue presented to the circuit court was that trial

counsel rendered ineffective assistance for failing to interview and investigate available witnesses (Micheal Jones, Knox, Anderson and Henry) to support defendant's claim of self-defense. Specifically, defendant alleged in his petition and affidavit that he gave his trial counsel the names of the victims' gang member friends "who were willing to testify that [the victim] had threatened the defendant on numerous [occasions]," and counsel stated that he would interview and investigate them but failed to do so. According to defendant's petition, these witnesses were willing to testify at defendant's trial in 2001, but when his initial postconviction petition was filed in 2003, he hired a private investigator to talk to these witnesses and "[a]t that point, two of the three witnesses did not want to get involved."

¶27 "The principle is well established that a defendant waives a post-conviction issue if the issue is not raised in the original or amended post-conviction petition." *People v. Barrow*, 195 Ill. 2d 506, 538 (2001); see 725 ILCS 5/122-3 (West 2010) ("[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived"). Whereas defendant's petition before the trial court clearly alleged that Knox, Anderson and Henry were willing to testify at the 2001 jury trial, his new claim on appeal asserts that these same witnesses were not available to testify at the 2001 trial because they feared gang reprisals. We conclude that defendant's revised and contradictory claim on appeal about the testimony of Knox, Anderson and Henry constituting newly discovered evidence has been procedurally defaulted.

¶28 Such forfeiture notwithstanding, defendant has not met his burden to make a substantial showing of a freestanding claim of actual innocence based on the affidavits of Knox, Anderson and Henry. A freestanding claim of actual innocence must show that the evidence is (1) newly discovered, (2) material and non-cumulative, and (3) of such conclusive character that it would probably change the result on retrial. *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009); *People v.*

Lofton, 2011 IL App (1st) 100118, ¶ 34. "An unbroken line of precedent holds that evidence is not newly discovered when it presents facts already known to a defendant at or prior to trial, though the source of those facts may have been unknown, unavailable or uncooperative." *People v. Jones*, 399 Ill. App. 3d 341, 364 (2010) (the codefendant's affidavit averring that he was solely responsible for the murder did not constitute newly discovered evidence where his allegedly false prior accusation of the defendant's complicity was not considered in the defendant's trial, the affidavit revealed no facts upon which a meaningful prosecution of the codefendant could be pursued, and it contained no statement that the codefendant would actually testify to the averred facts); see also *People v. Edwards*, 2012 IL 11711, ¶ 37 (alibi affidavits of two potential witnesses, who had rejected attempts by the defendant's attorney to persuade them to testify, did not qualify as newly discovered evidence because the efforts expended were insufficient to satisfy the due diligence requirement where there were no attempts to subpoena them and no explanation as to why subpoenas were not issued).

¶29 Defendant acknowledges on appeal that he knew about the potential testimony of Knox, Anderson and Henry at the time of trial. He argues, however, that their testimony constitutes newly discovered evidence because they previously were unavailable witnesses based on their fear of gang reprisals. He cites *People v. Knight*, 405 Ill. App. 3d 461, 467-68 (2010), which held that exculpatory affidavits from incarcerated gang members who were known to the defendant but were previously unwilling to testify constituted newly-discovered evidence because the witnesses had feared the risk of death by gang retaliation if they had come forward before the gang leader had died.

¶30 The third district case of *Knight* seemingly supports defendant's argument. We decline, however, to follow *Knight*, which erroneously relied on the distinguishable case of *People v.*

Molstad, 101 Ill. 2d 128 (1984), for support. *Molstad*, which held that a codefendant's affidavit can qualify as newly discovered evidence because a codefendant has a fifth amendment right to avoid self-incrimination and no amount of due diligence could force a codefendant to violate that right (*id*. at 135), was not controlling precedent for the facts presented in *Knight*, which did not involve a codefendant and, thus, did not implicate fifth amendment self-incrimination concerns. We conclude that defendant has failed to meet his burden to show that his claim of actual innocence is supported by newly discovered evidence.

¶31 Defendant has also failed to meet his burden to make a substantial showing that the testimony of Knox, Anderson and Henry about the victim's alleged violent and aggressive character and threats against defendant was of such conclusive nature that it would probably change the result on retrial. This determination is the most important factor in the analysis of a claim of actual innocence, and the defendant must provide "new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Edwards*, 2012 IL 111711, ¶¶ 40, 32. The proffered evidence must exonerate the defendant, not simply impeach or contradict testimony given at trial. *People v. Collier*, 387 Ill. App. 3d 630, 637 (2008). Although this court cannot judge the credibility of the new evidence at either the first or second stage of postconviction proceedings, this court must carefully review the evidence to determine whether it actually qualifies as newly discovered evidence of actual innocence. See *Edwards*, 2012 IL 111711, ¶¶ 40-41.

¶32 The record refutes defendant's postconviction claim that he was afraid of the victim and avoided confrontations with him. The trial evidence established that defendant went to the victim's home at 3:30 a.m. to accuse him of firebombing a car and threatened to kill the victim. Furthermore, the eyewitness testimony showed that defendant exited his car and confronted the

victim. Moreover, the testimony of Randolph, Randle and Laquese Murphy established that the victim never struck defendant, never made any movements indicating he was going to attack defendant, and had actually started to walk away when defendant shot him. Defendant even admitted at trial that he did not see the victim with a gun, knife or any weapon in his hand. In addition, Randle heard defendant at the scene threaten to "air out" the victim shortly before defendant fired his gun, and defendant told the investigating detective and assistant state's attorney that he was frustrated about young punks taking advantage of old timers, it was time for the old timers to teach these young dudes a lesson, and defendant would have no problem taking out one of these young punks. Furthermore, when the police questioned defendant after the shooting, he never mentioned any fear of the victim or self-defense; instead, defendant simply denied being at the scene. The evidence presented at trial clearly established that defendant neither feared the victim nor believed, unreasonably, that the circumstances justified his shooting of the victim, so the potential testimony of Knox, Anderson and Henry is not of such a conclusive character that it would probably change the result on retrial.

¶33 B. Effective Assistance of Counsel

¶34 Next, defendant argues the trial court erroneously dismissed his postconviction petition because trial counsel rendered constitutionally ineffective assistance by failing to investigate Micheal Jones as a possible source of evidence of the victim's personal vendetta against defendant, which would have supported defendant's self-defense claim. Defendant alleged that he informed trial counsel about Micheal Jones' potential testimony, and Micheal Jones stated in his affidavit that he wanted to testify at defendant's trial, was told by defendant's family that defendant's attorney would contact him, and even attempted to contact defense counsel but his call was never returned. Defendant argues that Michael Jones' testimony about the victim's

aggressive character and threats to kill defendant would have supported defendant's otherwise uncorroborated testimony that he believed he needed to defend himself from the victim, and there was no strategic reason for counsel not to investigate this witness, who could have bolstered defendant's defense.

¶35 Claims of ineffective assistance of counsel are resolved under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the Supreme Court delineated a two-part test to use when evaluating whether a defendant was denied the effective assistance of counsel in violation of the sixth amendment. Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced defendant. *Strickland*, 466 U.S. at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). In evaluating sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. If a case may be disposed of on the ground of lack of sufficient prejudice, that course should be taken, and the court need not consider the quality of the attorney's performance. *Strickland*, 466 U.S. at 697.

¶36 The scrutiny of counsel's performance must be highly deferential because of the inherent difficulties in making the evaluation, and a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689. "Although an attorney's decision regarding whether or not to present a particular witness is generally a matter of trial strategy, counsel may be deemed ineffective for

failure to present exculpatory evidence of which he or she is aware." *People v. Redmond*, 341 Ill. App. 3d 498, 516 (2003). To establish deficient performance, defendant must overcome the strong presumption that counsel's action or inaction was the result of sound trial strategy. *People v. Perry*, 224 Ill. 2d 312, 341-42 (2007). Defendant must show that counsel's errors were so serious and his performance so deficient that he did not function as the counsel guaranteed by the sixth amendment. *Id*. at 342.

¶37 We conclude that defendant has not made a substantial showing of ineffective assistance of counsel because there is no reasonable probability that the outcome of the trial would have been different if counsel had presented Micheal Jones' testimony about the victim's alleged drug and alcohol use and verbal threats against defendant. Contrary to defendant's argument, Micheal Jones' testimony would not have established that defendant acted in self-defense or that he believed, unreasonably, that the circumstances justified his shooting of the victim. Micheal Jones was not an eyewitness to the instant offense, and, as discussed above, the record refutes defendant's postconviction assertion that he was afraid of the victim and avoided confrontations with him. In light of the overwhelming evidence of defendant's guilt presented at trial, there is no reasonable probability that Micheal Jones' testimony would have changed the outcome of the trial.

¶38 C. Credit For Time Served

¶39 Defendant argues, the State concedes, and this court agrees that defendant received 585 days of sentence credit, but is entitled to one more day of credit than he received, for a total of 586 days of sentence credit. Specifically, defendant, who is entitled to credit for any part of a day he spent in custody prior to sentencing (730 ILCS 5/5-4.5-100(b) (West 1998); *People v. Williams*, 239 Ill. 2d 503, 510 (2011)), was arrested on September 18, 1999, and sentenced on

April 26, 2001. The right to receive the proper amount of sentencing credit is mandatory and not subject to forfeiture. *People v. Dieu*, 298 Ill. App. 3d 245, 249-50 (1998). Remandment is unnecessary since this court has the authority to directly order the clerk of the circuit court to make the necessary corrections. *People v. Brown*, 255 Ill. App. 3d 425 (1993); *People v. Mitchell*, 234 Ill. App. 3d 912 (1992). Accordingly, we direct the clerk of the circuit court to amend the mittimus to reflect 586 days of sentence credit.

¶40 For the foregoing reasons, we direct the clerk of the circuit court to amend the mittimus as indicated and affirm the trial court's second-stage dismissal of defendant's postconviction petition.

¶41 Affirmed; mittimus corrected.