2015 IL App (1st) 140175-U

SIXTH DIVISION
Order filed: August 28, 2015

No. 1-14-0175

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 01 CR 6466
	)	
JOSEPH BANNISTER,	)	
	)	Honorable
Defendant-Appellant.	)	Fred G. Suria, Jr.,
	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court's second-stage dismissal of the defendant's postconviction petition is affirmed where the defendant failed to make a substantial showing that his constitutional right to effective assistance of counsel was violated.

¶ 2 The defendant, Joseph Bannister, appeals the second-stage dismissal of his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). On appeal, the defendant argues that the trial court erred in dismissing his petition without an evidentiary hearing because he presented a substantial showing that his trial counsel was

ineffective for failing to investigate his medical history and present evidence of his organic brain damage at a fitness hearing and sentencing hearing. For the reasons that follow, we affirm.

¶ 3 In February 2001, the defendant was charged in a multicount indictment with, *inter alia*, the first degree murder of Henrietta Banks; the attempted murder of Henrietta's sister, Sharon Banks; and home invasion.

¶ 4 Prior to trial, the defendant told his court-appointed attorney that Sharon, the surviving victim, was visiting him in jail and that she would testify that he was not the person who shot her and her sister. Defense counsel investigated and debunked these claims, but the defendant persisted in his belief that Sharon would exonerate him at trial. Because of his beliefs, the defendant refused to discuss any other legal strategy with counsel. Consequently, defense counsel retained Dr. Randi Zoot, a clinical psychologist, to assess the defendant's psychological functioning, and Dr. Carl Wahlstrom, a forensic psychiatrist, to determine whether the defendant was fit to stand trial.

¶ 5 At an April 2003 status hearing, defense counsel informed the trial court that Dr. Zoot and Dr. Wahlstrom diagnosed the defendant with a delusional disorder and Dr. Wahlstrom determined that the defendant was unfit to stand trial. The trial court ordered a behavioral clinical examination of the defendant's fitness to stand trial. Pursuant to that order, the defendant was evaluated by Dr. Susan Messina, a licensed clinical psychologist with forensic clinical services (FCS) of the circuit court of Cook County. In a letter to the trial court, dated June 19, 2003, Dr. Messina stated the defendant is fit to stand trial. Dr. Messina found that the defendant is aware of the charge against him and the penalty he may face. She opined that "psychological testing and the defendant's behavior during the evaluation indicate the suggestion of malingering" and he is capable of assisting counsel in his defense if he chooses to do so. The

defendant was also evaluated by Dr. Carol Flippen, a staff forensic psychiatrist with FCS, who similarly opined that the defendant was malingering and fit to stand trial.

¶ 6 In July 2004, the trial court conducted a fitness hearing to determine whether the defendant was mentally fit to stand trial. The parties offered two conflicting expert medical opinions. The State offered the testimony of expert forensic psychiatrist, Dr. Flippen, who, pursuant to court orders, interviewed the defendant on four separate occasions to determine his fitness to stand trial. Dr. Flippen testified that, before meeting with the defendant, she reviewed the defendant's medical records, criminal history, family history, police reports, documents relating to the instant offense, and clinical reports prepared by Drs. Messina, Wahlstrom, and Zoot. According to Dr. Flippen, these records revealed, among other things, that the defendant demonstrated an average level of intelligence on IQ testing and was malingering.

¶ 7 Dr. Flippen further testified that during her clinical interviews, the defendant indicated that he has no knowledge of the pending charges against him, court procedure, the role of courtroom personnel, or the difference between guilty and not guilty. Dr. Flippen testified that the defendant's level of understanding was inconsistent with his presentation in prior evaluations in which he could relate events in a sequential manner, had goal-directed thoughts relevant to the questions posed, and could reason abstractly. Dr. Flippen noted that Dr. Zoot and Dr. Wahlstrom both reported that the defendant was able to discuss the nature of the charge against him, his understanding of the court procedures, including entering a plea, the purpose of a trial, and the role of key courtroom personnel. Dr. Flippen opined the defendant has the ability to assist his defense counsel if he chooses to do so. She determined that the defendant has not demonstrated any symptoms of mental illness that would interfere with his ability to participate in a legal

defense and the defendant "was malingering, cognitive and intellectual impairment." Accordingly, Dr. Flippen opined that the defendant was fit to stand trial.

¶ 8 After the State presented its expert witness, the defense called Dr. Wahlstrom, who testified that it was his opinion that the defendant was not fit to stand trial. Dr. Wahlstrom explained that, in coming to this conclusion, he met with the defendant twice and reviewed various documents produced in the defendant's criminal case, as well as clinical reports prepared by Dr. Zoot and the doctors at FCS. Dr. Wahlstrom's testimony was consistent with his April 16, 2003, report; namely that the defendant believed Sharon was visiting him at the Cook County jail and was going to recant her statement implicating him in the offense. Dr. Wahlstrom testified that he confronted the defendant with the fact that there was no truth to his representations, but the defendant persisted in his belief. According to Dr. Wahlstrom, the defendant would not consider any other possibilities about proceeding with his case and kept "bringing it back to Sharon." Dr. Wahlstrom opined that the defendant was delusional and was not willing to discuss or consider any other planning for his defense. Dr. Wahlstrom diagnosed the defendant with "Delusional Disorder, Mixed Type with Grandiose and Persecutory Features," which has resulted in substantial impairments in his ability to assist his attorney with his defense. Dr. Wahlstrom testified that the defendant was unfit to stand trial, but could attain fitness within a year if treated.

¶ 9 On cross-examination, Dr. Wahlstrom admitted that the defendant understood the nature of the charges, the role of the prosecutor, his trial counsel, the judge, and the nature of a jury trial. Dr. Wahlstrom clarified that the defendant's delusion was confined to Sharon.

¶ 10 After hearing the testimony of both experts, the trial court found the defendant fit to stand trial. The cause proceeded to a bench trial.

¶ 11 The evidence adduced at trial established that the defendant met Sharon in September 1992, and they were living together when their daughter, Britnee Bannister, was born in 1993. Sometime in 1997, Sharon moved to 1904 N. Kedzie Avenue in Chicago, where she lived with Britnee and her three other children. Also living with Sharon and her children were Sharon's mother, Arritta Banks; Sharon's sister, Henrietta; and Henrietta's two children.

¶ 12 On September 23, 2000, at approximately noon, Sharon, Henrietta, their children, and Arritta were at their Kedzie Avenue residence. The defendant broke open a side door to the apartment, damaging the door and locks thereto. The defendant entered the residence, wearing all black and holding a handgun. Sharon's children ran to her, but she ordered them to move away from her. Sharon was looking into the defendant's eyes when he raised the gun and shot her. The first bullet grazed Sharon's face, entered her left shoulder, and exited her back. Sharon collapsed on the floor.

¶ 13 The defendant stepped over Sharon and approached Henrietta, who was sitting on a couch. The defendant shot Henrietta three times: in the forehead, in the right side of the head over the ear, and in the right upper back. The defendant returned to Sharon, stood over her, and shot her again, saying, "Die bitch." This bullet entered Sharon's rib cage and was still lodged there when she testified at trial. The defendant then turned to Arritta, with his gun pointing at her. Britnee jumped into Arritta's arms and asked the defendant whether he was going to kill all of them. The defendant then ran out of the apartment.

¶ 14 The defendant did not present evidence and elected not to testify. The defense's case was that the State failed to prove the defendant guilty of the charged offenses beyond a reasonable doubt. In closing argument, defense counsel attacked the credibility of the State's witnesses and

described purported discrepancies in their testimony. The trial court found the defendant guilty of the murder of Henrietta, the attempted murder of Sharon, and home invasion.

¶ 15 Following admonishments from the trial court, and against the advice of defense counsel, the defendant chose to have the death sentencing hearing conducted before a jury. At the eligibility phase of the sentencing hearing, the State introduced into evidence certified copies of the defendant's (1) convictions for the first degree murder of Henrietta, the attempted murder of Sharon, and home invasion; and (2) birth certificate showing that he was over 18 years of age at the time of the murder. The jury found the defendant eligible for the death penalty.

¶ 16 At the second stage of the sentencing hearing, the State presented evidence in aggravation that the defendant was a member of a street gang and was previously convicted of attempted murder, aggravated battery, and armed violence for shooting a rival gang member in December of 1984. Sharon testified in aggravation about her abusive relationship with the defendant. The State also presented evidence of the defendant's prison disciplinary infractions, including assault, intimidation, and possession of narcotics and homemade weapons.

¶ 17 At the outset of the mitigation portion of the death sentencing hearing, the defendant informed the trial court that he did not want to present any evidence in mitigation. Despite this request, the trial court allowed defense counsel to present mitigation evidence. Anita Henry, the defendant's half-sister, and Michael Herring, the defendant's half-brother, testified in mitigation. They testified that the defendant maintained a relationship with Britnee and provided for her. Herring never saw the defendant become hostile or angry at Sharon or Britnee. However, Henry acknowledged that there were areas of Sharon and the defendant's relationship about which she did not know, including that Sharon obtained an order of protection against the defendant.

¶ 18 At the close of the death sentencing hearing, the jury found that death was the appropriate sentence. The trial court entered judgment on the finding of guilt and sentenced the defendant to death. The court also sentenced the defendant to a concurrent 45-year prison term on the attempted murder conviction and a concurrent 30-year prison term on the home invasion conviction.

¶ 19 The defendant's convictions and death sentence were affirmed on direct appeal. See *People v. Bannister*, 232 Ill. 2d 52, 93 (2008).

¶ 20 In April 2010, the defendant, through counsel, filed a petition for postconviction relief. Thereafter, in March 2011, Governor Patrick Quinn commuted the defendant's death sentence to a term of natural life imprisonment without the possibility of parole.

¶ 21 In November 2011, as a result of the Governor's commutation, the defendant filed an amended petition raising three claims for postconviction relief. First, the amended petition alleged that the defendant was denied effective assistance of counsel where his trial attorney failed to investigate the defendant's medical history and present evidence of his organic brain damage at the fitness hearing. More specifically, the petition alleged that the defendant suffered a head injury in 1998, following a car accident, and CT scans of his head were taken while he was being treated at Christ Advocate Hospital. According to the affidavit of Dr. Aaron McMurtray, a neurologist retained during the postconviction investigation, the CT scan shows that the defendant suffered a "lacunar infarct" (mini-strokes) in the right caudate nucleus, an area of the deep-brain that has been linked to content-specific delusions. Second, the amended petition asserted that the defendant was denied his due-process rights when the trial court erroneously admitted irrelevant gang evidence at the eligibility hearing. Finally, the amended petition alleged ineffective assistance of trial counsel for failing to investigate and present

available mitigating evidence at the aggravation-mitigation phase of his capital sentencing hearing. In support of his amended petition, the defendant attached 37 exhibits chronicling his medical and mental health history and family background.

¶ 22 In May 2012, the State moved to dismiss the defendant's claim regarding the admission of gang evidence and answered the defendant's ineffective-assistance-of-counsel claims. In its answer, the State conceded that the defendant "has developed evidence, outside the record, which raises a factual issue as to [his] fitness" and requested that the defendant undergo an MRI to determine whether he actually suffered a lacunar infarct.

¶ 23 In December 2012, the MRI exam took place at Northwestern University's Feinberg School of Medicine, which confirmed the presence of "a small cystic lesion" which "represents an old lacunar infarct."

¶ 24 Thereafter, the State filed a motion to dismiss all three claims in the amended postconviction petition, arguing the allegations failed to make a substantial showing of a constitutional deprivation. In response, the defendant filed a motion to strike the State's motion to dismiss, arguing it was untimely and procedurally improper for the State to file the motion after it had already filed an answer. The defendant contemporaneously filed a response to the State's motion to dismiss.

¶ 25 The trial court denied the defendant's motion to strike and held a hearing on the State's motion to dismiss. After hearing arguments, the court granted the State's motion to dismiss the amended petition, finding that the defendant failed to make a substantial showing that his trial counsel was ineffective under the deficient performance prong of *Strickland v. Washington*, 466 U.S. 668 (1984). The court noted that defense counsel made a reasonable assessment of the defendant's mental state and retained two experts to evaluate his fitness to stand trial. As to the

defendant's claim that counsel failed to investigate and present evidence in mitigation at his sentencing hearing, the court determined that the issue was moot since Governor Quinn commuted his death sentence and imposed a sentence of natural life imprisonment. This appeal followed.

¶ 26 We review a second-stage dismissal of a postconviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388 (1998). A postconviction petitioner is not entitled to an evidentiary hearing as a matter of right. *People v. Harris*, 206 Ill. 2d 1, 13 (2002). An evidentiary hearing is warranted only where the allegations of the postconviction petition make a substantial showing that the defendant's constitutional rights have been violated. *Id*. In making this determination, all well-pleaded facts that are not positively rebutted by the trial record are to be taken as true. *Id.* In addition, the allegations of fact contained in the petition are to be liberally construed in favor of the defendant. *Coleman*, 183 Ill. 2d at 382. Thus, the trial court is precluded from making credibility determinations or resolving any disputed questions of fact without an evidentiary hearing. *Id.* at 380-81.

¶ 27 The defendant's first contention on appeal is that the trial court erred in denying his motion to strike the State's motion to dismiss. He argues that the State's motion was not filed in a timely manner and was not procedurally proper since the State had already filed an answer to the amended petition. These contentions are without merit.

¶ 28 Generally, once a postconviction petition is advanced to the second stage and the defendant has filed an amended postconviction petition, the State has 30 days to either answer the petition or move to dismiss. 725 ILCS 5/122-5 (West 2010). The trial court, in its discretion, may extend the time for filing any such pleading. *Id*. Nonetheless, even where the State's filing of a motion to dismiss is untimely, a defendant is not entitled to a remedy unless he can show

that he was prejudiced by the State's delay. *People v. Cortez*, 338 Ill. App. 3d 122, 128 (2003). In this case, the defendant has failed to show any prejudice. The defendant filed a response to the State's motion to dismiss and the court set the matter for a hearing. The defendant attended the hearing on the State's motion to dismiss and was afforded the opportunity to be heard. Accordingly, the court properly denied the defendant's motion to strike on the basis of the State's tardiness. See *id.*

¶ 29 The defendant also claims that the State violated the Act's "either-or mandate" when it answered the amended petition *and* subsequently moved to dismiss. We disagree. Although section 122-5 of the Act provides that the State "shall answer or move to dismiss" within 30 days, a reading of section 122-5 in its entirety provides as follows:

> "The court may in its discretion make such order as to amendment of the petition or any other pleading, or as to pleading over, or filing further pleadings, or extending the time of filing any pleading other than the original petition, as shall be appropriate, just and reasonable and as is generally provided in civil cases." 725 ILCS 5/122-5 (West 2010).

Accordingly, the trial court has discretion to consider the State's motion to dismiss. As in civil cases, filing an answer does not preclude the filing of a subsequent motion to dismiss absent a showing of prejudice. See *Outlaw v. O'Leary*, 161 Ill. App. 3d 218, 220 (1987); *Midwest Bank & Trust Co. v. Village of Lakewood*, 113 Ill. App. 3d 962 (1983) (trial courts have discretion to allow the withdrawal of an answer and the subsequent filing of a tardy motion to dismiss based on a defense not raised in the answer). As discussed above, the defendant has failed to establish how he was prejudiced by the court's consideration of the motion.

¶ 30 We also disagree with the defendant's claim that, by filing an answer to the amended

petition, the postconviction proceedings advanced to the third stage. The defendant is entitled to a third stage evidentiary hearing only where his petition makes the requisite substantial showing that his constitutional rights were violated (*People v. Edwards*, 197 Ill. 2d 239, 246 (2001)) or suffered prejudice as a result of the State's failure to file a timely motion to dismiss (*Cortez*, 338 Ill. App. 3d at 128). Here, the defendant suffered no prejudice and the trial court determined his petition failed to make a substantial showing that his constitutional rights have been violated.

¶ 31 Next, the defendant argues that the trial court erred in dismissing his claim of ineffective assistance of counsel where his trial attorney failed to investigate his medical history and present evidence at the fitness hearing demonstrating that he suffered organic brain damage in an area that causes content-specific delusions. The State asserts that this claim was properly dismissed because defense counsel did investigate the defendant's fitness to stand trial, and her decision to forego additional investigation constituted trial strategy.

¶ 32 Postconviction claims of ineffective assistance of counsel are judged by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Coleman*, 183 Ill. 2d at 397. To prevail on a claim that trial counsel was not effective, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Strickland*, 466 U.S. at 694; *People v. Mahaffey*, 194 Ill. 2d 154, 174-75 (2000).

¶ 33 Trial counsel has a professional duty to conduct reasonable investigations and failure to investigate fully can constitute ineffective assistance of counsel. *People v. Domagala*, 2013 IL 113688, ¶ 38. "Lack of investigation is to be judged against a standard of reasonableness given all of the circumstances, 'applying a heavy measure of deference to counsel's judgments.' " *People v. Kokoraleis*, 159 Ill. 2d 325, 330 (1994) (quoting *Strickland*, 466 U.S. at 691).

However, "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466 U.S. at 690-91.

¶ 34 Our review of the trial record shows that defense counsel investigated the defendant's fitness to stand trial by having Dr. Zoot and Dr. Wahlstrom evaluate him. After both Dr. Zoot and Dr. Wahlstrom diagnosed the defendant with a delusional disorder, and Dr. Wahlstrom concluded that the defendant was unfit to stand trial, defense counsel requested a fitness hearing. At the hearing, defense counsel presented evidence that the defendant's content-specific delusions rendered him unable to assist counsel in preparing a defense.

¶ 35 Nevertheless, in his amended postconviction petition, the defendant contends that a CT scan of his head reveals that he suffered a "lacunar infarct in the right caudate nucleus" that can result in "content specific delusions." The petition alleges that his trial attorney failed to conduct a reasonable investigation and failed to obtain his medical records (*i.e.*, the CT scan) from Christ Advocate Hospital. According to the defendant, counsel's failure to obtain these records was ineffective because "it would have assisted Dr. Wahlstrom in the fitness evaluation by painting a more complete picture of [the defendant]'s mental condition." We disagree.

¶ 36 Defense counsel's failure to further investigate the defendant's medical history and obtain the CT scan prior to the fitness hearing was not unreasonable. Both experts who examined the defendant concluded that he suffered from a delusional disorder. None of the experts found anything to indicate that the defendant suffered from an organic brain disorder (lacunar infarct), and there was nothing to indicate that further testing would be beneficial in any way. In fact, Dr. Zoot's report stated that the defendant denied having any mental problems and hallucinations and that the doctor found "no evidence of such." Dr. Wahlstrom's report similarly stated that the defendant "denied a history of loss of consciousness or severe head injuries." Counsel's

decisions to investigate must be assessed in light of the information known at the time the decisions are made. In the instant case, defense counsel's decision not to investigate further into organic brain disorders, electing instead to present the testimony of Dr. Wahlstrom, was trial strategy and was not unreasonable under the circumstances. See *People v. Cloutier*, 191 Ill. 2d 392, 404-05 (2000) (counsel's decision to forego additional investigation into the defendant's organic brain disorders was reasonable trial strategy).

¶ 37 The defendant argues that even if he was uncooperative and never told his trial attorney about his head injury, his attorney was still under a duty to investigate these matters. He claims that his attorney should have interviewed the defendant's siblings to determine where the defendant lived and should have sent medical releases to hospitals and medical centers near his home. He cites *People v. Morgan*, 187 Ill. 2d 500 (1999), and *Brown v. Sternes*, 304 F.3d 677 (7th Cir. 2002), in support of his argument. We find *Morgan* and *Brown* distinguishable.

¶ 38 In *Morgan*, the evidence showed that defense counsel "totally failed" to investigate or present any evidence of neurological impairment and brain damage, even though such evidence was readily available from family members, school records and the defendant's criminal file, and counsel was on notice of the defendant's history of mental health problems. *Morgan*, 187 Ill. 2d at 540-44. In contrast, here, defense counsel did not "totally fail" to investigate or present evidence of the defendant's mental health. Also, unlike in *Morgan*, the affidavits of the defendant's family members do not indicate that the defendant suffers from some underlying medical or psychological condition.

¶ 39 We also find that the defendant's reliance on *Brown* is misplaced. Initially, we note that we are not bound by this federal court decision. *People v. Kidd*, 129 Ill.2d 432, 457 (1989). Additionally, the factual distinctions between this case and *Brown* render it unpersuasive.

Unlike in *Brown*, defense counsel in this case did not wholly ignore the defendant's delusions, causing a "tragic breakdown" in the criminal justice system and casting serious doubt on the defendant's competency to stand trial. As already discussed, defense counsel investigated the defendant's mental condition by retaining two experts who examined him and diagnosed him with a delusional disorder. Defense counsel's decision to move forward with this evidence at a fitness hearing is virtually unchallengeable. See *People v. Peeples*, 205 Ill. 2d 480, 542 (2002) ("strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable").

¶ 40 In sum, affording the appropriate deference to counsel's performance, we conclude that counsel's investigation was "well within the range of professionally reasonable judgments" (*Strickland*, 466 U.S. at 699), and that counsel's decision not to seek additional medical records was also reasonable. Thus, the amended petition, affidavits, and record do not raise a factual question as to whether defense counsel's performance fell below an objective reasonableness and the first prong of *Strickland* is not met.

¶ 41 The defendant also maintains that the trial court erred in dismissing his claim of ineffective assistance of counsel where his trial attorney failed to investigate and present available mitigating evidence at the aggravation-mitigation phase of his capital sentencing hearing. The defendant alleges that an adequate investigation would have yielded evidence of his organic brain damage and that he experienced an extremely troubled childhood. According to the defendant, had this evidence been considered by the jury, there is a reasonable probability that at least one juror would have concluded that sufficient mitigating evidence existed to preclude the death penalty. We hold that this issue is moot.

¶ 42 An issue on appeal is moot when it is abstract or presents no controversy. *People v. Blaylock*, 202 Ill. 2d 319, 325 (2002). An issue can become moot if circumstances change during the pendency of an appeal that prevents the reviewing court from being able to render effectual relief. *People v. Jackson*, 199 Ill. 2d 286, 294 (2002). In this case, subsequent to the filing of the defendant's postconviction petition, the Governor commuted the defendant's death sentence to natural life imprisonment without the possibility of parole or mandatory supervised release. "Commutation removes the judicially imposed sentence and replaces it with a lesser, executively imposed sentence." *People v. Miller*, 203 Ill. 2d 433, 438 (2002). Thus, the commutation rendered this sentencing issue moot. *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 480 (2004); see also *People v. Oaks*, 2012 IL App (3d) 110381, ¶ 27 (any claims of ineffective assistance involving evidence of the defendant's abusive childhood or the defendant's sentencing issues were rendered moot upon commutation of his death sentence).

¶ 43 Finally, the defendant asserts that the trial court erred when it denied his discovery requests.

¶ 44 Our supreme court has held the trial court has inherent authority to order discovery in postconviction proceedings following a hearing for "good cause shown." *People v. Fair*, 193 Ill. 2d 256, 264-65 (2000). Because of the possibility for abuse of the discovery process in postconviction petitions, trial courts must exercise discretion in granting or denying discovery requests. *Id*. at 264. A discovery request will be denied where it goes beyond the limited scope of postconviction proceedings and amounts to, in essence, a "fishing expedition." *People v. Enis*, 194 Ill. 2d 361, 415 (2000). We will not disturb a trial court's denial of a postconviction discovery request absent an abuse of discretion. *Fair*, 193 Ill. 2d at 265.

¶ 45 Upon review, we find that the trial court did not abuse its discretion in denying the defendant's discovery requests. Although the defendant claims that his discovery requests were "specific" and "targeted," we find that the requests amounted to nothing more than a fishing expedition. The defendant requested *all* Cook County department of corrections records from his prior confinements in 1987, 1994, and 1995, as well as police reports from when he was arrested as a juvenile and arrested for a shooting incident that occurred in 1984. The defendant has not demonstrated good cause for the trial court to order discovery of these records which relate to matters outside the scope of the postconviction proceeding. We note that the trial court granted the defendant's request to subpoena all medical or mental health treatment records from the Illinois Department of Correction and also permitted the defendant's request to subpoena records from FCS regarding his mental and medical health. Accordingly, we find the trial court did not abuse its discretion in denying the defendant's postconviction discovery requests.

¶ 46 For the reasons set forth above, we affirm the second-stage dismissal of the defendant's claim for postconviction relief based upon ineffective assistance of counsel.

¶ 47 Affirmed.