NOTICE
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2015 IL App (4th) 130439-U

NO. 4-13-0439

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 19, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
OTHEUS T. WORTHY,	)	No. 04CF1223
Defendant-Appellant.	)	
	)	Honorable
	)	Robert J. Eggers,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted the office of the State Appellate Defender's motion to withdraw as counsel, concluding the trial court properly granted the State's motion to dismiss defendant's postconviction petition where the claims alleged (1) failed to make a substantial showing of a constitutional violation; (2) are barred by the doctrine of *res judicata*; and (3) have been forfeited.

¶ 2 In September 2012, counsel appointed to represent defendant, Otheus T. Worthy, filed an amended petition for postconviction relief. At the second stage of postconviction proceedings, in April 2013, the State moved to dismiss the petition. In May 2013, the trial court granted the State's motion. Defendant filed a notice of appeal, and the court appointed the office of the State Appellate Defender (OSAD) to represent defendant. On appeal, OSAD moves to withdraw its representation of defendant under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending any request for review would be without merit. We grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In December 2004, the State charged defendant by information with aggravated criminal sexual assault committed while displaying a dangerous weapon. 720 ILCS 5/12-14(a)(1) (West 2004). On direct appeal, in October 2006, a jury found defendant guilty of aggravated criminal sexual assault committed against the victim, V.G. The trial court sentenced defendant to 15 years' imprisonment. In October 2008, this court affirmed defendant's conviction and the trial court's judgment. *People v. Worthy*, No. 4-07-0030, slip order at 1 (Oct. 8, 2008) (unpublished order under Supreme Court Rule 23). In March 2010, defendant filed the underlying postconviction petition. In April 2010, the trial court appointed counsel. Counsel's amended petition for postconviction relief raised the following issues: (1) a violation of defendant's fifth-amendment right to counsel during custodial interrogation; (2) ineffective assistance of trial counsel in not objecting to refreshing V.G.'s recollection with her mental health records or seeking to obtain those records for impeachment purposes; (3) ineffective assistance of trial counsel in failing to properly argue for the release of V.G.'s mental health records; (4) ineffective assistance of trial counsel in not impeaching the police detective who conducted the custodial interrogation; and (5) a violation of defendant's sixth-amendment right to counsel of his choice.

¶ 5 A. The Underlying Events

¶ 6 We set forth the following facts when we considered defendant's direct appeal:

> "According to V.G., defendant and V.G. first met several months prior to the offense, when defendant approached V.G. outside her residence and asked if he could borrow her phone. Defendant told V.G. that his car had broken down. V.G. did not

know defendant, but she nevertheless brought her phone outside and allowed defendant to use it. This initial interaction lasted 5 to 10 minutes. Defendant and V.G. did not speak again until the days preceding the offense.

By this time, V.G. had moved to a new residence. On November 6, 2004, a Saturday, defendant knocked on the door of V.G.'s new residence. He told her that he had noticed her car parked outside and assumed she must have moved there. V.G. invited defendant to sit on her porch, and they proceeded to talk for several hours. Later that evening, V.G. and defendant walked to Hardee's to get dinner and then watched a movie together in V.G.'s living room. According to V.G., defendant kissed her that night, but V.G. told defendant she was not interested in a romantic relationship with him. Defendant left around midnight." *Worthy*, No. 4-07-0030, slip order at 2.

Defendant walked his dog to V.G.'s house on Sunday, November 7, 2004, and he spent about 20 minutes talking with V.G. Defendant returned that evening, but V.G. asked defendant to leave because he was drunk. He returned again at 2 a.m. on Monday, November 8, 2004. V.G. reluctantly let defendant sleep on a mattress on her living room floor.

¶ 7 Defendant returned to V.G.'s home on the evening of Tuesday, November 9, 2004. We summarized V.G.'s testimony as follows:

"Defendant left but returned yet again at 8 p.m. [Tuesday, November 9, 2004,] to ask V.G. for a place to stay. V.G. told

defendant he could not stay with her. V.G. may have told defendant that her boyfriend, Grover Webb, would be arriving in an hour, but she could not be certain. Defendant then asked if he could just stay for 15 minutes while he waited for his brother to come home. V.G. allowed this and invited defendant into her living room, where they sat at opposite ends of the couch. Once inside, defendant got up to use the bathroom, which was only accessible by walking through the kitchen.

When defendant returned from the bathroom, he began questioning V.G. about her love life. *** Defendant told V.G. that he had loved her since the very first day he saw her. V.G. told defendant that he could not possibly love her since he did not really know her. V.G. asked defendant to leave, but defendant said he would not leave until his brother returned home. V.G. remained seated on the couch and closed her eyes. Suddenly, defendant moved on top of V.G. and pinned her down. Defendant put one hand on V.G.'s throat. V.G. asked defendant what he was doing, and he said, 'I will cut you, B---h, *** If you don't shut up I will cut you.' V.G. tried to pull defendant's hand away from her throat, but then she felt the back of a knife, which the prosecution claim[ed] defendant must have gotten when he walked through V.G.'s kitchen. *** The more V.G. struggled against defendant, the harder he held his hand against her throat and the more he

> threatened to cut and kill her. Defendant forced intercourse on V.G., breaking the zipper of her jeans. By this time, V.G. realized she could not overpower defendant, and she went mentally and physically limp. V.G. was afraid that defendant might kill her, and she thought of her son. When defendant was done, he began kissing V.G. and telling her that he loved her." *Worthy*, No. 4-07-0030, slip order at 3-4.

V.G. grabbed the knife, exited her home, dropped the knife on her porch, and went to a neighbor's house. V.G. reported the incident to the police, who arrived on the scene and took V.G. to the hospital. Ultimately, testing revealed the presence of nonmotile sperm that matched defendant's deoxyribonucleic acid (DNA) in V.G.'s vagina.

¶ 8 V.G.'s neighbor led the police officers to defendant's apartment. Police eventually found defendant in a utility room, lying in a storage bin full of clothing. Police arrested defendant and transported him to the police station. Again, we quote from our previous order:

> "At the police station, Officer [Scott] Kincaid presented defendant with a *Miranda* warning and waiver form, which defendant executed. See *Miranda v. Arizona*, 384 U.S. 436 *** (1966). Initially, defendant declined to submit a written statement but did agree to talk to Kincaid. Defendant acknowledged that he had been with V.G. earlier that evening and that he had performed a consensual sex act when he placed his fingers inside her vagina. At first, defendant denied that he had used a knife. Kincaid told defendant he did not believe defendant because he (Kincaid) had

> seen the knife at the crime scene. Kincaid told defendant he did not believe him three more times. After this prodding, defendant explained that he was 'deathly afraid' of cats and that he only used the knife for 'cat protection.' The interview ended for the evening.
>
> The next morning, Kincaid attempted to interview defendant again. This time, defendant agreed to a written statement. Kincaid wrote the statement for defendant, and defendant initialed it. According to Kincaid, Kincaid wrote the statement one sentence at a time. After Kincaid wrote a sentence, he read it back to defendant. Defendant made some minor changes, which he initialed. Defendant also initialed each page of the statement." *Worthy*, No. 4-07-0030, slip order at 6-7.

Defendant denied making some of the statements contained in the written statement. Defendant testified he did not sign his initials on all the changes in the statement and further testified he never read over the written statement and never said anything incriminating to Kincaid. Defendant maintained he and V.G. engaged in consensual intercourse on Saturday, November 6, 2004.

¶ 9 B. Pretrial Matters

¶ 10 1. *Motion To Suppress*

¶ 11 Prior to trial, defendant filed a motion *in limine*, arguing the written statement, signed and initialed by defendant, should be suppressed because the statement was a product of coercion. At the hearing on the motion *in limine*, Kincaid testified defendant refused to make a written statement but agreed to speak with the officers at the November 9, 2004, interview

session. Kincaid testified defendant did not request an attorney during the interview. Officer Don Larson, present at the November 9, 2004, interview, testified defendant did not request an attorney during the interview. Officer Tanessa McCormick, present on the November 10, 2004, interview, testified defendant did not request at attorney while in her presence. Defendant testified he requested an attorney during the November 9, 2004, interview and following his request, the officers ceased questioning him. Defendant further testified the officers initiated the questioning on November 10, 2004. Defense counsel sought to orally amend the motion to suppress to allege a violation of defendant's right to counsel during interrogation. The State responded:

> "Suffice it to say, Your Honor, there's no allegations here, the request for counsel. I know [defense counsel]. I believe [defense counsel] to be an extremely competent attorney. I cannot believe that he went—met with his client, formulated the facts to prepare this motion and failed to note the [d]efendant had requested counsel. I don't expect [defense counsel] to respond, but I think [defense counsel] was surprised by the sudden remembering of asking for counsel, as I was, in this matter."

The trial court did not specifically address the right-to-counsel argument but generally found "the officers', plural, testimony bears more credibility than that of the [d]efendant," and it denied the motion to suppress the written statement. Defendant did not renew this issue on direct appeal.

¶ 12 2. *Motion for in Camera Inspection and Disclosure of Mental Health Records*

¶ 13 Defendant filed a motion for an *in camera* inspection of V.G.'s mental health records. The motion requested disclosure of relevant impeaching information, particularly as related to the following:

> "a. information detailing previous demonstrably false allegations made by [V.G.] and her propensity for making false allegations;
>
> b. information that may reveal [V.G.'s] biases or improper motives for making the allegation against the [d]efendant;
>
> c. information that may demonstrate [V.G.'s] lack of truth and veracity;
>
> d. information that may demonstrate that [V.G.] suffers from a delusional thought process;
>
> e. information that may reflect upon [V.G.'s] competency to testify at trial in the above-captioned matter; and
>
> f. information that may reflect upon [V.G.'s] memory, perceptual ability, thought process, and ability to perceive, recall[,] and relate."

The trial court reviewed V.G.'s records *in camera* and concluded the records contained no information as referenced in the defendant's motion. The court refused to disclose any of the records to the defense. However, the court did give the defense permission to cross-examine V.G. about her mental health history "in general terms and about whether she was taking medication *** at the time of [her] complaint."

¶ 14 During cross-examination, V.G. testified she suffered from depression and denied suffering from anything other than depression. Following redirect, a question arose as to whether V.G. was on medication or receiving treatment at the time of the incident. V.G. could not remember so the trial court sent the jury out of the courtroom and allowed V.G. to view her medical records to refresh her recollection. The court also reviewed V.G.'s records to ensure the accuracy of her testimony. Upon the jury's return, V.G. testified she was not receiving treatment during September and November 2004 because she was on a waiting list to see a therapist.

¶ 15 3. *Motion To Continue To Retain Private Counsel*

¶ 16 The day before the jury trial, Monday, October 2, 2006, defendant moved to continue to retain private counsel. Defendant and his mother had been in contact with private counsel, Sean Liles, who was unavailable Monday because he was attending a family funeral. Defense counsel, Brian Otwell, stated he spoke to Liles and Liles "simply indicated that he had not been paid, and he had no present intent to represent [defendant] until such time as he was paid." Defendant presented the court with a letter he claimed to have received Friday, September 29, 2006, indicating Liles would not be available until Wednesday, October 4, 2006. Defendant stated his mother intended to pay Liles a retainer on Wednesday morning. The court denied the motion but allowed Otwell to attempt to contact Liles and agreed to revisit the matter the following day before trial.

¶ 17 On Tuesday, October 3, 2006, the date set for defendant's trial, Otwell indicated he left two voicemails for Liles and received no response. The judge denied defendant's motion to continue, stating, "We might be in a different situation here if I had a lawyer standing here in the courtroom telling me that he has been retained, that he was ready to take over this case, and he was ready to move on it, but your attempts to, I believe, hire a lawyer came too little and too

late, frankly. So I'm going to proceed to trial on this matter." Defendant did not raise this issue before this court on direct appeal.

¶ 18 C. Postconviction Proceedings

¶ 19 Following his unsuccessful direct appeal, defendant filed a *pro se* postconviction petition in May 2010. The trial court advanced the petition to the second stage of proceedings and appointed counsel. Counsel filed an amended petition, which the State moved to dismiss. In May 2013, the trial court granted the State's motion. In pertinent part, the written order allowing the State's motion to dismiss reads:

> "Concerning the matter of the trial court's handling of the issue relating to the use of the victim's mental health records to refresh her recollection at trial, the [c]ourt finds that this was a matter of record at trial and is not appropriate for consideration in a post-conviction proceeding. This issue was raised on direct appeal and is barred from consideration by the doctrine of *res judicata*. The [c]ourt finds that the trial court's ruling on [d]efendant's Motion to Suppress a statement was also a matter of record and will not be considered in this proceeding. This issue could have been raised on direct appeal and was not. Therefore, the doctrine of *** [forfeiture] allows the [c]ourt to refrain from its consideration.
>
> Defendant claims he was denied the right to counsel of his choosing. The [c]ourt finds that [d]efendant had ample opportunity via numerous trial continuances to retain counsel but failed to do so. The[c]ourt finds that [d]efendant's right to counsel

was not violated when the trial court refused to grant an additional continuance for the purpose of hiring counsel.

***

The remaining claims *** relate to the ineffective assistance of trial counsel. After considering the standard enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984), the [c]ourt cannot find that any of the allegations made by [d]efendant show unreasonable assistance by his counsel. Nor can the [c]ourt find that he was prejudiced by these purported failures."

¶ 20 This appeal followed. OSAD was appointed and moved to withdraw, filing a brief in support of its *Finley* motion. On its own motion, this court granted defendant until January 15, 2015, to file additional points and authorities. He filed none. We have considered the record consistent with our responsibilities under *Finley* and conclude, as did OSAD, no meritorious issues can be raised as to the second-stage dismissal of defendant's postconviction petition.

¶ 21 II. ANALYSIS

¶ 22 Defendant appeals the second-stage dismissal of his postconviction petition. The petition raised the following issues: (1) a violation of defendant's fifth-amendment right to counsel during custodial interrogation; (2) ineffective assistance of trial counsel in not objecting to refreshing V.G.'s recollection with her mental health records or seeking to obtain those records for impeachment purposes; (3) ineffective assistance of trial counsel in failing to properly argue for release of V.G.'s mental health records; (4) ineffective assistance of trial counsel in not

impeaching the police detective who conducted the custodial interrogation; and (5) a violation of defendant's sixth-amendment right to counsel of his choice.

¶ 23 The Post-Conviction Hearing Act allows a criminal defendant to raise a claim his conviction resulted from a substantial violation of his constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2010). "Because this is a collateral proceeding, rather than an appeal of the underlying judgment, a post-conviction proceeding allows inquiry only into constitutional issues that were not, and could not have been, adjudicated on direct appeal." *People v. Pitsonbarger*, 205 Ill. 2d 444, 455-56, 793 N.E.2d 609, 619 (2002). Issues raised and decided on direct appeal are barred from consideration by the doctrine of *res judicata*. Issues a defendant could have raised on direct appeal, but did not, are deemed forfeited. *Pitsonbarger*, 205 Ill. 2d at 456, 793 N.E.2d at 619.

¶ 24 At the second stage of proceedings on a postconviction petition, dismissal is warranted "only 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, 841 N.E.2d 913, 920 (2005). We accept as true all factual allegations not positively rebutted by the record. *People v. Childress*, 191 Ill. 2d 168, 174, 730 N.E.2d 32, 35 (2000). We review *de novo* the dismissal of a postconviction petition without an evidentiary hearing. *Hall*, 217 Ill. 2d at 334, 841 N.E.2d at 920.

¶ 25 A. Right to Counsel During Interrogation

¶ 26 In his postconviction petition, defendant contends he requested counsel during the November 9, 2004, interview with police detectives. Defendant further contends this request ended the interrogation; however, Detective Kincaid initiated further questioning with defendant on the morning of November 10, 2004. Because the officers did not wait to question defendant

in the presence of counsel and because defendant did not initiate the November 10, 2004, interview, defendant argues his written, signed statement should have been suppressed under *Edwards v. Arizona*, 451 U.S. 477 (1981). In *Edwards*, the United States Supreme Court held a defendant's invocation of his right to counsel under the fifth amendment required law enforcement officers to cease interrogation immediately. Further interrogation violates a defendant's fifth-amendment rights unless done in the presence of counsel or at the defendant's own initiation. *Edwards*, 451 U.S. at 484-85.

¶ 27 OSAD argues the claim is without merit because the trial court credited the officers' testimony over defendant's and the officers consistently testified defendant did not request counsel. We agree the officers' consistent testimony and the trial court's credibility finding clearly rebut defendant's contention such that defendant has failed to make a substantial showing of a constitutional violation. *Hall*, 217 Ill. 2d at 334, 841 N.E.2d at 920. Moreover, this claim is forfeited, that is, procedurally defaulted, because defendant did not raise the issue on direct appeal and defendant does not allege appellate counsel was ineffective in failing to raise this argument on appeal. *Childress*, 191 Ill. 2d at 174-75, 730 N.E.2d at 35-36; *People v. Coleman*, 168 Ill. 2d 509, 522, 660 N.E.2d 919, 927 (1995).

¶ 28 B. Ineffective Assistance of Counsel

¶ 29 We evaluate a defendant's claims of ineffective assistance of counsel under the two-part test the United States Supreme Court set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on such a claim, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. The defendant must show a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient representation. *Strickland*, 466 U.S. at 694.

¶ 30 1. *Claims Regarding V.G.'s Mental Health Records*

¶ 31 Defendant's postconviction petition raises two claims of ineffective assistance of counsel involving V.G.'s medical records. First, the petition argues counsel's failure to obtain the medical records V.G. used to refresh her recollection prejudiced defendant because "the case was referred to as a competition of differing stories as to what occurred" and counsel should have obtained the reports and used the information to impeach V.G's testimony she had only been diagnosed with depression. Second, the petition contends counsel improperly argued for release of V.G.'s medical records on the whole. The petition argues counsel failed to file a motion to reconsider following the trial court's denial to release the records after an *in camera* review and counsel failed to make any other reasonable follow-up in attempting to obtain the records.

¶ 32 With respect to the reports V.G. used to refresh her recollection, OSAD argues counsel made reasonable efforts to obtain the medical records and was required to rely on the trial court's review of the records to ensure truthful testimony by V.G. Further, OSAD argues this court found the procedure used to refresh V.G.'s recollection appropriate and noted V.G.'s testimony she never suffered from any mental health issues other than depression was misleading given the other diagnoses in her records. This court found a new trial based on V.G.'s false testimony was not warranted because "defendant's guilty verdict arose not from any misrepresentation regarding V.G.'s mental-health history, but from strong evidence against defendant." *Worthy*, No. 4-07-0030, slip order at 23. Defendant cannot show the outcome of the trial would have been different had V.G.'s testimony been impeached on this point. It is uncontroverted defendant and V.G. engaged in sexual intercourse. Multiple witnesses testified V.G. was shaken and upset after reporting the attack to the police. Defendant admitted signing the written statement that corroborated V.G.'s basic account of the facts. Defendant also

stipulated to the DNA results from the sperm found in V.G.'s vagina. Moreover, defendant hid in a clothes bin in a utility room with a contraption devised of a rope tied to his leg and the hinge of the door to alert him to the presence of anyone entering the room. See *People v. Johnson*, 105 Ill. App. 2d 204, 206, 245 N.E.2d 85, 86 (1969).

¶ 33 OSAD contends defendant's ineffective-assistance-of-counsel claim regarding counsel's failure to properly argue for disclosure of V.G.'s medical records is barred by the doctrine of *res judicata*. OSAD contends trial counsel took reasonable steps to obtain the records by asking the trial court to review the records *in camera* and release any records related to six specific areas. We agree counsel took reasonable steps to obtain the records. Counsel's failure to file a motion to reconsider or take further steps after the trial court's *in camera* review is perfectly reasonable. Counsel did not know the contents of the records and therefore had no information to serve as a basis for a motion to reconsider. Further, defendant was not prejudiced by counsel's failure to obtain release of the records even if the steps counsel took were to amount to ineffective assistance. On appeal, this court stated: "In sum, the records indicate that V.G., though having been diagnosed with several serious mental illnesses, never experienced those symptoms which would have directly implicated V.G.'s ability to convey matters truthfully and accurately. We cannot say that the trial court's refusal to disclose portions of V.G.'s mental-health records violated defendant's right to confrontation, especially where the trial court had to be mindful of V.G.'s right of confidentiality." *Worthy*, No. 4-07-0030, slip order at 21. Any cross-examination related to the medical records would not have impeached V.G.'s testimony because she displayed no symptoms casting doubt on her ability to remember the events of the attack. Because the records contained no information with impeachment value, defendant cannot

show prejudice by counsel's failure to properly argue for the disclosure of V.G.'s mental health records. We agree these claims of ineffective assistance of counsel have no merit.

¶ 34 2. *Cross-Examination of Detective Kincaid*

¶ 35 Defendant's postconviction petition claims trial counsel was ineffective in failing to impeach Kincaid's testimony at trial with inconsistencies from Kincaid's testimony at the suppression hearing. This claim of deficient cross-examination is meritless. As a general rule, the decision whether to cross-examine or impeach a witness is a matter of trial strategy, which does not support a claim of ineffective assistance of counsel. *People v. Pecoraro*, 175 Ill. 2d 294, 326, 677 N.E.2d 875, 891 (1997). "The manner in which to cross-examine a particular witness involves the exercise of professional judgment which is entitled to substantial deference from a reviewing court." *Pecoraro*, 175 Ill. 2d at 326-27, 677 N.E.2d at 891. Defendant's trial counsel conducted a lengthy cross-examination of Kincaid, spanning two days and covering his testimony regarding defendant's interviews and written statement extensively. The approach counsel took in cross-examining Kincaid was not objectively unreasonable and this claim of ineffective assistance of counsel is also meritless.

¶ 36 C. Right to Counsel of Choice

¶ 37 Defendant contends his right to counsel of choice was violated when the trial court denied his motion to continue to retain private counsel. The sixth amendment and the Illinois Constitution of 1970 both guarantee a criminal defendant the right to counsel. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. "The right to select counsel of one's choice" "has been regarded as the root meaning of the constitutional guarantee." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-48 (2006).

¶ 38 The decision to grant or deny a continuance for substitution of counsel is within the discretion of the trial court. *People v. Segoviano*, 189 Ill. 2d 228, 245, 725 N.E.2d 1275, 1283 (2000). The denial of a request for a continuance will not be overturned absent an abuse of discretion. *Segoviano*, 189 Ill. 2d at 245, 725 N.E.2d at 1283. "A trial court does not abuse its discretion by denying a motion for substitution of counsel 'where new counsel is unidentified or does not stand ready, willing, and able to make an unconditional entry of appearance on defendant's behalf.' " *People v. Curry*, 2013 IL App (4th) 120724, ¶ 49, 990 N.E.2d 1269 (quoting *People v. Childress*, 276 Ill. App. 3d 402, 411, 657 N.E.2d 1180, 1186 (1995)).

¶ 39 The trial court did not abuse its discretion in denying defendant's motion for a continuance to substitute counsel. Defendant filed the motion the day before trial, alleging he had specific substitute counsel who would represent him upon payment. The court gave defense counsel an opportunity to contact substitute counsel (who did not return the calls), and held over the final ruling on the motion until the following day. Substitute counsel was not present, ready, willing, and able to make an unconditional entry of appearance on defendant's behalf and defendant had not paid counsel a retainer. We cannot say the court abused its discretion in denying defendant's motion for a continuance. We agree with OSAD, this issue is meritless. Defendant did not raise this issue on direct appeal, although he could have done so. This claim is forfeited. *Pitsonbarger*, 205 Ill. 2d at 456, 793 N.E.2d at 619.

¶ 40 III. CONCLUSION

¶ 41 We grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 42 Affirmed.