

NOTICE

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2015 IL App (4th) 140019-U

NO. 4-14-0019

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 15, 2015

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
CLEMON ADKINSON,)	No. 11CF355
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed and remanded, concluding defendant's petition for postconviction relief stated the gist of a constitutional claim for ineffective assistance of counsel.

¶ 2 In December 2013, defendant, Clemon Adkinson, filed a petition for postconviction relief, alleging, in part, his defense counsel was ineffective for failing to convey a counteroffer to the State's plea offer. Later that month, the trial court dismissed defendant's petition as frivolous and patently without merit.

¶ 3 Defendant appeals, asserting the trial court erred by dismissing his petition during the first stage of postconviction proceedings, as he stated the gist of a constitutional claim. We reverse and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In March 2011, the State charged defendant with aggravated battery with a firearm, a Class X felony. 720 ILCS 5/12-4.2(a)(1) (West 2010)). The information alleged he discharged a firearm in the direction of Amanda Cavanaugh, which caused a laceration on her head. Following a December 2011 trial, a jury found defendant guilty. Thereafter, the trial court sentenced defendant to 30 years in the Illinois Department of Corrections.

¶ 6 In December 2013, defendant filed a *pro se* petition for postconviction relief, alleging, in part, he was provided with ineffective assistance of counsel. Specifically, he alleged the State asked for a counteroffer if defendant rejected its initial offer of 25 years' imprisonment, but defense counsel refused to convey defendant's counteroffer of 6 years' imprisonment prior to trial. Later that month, the trial court dismissed defendant's petition as frivolous and patently without merit. In its written order, the court noted (1) given defendant's violent criminal history, neither the State nor the court would have accepted defendant's counteroffer, and (2) defendant had no constitutional right to engage in extended plea negotiations.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues the trial court erred by dismissing his petition for postconviction relief during the first stage of postconviction proceedings, as he stated the gist of a constitutional claim.

¶ 10 Under the Post-Conviction Hearing Act, an imprisoned defendant may assert the trial court proceedings resulted in a substantial denial of his constitutional rights. 725 ILCS 5/122-1(a)(1) (West 2012). Once a defendant files a petition for postconviction relief, the trial court may, during this first stage of proceedings, enter a dismissal order within 90 days if it finds the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). Upon

review of the court's first-stage dismissal, we examine whether the defendant's petition sets forth the gist of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 271, 757 N.E.2d 442, 460 (2001). Our review is *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009).

¶ 11 In this case, defendant's constitutional claim is that his attorney provided ineffective assistance of counsel. To demonstrate ineffective assistance of counsel, defendant must show counsel's (1) performance fell below an objective standard of reasonableness; and (2) deficient performance resulted in prejudice to the defendant such that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). If a defendant fails to prove either prong of the *Strickland* test, his claim for ineffective assistance of counsel must fail. *People v. Sanchez*, 169 Ill. 2d 472, 487, 662 N.E.2d 1199, 1208 (1996). Put in the context of postconviction proceedings, "a petition alleging ineffective assistance may not be summarily dismissed if (i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212.

¶ 12 Defendant asserts he stated the gist of a claim for ineffective assistance of counsel. Specifically, he alleged the prosecutor asked to be informed if defendant wanted to make a counteroffer to the State's original offer of 25 years' imprisonment. According to defendant, defense counsel refused to convey his counteroffer of six years. Defendant contends his postconviction petition therefore demonstrated the gist of a claim that defense counsel's conduct fell below an objective standard of reasonableness, as his right to be informed of any plea offers made by the State "should have the corresponding right to counsel who follows up on any offers made."

¶ 13 A criminal defendant has the right to be informed of any plea offers made by the State. See *People v. Trujillo*, 2012 IL App (1st) 103212, ¶ 9, 972 N.E.2d 184. Contrary to defendant's contention, no specific corresponding right exists to ongoing plea negotiations. However, "the failure to pursue plea negotiations may, in certain cases, properly support a claim of ineffective assistance of counsel." *People v. Palmer*, 162 Ill. 2d 465, 478, 643 N.E.2d 797, 803 (1994). At the same time, defense counsel's decision not to engage in plea negotiations may constitute a matter of trial strategy. *Id.* Accordingly, "the extent of an attorney's duty to engage in plea negotiations is necessarily defined by the particular facts and circumstances of each individual case." *Id.*

¶ 14 In this case, because defendant alleges the State sought a counteroffer, an issue exists as to whether defense counsel's subsequent refusal to convey defendant's counteroffer was objectively reasonable. We therefore conclude defendant's petition stated the gist of a constitutional claim.

¶ 15 The State cites *People v. Robinson*, 2012 IL App (4th) 101048, ¶ 33, 974 N.E.2d 978, for the proposition that "when a defendant elects to seek a plea agreement, his role is not to 'haggle' with the prosecutor by directing counsel during the negotiation process; his role is to decide whether to accept or reject the plea agreement that his counsel and the prosecutor ultimately reached." *Id.* While this contention is correct, *Robinson* is distinguishable because it concerned a second-stage proceeding under the Post-Conviction Hearing Act, where the defendant's burden required a substantial showing of a constitutional violation. *Id.* ¶ 26, 974 N.E.2d 978. Here, defendant needed only to demonstrate the *gist* of a constitutional claim, which he does by alleging defense counsel failed to convey his counteroffer despite the State's request for a counteroffer.

¶ 16 Additionally, the State contends defendant cannot state the gist of a constitutional claim because he cannot demonstrate prejudice, as the trial court indicated it would not have accepted a plea agreement for six years' imprisonment based on defendant's prior violent criminal history. However, during the first stage, well-pleaded facts must be taken as true and liberally construed in the defendant's favor unless contradicted by the record. See *Edwards*, 197 Ill. 2d at 244, 757 N.E.2d at 445. The court cannot engage in fact-finding. *People v. Coleman*, 183 Ill. 2d 366, 380-81, 701 N.E.2d 1063, 1071 (1998). This includes the court's determination that it would or would not have accepted a particular plea agreement had it been presented to the court.

¶ 17 Accordingly, we conclude defendant's postconviction petition stated the gist of a constitutional claim for ineffective assistance of counsel under *Strickland*. We render no opinion on the merits of his petition on remand.

18 III. CONCLUSION

¶ 19 For the foregoing reasons, we reverse the trial court's judgment and remand for second-stage postconviction proceedings.

¶ 20 Reversed and remanded.