2016 IL App (1st) 133517-U

SECOND DIVISION
October 11, 2016

No. 1-13-3517

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. 08 CR 10910
	)	
DAVID CLAYTON,	)	Honorable
	)	James L. Rhodes,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for first degree murder affirmed over his challenge that trial counsel rendered ineffective assistance.

¶ 2 Following a bench trial, defendant David Clayton was convicted of first degree murder and aggravated battery with a firearm based on a theory of accountability, and was sentenced to consecutive prison terms of 20 years and 6 years, respectively. On appeal, Clayton contends that his trial counsel rendered ineffective assistance because he failed to impeach the State's

witnesses with evidence that would have undermined their credibility. Because we find that both trial and posttrial counsel competently represented Clayton, we affirm.

¶ 3 Clayton and five codefendants[1] were charged with multiple counts of first degree murder, attempted first degree murder, and aggravated battery with a firearm for the fatal shooting of Kenneth Thomas, and the shooting of his brother, Maverick Magee, on March 6, 2008, in South Holland, Illinois. Clayton was charged under a theory of accountability for driving one of the vehicles used by the group during the commission of the offense. Pursuant to a warrant issued in this case, Clayton was arrested by federal marshals in Macon, Georgia, on March 20, 2008.

¶ 4 In July 2011, Clayton filed a motion to suppress statements he made during an interview with an assistant Cook County State's Attorney and two South Holland police detectives on March 23, 2008, while in custody in the Jones County jail in Georgia. Clayton alleged that after being advised of his *Miranda* rights, he viewed several photographs, but refused to speak about the incident and invoked his right to counsel, ending the interview. Clayton denied making any inculpatory statements and claimed that the authorities "pieced together" his alleged statement after overhearing Clayton discuss his case with a fellow inmate in the jail.

¶ 5 At the hearing on the motion to suppress, Assistant State's Attorney (ASA) Nick D'Angelo testified that he and detectives Chris Lareau and Robert Williams interviewed Clayton in the Jones County jail on March 23, 2008, which was Easter Sunday. When they arrived at the jail, they were escorted down a corridor, and as they approached the interview room, Clayton

[1] Codefendants are not parties to this appeal.

was being brought in by other deputies. D'Angelo, the two detectives and Clayton were the only people present for the interview.

¶ 6 The prosecutor then asked ASA D'Angelo if there was videotaping capability in the Jones County jail, and he replied "[y]es and no." D'Angelo explained:

> "We had gotten there early on Sunday morning. Even though we were informed that there was the possibility that there might have been equipment available, the lieutenant who would have had access to that equipment had taken Easter Sunday off.
>
> So if they had it, there was no one there who knew how to run it."

The prosecutor then asked D'Angelo "[s]o there was nothing there that was permanently set up to run whenever a murder defendant is going to be interviewed," and D'Angelo replied "[n]ot as it was explained to us. It was not available."

¶ 7 D'Angelo testified that after he advised Clayton of his *Miranda* rights, he showed him photographs of the codefendants, at least two vehicles, including a red van and a PT Cruiser, and two houses, one in South Holland and one in Dolton, Illinois. Clayton identified all of the codefendants, which included his two sisters and his nephew, Dion Davis. He then identified the red van used during the incident as belonging to Davis' father, and identified the PT Cruiser as belonging to his sister, codefendant Quainka Clayton. He also identified the two houses, one of which was his mother's house in Dolton.

¶ 8 After viewing the photographs, Clayton discussed the details of the murder for approximately three to five minutes. D'Angelo summarized Clayton's statement on his felony review folder, and Detective Williams wrote a supplemental report that also reflected Clayton's

statement. Clayton then stated that he wanted to speak with his lawyer in Chicago, and the interview was terminated. D'Angelo denied that he overheard Clayton speaking with anyone else at the jail, and denied that anyone told him what Clayton may have said to another inmate in the jail.

¶ 9 South Holland police detective Chris Lareau's testimony was substantially similar to ASA D'Angelo's but Lareau could not recall if Clayton was already inside the interview room when they arrived, or if they waited for him in the room. Lareau observed Clayton identify the photographs of codefendants, his mother's house, the red van and the red PT Cruiser. Lareau testified that Clayton then briefly discussed the murder with D'Angelo, at which time Clayton stated "that he knows that his sister was on video and told everything and that it was a bad situation, it wasn't supposed to go that way." Clayton then requested his lawyer from Chicago and the interview ended. Lareau denied overhearing any conversations Clayton had with anyone at the jail, and denied that any jail personnel or another inmate gave him any information regarding anything Clayton said about the murder.

¶ 10 South Holland police detective Robert Williams, also present during Clayton's interview, testified similarly, but he recalled that Clayton was already inside the interview room when they arrived. After viewing the photographs, Clayton spoke "very briefly" about the murder. Williams testified that Clayton "said something to the effect that the situation was f****d up, it was only supposed to be a beatdown, and he knew his sister was already on record talking to us about it, and he didn't have anything else to say without a lawyer." Williams wrote a report based on their interview which included Clayton's statement. Like Lareau and D'Angelo, Williams denied

overhearing Clayton speaking of the matter while he was in custody or being told by anyone else what Clayton had said.

¶ 11 In ruling on the motion, the trial court noted that there was conflicting testimony regarding whether Clayton was already inside the interview room when the ASA and the detectives arrived. Specifically, the court noted that Williams could not recall whether Clayton was already in the room, but was able to remember Clayton's statement, which were credibility considerations. But these discrepancies aside, the court found that Clayton's statement was admissible and denied his motion to suppress.

¶ 12 Clayton was tried in a joint bench trial with codefendants Dominique Clayton, Quainka Clayton, Dion Davis, and Greg Morgan. On March 5, 2008, Michael Woodard, then a student at Thornridge High School, watched a dice game after school at the home of Greg Hawkins, who lived across the street from the school. During the game, Greg Morgan and Maverick Magee, Woodard's brother, began wrestling, and when the fight ended, they were still angry. The next day, Woodard asked another brother, Kenneth, to meet him at the school. Woodard waited for Kenneth for 20 minutes, then walked across the street to Hawkins' house. Woodard and Hawkins then walked to Woodard's house, during which time a maroon PT Cruiser began chasing them. After arriving home, Woodard received a phone call, then went to the field behind St. Jude's church where he saw his brother Kenneth lying dead in the field.

¶ 13 On March 5, 2008, Maverick Magee was participating in the dice game when everyone claimed that someone was cheating, and Magee and Morgan began wrestling over the money. Magee then left the game and went home. The next day, Magee and his brother Kenneth were

walking to Thornridge High School to meet their younger brother when a red van, a red PT Cruiser and a gold car drove past them, and someone pointed out of one of the vehicles. The brothers continued walking to the school, and a couple of blocks later, the same vehicles pulled up alongside them. As they continued walking, the brothers saw two men walking down the street towards them. Magee then felt a pain inside his coat and realized that he had been shot. Magee and Kenneth ran through a gangway and into a field, and Magee heard more gunshots and knew that the two men were still shooting at them. Kenneth then said that he had been hit, and as Magee continued running, Kenneth was no longer next to him. Magee ran through a gangway to the school on Cottage Grove Avenue where he started to faint. He was taken by ambulance to Ingalls Hospital where he was treated for a gunshot wound to the chest. In court, Magee identified photographs of the red van and the red PT Cruiser that approached him and Kenneth.

¶ 14 Briyanna Campbell arrived home from Thornridge High School on the afternoon of March 6, 2008, and later went to the home of her friend, Dominique Clayton (Dominique). Dominique, Quainka, Dion Davis, and two men Campbell did not know were sitting inside a red PT Cruiser owned by Quainka, who was driving. Campbell sat in the front passenger seat. Parked nearby were a red Monte Carlo that Greg Morgan was sitting in, and a red van driven by Clayton with other students from school in the back of the van.

¶ 15 The cars drove away together with the van in front, followed by the Monte Carlo, and the PT Cruiser at the end. They drove through Dolton and South Holland, and when they came to a stop, Davis told Campbell to get out of the PT Cruiser and to get into a different vehicle. Campbell observed Davis "wiping down a gun" at that time, but later testified that she was not

sure that it was a gun, and that she told police that it may have been a cell phone. Campbell got out of the PT Cruiser and got into the back seat of the Monte Carlo, sitting next to Morgan. The three cars began driving again in the same order, but became separated. Shortly thereafter, as they drove down a street, Campbell saw Maverick Magee sitting on a curb surrounded by police. The Monte Carlo then returned to Dominique's residence and Campbell went home.

¶ 16 About 4 p.m., Dominique called Campbell and told her to watch the news. Campbell acknowledged that she told police that while they were driving around, the people in the cars were talking about fighting with some boys, and she had no knowledge that there was going to be a shooting because that was not the plan. Campbell further acknowledged that she did not observe the shooting that day and never heard any gunshots.

¶ 17 On March 6, 2008, Morgan told Brendon Cotton, a classmate, that he was going to fight someone after school. The two then agreed to meet in front of the school after dismissal to go to drill team practice together. About 2:30 p.m., Cotton met Morgan, and they walked across the street and joined a group of several men and one woman, none of whom Cotton knew at that time. One of the men was Clayton, who was Morgan's uncle, and the woman was Dominique, Morgan's aunt. Dominique went to the door of the house they were standing in front of and rang the doorbell, but no one answered and she returned to the group.

¶ 18 As the group walked toward a parking lot across the street from the high school, people in the group "jumped" someone and began fighting. When the fighting stopped, everyone in the group entered four vehicles that were parked in the lot, which included a red van, a red PT Cruiser, a red Monte Carlo and a gold car. Clayton sat in the driver's seat of the red van, and

Cotton entered the back of the van with Morgan. All of the vehicles were driven to Morgan's house, and when they arrived, everyone entered the home.

¶ 19 About 10 minutes later, everyone left the house and reentered the vehicles. Clayton again entered the driver's seat of the red van, and Cotton, Morgan and two other men entered the back of the van. The four vehicles then drove away together. As they were driving, Cotton observed two men walking in the direction of the van on the opposite side of the street, and Morgan said that those were the guys who had robbed him. Clayton then made a phone call and said "Greg saw the dudes that robbed him." Clayton stopped the van in the middle of the street, and Morgan exited the van and entered the red Monte Carlo. All of the vehicles then drove away together. Clayton turned the van around in a driveway, pulled over on the side of the street and parked. Cotton then heard 10 or 11 gunshots, and ducked down inside the van. Cotton then heard Clayton say that it was "his people shooting."

¶ 20 After the shots were fired, Cotton observed two men, one of whom was Jovan Dockery, entered the side door of the van, and both were holding guns in their hands inside the front pockets of their hoodies. Clayton told the men to "get out [of] the van with the guns," and they left the van and got into the PT Cruiser. Clayton then drove to the intersection and stopped the van, and Cotton got out of the van, caught a bus, and went to drill team practice. Later at practice, Morgan told Cotton that Clayton said "don’t say anything."

¶ 21 Detective Williams' trial testimony regarding the interview of Clayton in Georgia mirrored that he gave at the suppression hearing.

¶ 22 The trial court found that the evidence showed that Clayton was driving people around and was near the location of the shooting. The court then stated:

> "The most credible witness didn't see anything, because she got to the location after the shooting. So I am pretty much left with what Mr. Clayton told the police and the assistant state's attorney.
>
> There was supposed to be a beat-down. There was supposed to be a beating – and I am paraphrasing. There was supposed to be a beating that got out of hand. Somebody did some shooting.
>
> If you plan a crime and you band together with some people and during the process of committing that offense or attempting to commit that offense, somebody jumps up with a gun and shoots somebody, in my mind, that's accountability."

The trial court then found Clayton guilty of first degree murder and aggravated battery with a firearm.

¶ 23 On January 18, 2013, when trial counsel filed his posttrial motion, Clayton stated that he wanted to relieve counsel of his duties and asked to proceed *pro se*. Clayton further stated that he would file his own motion for a new trial raising claims of ineffective assistance of counsel. Several continuances followed, and on June 26, 2013, Clayton filed a *pro se* motion for a new trial and a *pro se* motion for a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 24 At the *Krankel* hearing, Clayton argued, *inter alia*, that his lawyer was ineffective at the suppression hearing because he did not call any officers from the Jones County jail to testify that there was video equipment available to record his interview, which contradicted ASA D'Angelo's

testimony that such equipment was not available. Clayton stated that he received a letter from the Jones County jail stating that video equipment was available and that someone there knew how to operate that equipment. Clayton also alleged that counsel failed to investigate Detective Williams' background and impeach him with information Clayton had given counsel that Williams had falsified documents at work. Clayton presented a "Recommendation for Punitive Action" from the South Holland police department which stated that between the dates of November 14, 2009, and January 7, 2010, some 20 months after his interview in Georgia, Williams filled out weekly productivity sheets indicating that he wrote citations on 23 separate dates on which no citations were, in fact, issued. Consequently, Williams was suspended for two days in 2010. Clayton alleged that had such information been presented, it would have damaged Williams' credibility.

¶ 25 In response, defense counsel stated that prior to trial there was never an issue pertaining to a lack of video equipment because Clayton had told him that he had discussed the incident while in jail, a sheriff overheard him, and the officers then incorporated the eavesdropped conversation into Clayton's statement. Counsel further asserted that Clayton's statement was not inculpatory, or an admission that he aided or abetted in the commission of the offense. Instead, Clayton had stated "in a state of surprise" that "it was suppose[d] to be a beat down and somebody got trigger happy." Counsel further opined that Clayton's statement was not damaging and "not the most incriminating" statement, and that Clayton merely commented on what the police told him that they already knew. Counsel acknowledged that he did not contact the Jones County sheriff. In addition, counsel stated that Clayton never told him that Williams was

involved in any improprieties, and if the State knew that there was a "dirty cop" on its witness list, it would have provided the defense with that information.

¶ 26 The State disputed the relevance of the letter from Jones County given that Clayton had specifically inquired about the time period "prior to March, 2008," but Clayton's interview occurred after that, on March 23, 2008. The State further contended that there was nothing in any of the statements or testimony that suggested that defense counsel needed to call an officer from Jones County. In any event, trial counsel's decision regarding what witnesses to call constituted trial strategy.

¶ 27 With respect to Williams, the State asserted that it had never seen the disciplinary document Clayton presented, and further, that such document could not have been used to impeach the officer because it was not relevant. The State pointed out that the issue with Williams in this case pertained to Clayton's murder interview, while the issue in the discipline document pertained to the issuance of citations. Because these were two separate and distinct incidents that occurred during two different time periods, the State argued Williams could not be impeached with alleged misconduct occurring nearly two years after Clayton's interview. The trial court found that all of the allegations discussed were matters of trial strategy and denied Clayton's *Krankel* motion.

¶ 28 Three weeks later, on August 9, 2013, private counsel Joseph Kennelly filed his appearance for Clayton on his posttrial motions, and trial counsel was granted leave to withdraw. Posttrial counsel later filed an amended motion for a new trial that replaced both the original motion filed by trial counsel and the *pro se* motion filed by Clayton. The amended motion again

alleged, among other things, that trial counsel rendered ineffective assistance when he failed to call officers from Jones County to testify that video recording equipment was available at the time of Clayton's interview. Attached to the motion was a second letter from the Jones County sheriff's office dated July 22, 2013, stating that video equipment was available, operational, and someone was available to operate the equipment on March 22, 23 and 24, 2008. Posttrial counsel asserted that the letter contradicted the testimony of the State's witnesses at the suppression hearing, and thus, would have affected their credibility. Counsel also maintained that the statement Clayton made during his interview in Georgia, that "somebody got trigger happy," was not an admission because Clayton did not know who "somebody" was. The amended posttrial motion did not include the allegation that trial counsel was ineffective for failing to impeach Williams with his disciplinary record. The trial court denied Clayton's posttrial motion and later sentenced Clayton to consecutive prison terms of 20 years for murder and 6 years for aggravated battery with a firearm.

¶ 29 On appeal, Clayton contends that his trial counsel rendered ineffective assistance because he failed to impeach the State's witnesses with evidence that would have undermined their credibility. He raises the same two issues initially included in his *pro se* posttrial motion, *i.e.*, counsel's failure to impeach (i) D'Angelo at the suppression hearing with evidence that video recording equipment was available at the time Clayton allegedly made a custodial statement and (ii) Williams at trial with evidence that the officer had been disciplined for falsifying citation records. Clayton acknowledges the trial court's finding that counsel's decisions were strategic, but argues that counsel's strategy was not sound because he misunderstood the law of

accountability and believed Clayton's statement was not damaging. Clayton claims that he suffered prejudice because any evidence impeaching the reliability of his statement could have had "a tremendous impact" on the outcome of the trial.

¶ 30 The State initially argues that Clayton's real issue on appeal concerns the trial court's denial of his motion for a new trial. But we agree with Clayton that the issue is whether the ineffective assistance of his trial counsel entitles him to a new trial. Here, Clayton is not challenging the trial court's ruling on his motion for a new trial or his *Krankel* motion, but rather, is arguing that his trial counsel rendered ineffective assistance on two grounds, one of which was raised in his posttrial motion filed by his retained posttrial counsel after the *Krankel* hearing. Accordingly, we review Clayton's claims of ineffective assistance of counsel as raised in his brief.

¶ 31 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Graham*, 206 Ill. 2d 465, 476 (2003). To support a claim of ineffective assistance of trial counsel, defendant must demonstrate that (1) counsel's representation was deficient, and (2) as a result, he suffered prejudice that deprived him of a fair trial. *Strickland*, 466 U.S. at 687. To establish prejudice, defendant must show that there is a reasonable probability that, but for counsel's deficient performance, the result of the trial would have been different. *Graham*, 206 Ill. 2d at 476. If defendant cannot prove that he was prejudiced, this court need not determine whether counsel's performance was deficient. *Id*.

¶ 32 "In considering whether counsel's performance was deficient, 'a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." ' " *People v. Patterson*, 217 Ill. 2d 407, 441 (2005), quoting *Strickland*, 466 U.S. at 689. In general, conduct related to trial strategy will not support a claim of ineffective assistance unless counsel failed to pursue any meaningful adversarial testing. *Patterson*, 217 Ill. 2d at 441. Decisions regarding which witnesses to call and what evidence to present at trial are considered matters of trial strategy, and as such, are generally immune from claims of ineffective assistance of counsel. *People v. Munson*, 206 Ill. 2d 104, 139-40 (2002).

¶ 33 Under the foregoing standards, we find no merit in Clayton's claim that trial counsel rendered ineffective assistance when he failed to investigate and present evidence that video recording equipment was available at the time of Clayton's interview in Jones County, Georgia. The only testimony regarding the availability of such equipment came from ASA D'Angelo during the hearing on Clayton's motion to suppress his statement. D'Angelo testified "[e]ven though we were informed that there was the possibility that there might have been equipment available, the lieutenant who would have had access to that equipment had taken Easter Sunday off. So if they had it, there was no one there who knew how to run it." The prosecutor then asked D'Angelo if there was any permanent equipment set up to record homicide interviews, and D'Angelo replied "[n]ot as it was explained to us. It was not available." D'Angelo's testimony thereby conveyed what he had been told by the officers at the Jones County jail when he and the

detectives arrived there to interview Clayton on March 23, 2008. The letter from the Jones County sheriff's office dated July 22, 2013, stated, in general, that video equipment was available, operational, and that someone was available to operate the equipment on March 22, 23 and 24, 2008.

¶ 34 The letter from Jones County has little, if any, impeachment value. The letter, written five years after Clayton's interview, merely states that on the dates in question, the jail possessed working video equipment and someone would have known how to operate it. This does not contradict D'Angelo's testimony that he was told by jail personnel that at the time of their interview on Easter morning, the lieutenant who had access to and could operate the equipment had taken the day off. Consequently, we find that even if the information in the letter had been presented by counsel, it would not have diminished D'Angelo's credibility.

¶ 35 Moreover, it can be inferred from D'Angelo's testimony that when he arrived at the jail, he must have inquired about the possibility of recording Clayton's interview in order for jail personnel to inform him that, although such equipment may have been available, the lieutenant who had access to it was not there at that time. This testimony suggests that had it been possible to record Clayton's interview, D'Angelo would have done so. We therefore find no merit in Clayton's argument that if counsel had established that such equipment was available, he could have questioned D'Angelo's decision not to use it.

¶ 36 In addition, we find that Clayton has failed to show that he was prejudiced by counsel's failure to challenge the availability of the video equipment. As Clayton acknowledges, when a statement is made during a custodial interrogation that is conducted out-of-state, the Illinois

statutory requirement for recording custodial interrogations in murder cases does not apply. 725 ILCS 5/103-2.1(e)(vii) (West 2008). Thus, even if the video equipment was available at the time of Clayton's interview in Jones County, there was no requirement that his statement be recorded in order to be admissible at trial. Clayton's statement was admitted at trial through the testimony of Detective Williams, who was present during the interview in Jones County. Whether or not ASA D'Angelo was impeached about the availability of the video equipment at the suppression hearing had no impact on the admissibility of Clayton's statement through Williams' trial testimony. Accordingly, we find that trial counsel did not render ineffective assistance when he did not attempt to impeach D'Angelo on this basis.

¶ 37 Clayton also contends that trial counsel rendered ineffective assistance because he failed to impeach the credibility of Williams' trial testimony with evidence that the officer had been disciplined for falsifying citation records. Clayton acknowledges that he failed to preserve this issue for appeal because it was not raised in his amended posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). He points out, however, that he had raised this claim in his *pro se* *Krankel* motion, and argues that his retained posttrial counsel rendered ineffective assistance when he failed to include it in his amended posttrial motion.

¶ 38 Although Clayton argues that the evidence showing that Williams was disciplined for falsifying citation records was "tremendously significant," we have no trouble concluding that posttrial counsel's decision omit this issue from the amended posttrial motion was sound strategy.

¶ 39 A criminal defendant has a constitutional right to confront the witnesses against him, which includes the right to inquire into a witness' bias, interest, or motive to testify falsely. *People v. Collins*, 2013 IL App (2d) 110915, ¶ 15, citing *People v. Coleman*, 206 Ill. 2d 261, 278 (2002). "However, the evidence must not be remote or uncertain; rather, it must give rise to an inference that the witness has something to gain or lose by his testimony." *Id.*

¶ 40 The circumstances here are similar to *Collins*. In *Collins*, a police officer testified regarding a drug transaction he had conducted with the defendant, and the defendant was thereafter convicted of delivery of a controlled substance. *Id.* at ¶¶ 8-9. On appeal, the defendant argued that the trial court erred when it refused to allow him to impeach the officer's testimony with information contained in the officer's personnel file that, prior to the drug transaction, the officer received a one-day suspension for knowingly providing inaccurate information to a deputy chief conducting an investigation in another police department. The defendant argued that the officer's credibility was a "crucial aspect" of the case because the officer was the only witness with firsthand knowledge of the drug transaction. *Id.* at ¶ 16.

¶ 41 The *Collins* court found that the matter for which the officer had been suspended was unrelated to his ability to conduct an undercover drug transaction, and that it did not raise an inference that the officer had anything to gain or lose by his testimony in the defendant's case. *Id.* at ¶ 19. The court further found that the defendant's claim that the officer would testify falsely to avoid further discipline was unsupported speculation that was remote and uncertain. *Id.* Consequently, the court held that the trial court properly barred the defendant from impeaching the officer with his disciplinary record. *Id.*

¶ 42 Like *Collins*, we find that the disciplinary document from the South Holland police department would not have been admissible to impeach the credibility of Williams' testimony. The matter for which Williams received a two-day suspension, falsifying citation records, was remote in time and unrelated to his participation in the interview of a murder suspect, basically as an observer, 20 months earlier. While an officer's prior misconduct can, under appropriate circumstances, be used to attack the officer's credibility, we fail to see the relevance of Williams' post-interview misconduct given the length of time that had elapsed and the unrelated nature of the misconduct in falsely reporting the issuance of citations to Williams' participation in an interview of a murder suspect. Consequently, trial counsel would not have been able to challenge the credibility of Williams' testimony with his disciplinary record, and thus, his failure to attempt to do so does not constitute ineffective assistance. It therefore follows that posttrial counsel did not provide ineffective assistance when he decided not to include this meritless issue in the amended posttrial motion.

¶ 43 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.