

NOTICE
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2016 IL App (5th) 140217-U

NO. 5-14-0217

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 04-CF-2401
)	
CHADWICK W. WALLACE,)	Honorable
)	Charles V. Romani, Jr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant failed to show that he was denied a public trial or that Public Act 80-1099 is void. Therefore, the trial court's denial of the defendant's postconviction petition is affirmed.

¶ 2 The defendant, Chadwick W. Wallace, appeals the denial of his postconviction petition following an evidentiary hearing. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any

other document supporting his appeal. The defendant filed a response. We considered OSAD's motion to withdraw as counsel on appeal, as well as the defendant's response thereto. We examined the entire record on appeal and found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of Madison County.

¶ 3

BACKGROUND

¶ 4 A jury found the defendant guilty of first-degree murder and dismembering a human body. After denying the defendant's posttrial motion, the court sentenced the defendant to consecutive terms of 50 years for the murder and 25 years for dismembering a body. On direct appeal, this court affirmed the conviction and sentences. *People v. Wallace*, 402 Ill. App. 3d 774 (2010).

¶ 5 On July 6, 2010, the defendant filed a *pro se* postconviction petition alleging that various sections of the Unified Code of Corrections (730 ILCS art. 5 (West 2002)) and the Criminal Code of 1961 (720 ILCS art. 5 (West 2002)), which applied to his conviction and sentence, were invalid because Public Act 80-1099 (the Act) was never passed by the legislature and void. He attacked the Act on three grounds: (1) the Senate failed to follow its rules, so the Act was never actually passed by the Senate; (2) the Act was passed without giving the public reasonable notice; and (3) the Governor improperly influenced the legislative process by stating that he would use his campaign funds to support any legislator who voted for the Act, and he would use his campaign funds to defeat any legislator who voted against the Act. In support of these claims, the defendant

attached various rules of procedure and portions of the record of proceedings in the Senate.

¶ 6 Additionally, the defendant argued that he was denied a public trial because his family, the decedent's family, and the media were excluded from the courtroom during *voir dire*. In support of this issue, the defendant attached various affidavits. The defendant's affidavit stated that his trial counsel told him that his family and friends could not be present in the courtroom during *voir dire* because the court only allowed potential jurors in the courtroom during *voir dire*. The defendant did not believe he was allowed to address the court, so he did not ask the court that his family and friends be allowed in the courtroom during *voir dire*. The defendant's grandmother, Linda I. Robertson, provided an affidavit stating that the defendant's trial attorney told her that she and her daughter would not be allowed into the courtroom during *voir dire*. The affidavit of Chrystal Wallace, the defendant's sister, indicated that the bailiff told her she could not enter the courtroom during *voir dire*. Christopher Donahue, a friend of the defendant, provided an affidavit which indicated that he was present in the courthouse during *voir dire*, but was told by Cheryl Wallace, the defendant's mother, that the court would not allow him to be in the courtroom during *voir dire*.

¶ 7 The court appointed counsel to represent the defendant. Appointed counsel amended the defendant's petition. He added an allegation that trial counsel had rendered ineffective assistance by failing to object to the exclusion during the *voir dire* of the defendant's family and friends. Subsequently, the State filed a motion to dismiss. The court granted the State's motion with respect to the argument regarding the Act, but it

denied the State's motion with regard to the public trial claim. At an evidentiary hearing, the defendant's trial counsel testified that he never told the defendant or the defendant's family that they could not be present in the courtroom during *voir dire*. The defendant's trial attorney also testified that at times, it was the practice of the bailiffs to prevent people from entering the courtroom until a break in the questioning occurred; the bailiffs made the public enter at the next break. The defendant testified in conformance with his affidavit. Following an evidentiary hearing, the court denied the defendant's petition. The court found no denial of a constitutional right or ineffective assistance of counsel.

¶ 8 The defendant appealed, and OSAD was appointed to represent him. After reviewing the case, OSAD filed the *Finley* motion currently before the court.

¶ 9 ANALYSIS

¶ 10 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) allows a person convicted of a crime to "assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution." *People v. Coleman*, 183 Ill. 2d 366, 379 (1998). Evidence of the claim must be attached to the petition in the form of "affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2012). The Act provides a three-stage process for dealing with postconviction petitions. *People v. Tate*, 2012 IL 112214, ¶ 9. At the first stage, the court determines if the petition presents a gist of a constitutional violation. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). If the court does not dismiss the petition for failing to state the gist of a constitutional violation, the petition moves to second-stage

proceedings. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). At the second stage of the proceeding, the State files an answer to the petition or a motion to dismiss. *Id.* at 10-11. When confronted with a motion to dismiss a postconviction petition, "the circuit court is concerned merely with determining whether the petition's allegations sufficiently demonstrate a constitutional infirmity which would necessitate relief under the Act." *Coleman*, 183 Ill. 2d at 380. At this stage of the proceedings, the circuit court is not to engage in any fact-finding. *Id.* at 380-81. All facts not rebutted by the record are accepted as true. *People v. Hall*, 217 Ill. 2d 324, 334 (2005). A third-stage "hearing is required whenever the petitioner makes a substantial showing of a violation of constitutional rights." *Coleman*, 183 Ill. 2d at 381. We review the dismissal of a postconviction petition *de novo*. *Id.* at 387-89. The denial of a postconviction petition following an evidentiary hearing will only be overturned if the court's decision was manifestly erroneous. *People v. Marshall*, 375 Ill. App. 3d 670, 675 (2007). "Manifest error is error that is clearly evident, plain and indisputable." *Id.* (citing *People v. Morgan*, 212 Ill. 2d 148, 155 (2004)).

¶ 11 Public Act 80-1099

¶ 12 The defendant first argued that the Act is void because the Senate did not follow its own rules in passing the Act. However, "'an act cannot be declared invalid for a failure of a house to observe its own rules. Courts will not inquire whether such rules have been observed in the passage of the act.'" *Illinois Gasoline Dealers Ass'n v. City of Chicago*, 119 Ill. 2d 391, 404 (1988) (quoting 1 A. Sutherland, *Statutory Construction* §§ 7.01, 7.04 (4th ed. 1985)). Therefore, the defendant's first argument against the Act fails.

¶ 13 The defendant next argued that the Act was passed without giving the public reasonable notice. In this case, the defendant's own petition shows that the public did receive notice. House Bill 1500 (the Bill), which became the Act, was first read in the Senate on March 31, 1977. Final Legislative Synopsis and Digest of the 1977 Session of the Eightieth General Assembly State of Illinois No. 23, at 1975. The Bill was referred to the Judiciary Committee, which recommended that the Bill be passed as amended on June 20, 1977. *Id.* Following debate on several amendments to the Bill, it was then passed by the Senate on November 22, 1977. *Id.* Additionally, the legislative record shows members of the public were in the Senate gallery on November 22, 1977. 80th Ill. Gen. Assem., Senate Proceedings, Nov. 22, 1977, at 1. There is no validity to the defendant's argument that the public did not receive notice of the Senate's action on the Bill.

¶ 14 The defendant's final argument regarding the Act was that the Act passed as the result of bribery by the Governor. We are aware of no case law holding that a court can invalidate a statute because one or more of the votes in favor of a bill was the result of bribery. Even assuming, *arguendo*, that the Governor attempted to bribe legislators to vote for the Bill, the defendant did not allege or provide evidence that any legislator changed his or her vote due to the Governor's attempt to influence the vote. In fact, the defendant's pleading stated that there is no way to say that any vote was changed. We will not entertain the defendant's argument given the lack of allegations that the Governor's actions had any impact on the Senate vote.

¶ 16 The defendant also argued that he was denied the right to a public trial because his friends and family were excluded from *voir dire*. The defendant had the right to a public trial, and that right includes public proceedings during *voir dire*. *People v. Hayden*, 338 Ill. App. 3d 298, 306 (2003). The defendant is not required to show prejudice to obtain relief for a violation of his right to a public trial. *People v. Willis*, 274 Ill. App. 3d 551, 554 (1995).

¶ 17 The circuit court found that no public-trial violation occurred. We will only reverse the circuit court's finding if manifestly erroneous. The right to a public trial in a state court is derived from the fourteenth amendment's incorporation of the sixth amendment to the United States Constitution. See *Gannett Co. v. DePasquale*, 443 U.S. 368, 379-80 (1979). The transcripts of this case show that the circuit court did not close the trial to the public. The only allegation of state action is that the bailiff told two people that they could not enter the courtroom during *voir dire*. At the evidentiary hearing, the defendant's trial counsel testified that bailiffs were known to prohibit people from entering until a break in the testimony to prevent interruptions of the proceedings.

¶ 18 The circuit court is in the best position to evaluate the credibility of witnesses. In this case, the circuit court found that the defendant's trial attorney was more believable than the defendant and his affidavits. The circuit court's finding is not manifestly erroneous; therefore, we will not overturn the circuit court's decision to deny the defendant's postconviction petition.

¶ 19 Finally, we address the defendant's argument that he received ineffective assistance of counsel because his attorney failed to object to *voir dire* being closed to the public. An allegation of a violation of the constitutional right to effective assistance of counsel is evaluated under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted in Illinois by *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). The standard has two prongs, both of which must be satisfied for a defendant to prevail on an ineffective-assistance-of-counsel claim. First, a defendant must show that his "counsel's representation fell below an objective standard of reasonableness, and that counsel's shortcomings were so serious as to deprive the defendant of a fair trial[.]" (Internal quotation marks omitted.) *Id.* at 525. Second, a defendant must show "that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." (Internal quotation marks omitted.) *Id.* In *People v. Tate*, 2012 IL 112214, the Illinois Supreme Court stated that at the second stage of postconviction proceedings the petitioner must " 'demonstrate' or 'prove' ineffective assistance by 'showing' that counsel's performance was deficient and that it prejudiced the defense." *Id.* ¶ 19. The reviewing court can address these requirements in either order. *Albanese*, 104 Ill. 2d at 527. A failure to satisfy either prong of the *Strickland* standard causes the allegation of ineffective assistance of counsel to fail; the court need not address both prongs. See *Strickland*, 466 U.S. at 670.

¶ 20 The defendant failed to establish either prong of the *Strickland* analysis. First, as discussed above, *voir dire* was not closed to the public, so trial counsel's representation

cannot be ineffective because there was nothing to object to. Second, even if trial counsel should have objected to the trial court's handling of *voir dire*, the defendant made no showing that but for trial counsel's ineffective assistance, the outcome of the trial would have been any different. Therefore, the defendant did not establish that he received ineffective assistance of counsel.

¶ 21

CONCLUSION

¶ 22 The defendant failed to show that the Act was void as he alleged, and the trial court's determination that the defendant was not denied a public trial was not against the manifest weight of the evidence. Therefore, the judgment of the circuit court of Madison County is affirmed.

¶ 23 Affirmed.