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NOS. 4-17-0707, 4-17-0708 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL J. CONNOR, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Livingston County Nos. 11CF262 11CF263 Honorable Jennifer Bauknecht, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by denying defendant's postconviction petition after an evidentiary hearing.

¶ 2 In June 2016, defendant, Michael J. Conner, filed a postconviction petition, asserting ineffective assistance of counsel and actual innocence. The Livingston County circuit court advanced defendant's petition to the second stage of the proceedings, and the State filed an answer to the petition. On July 24, 2017, the court held an evidentiary hearing on defendant's postconviction petition. In August 2017, the court entered a written order denying defendant's postconviction petition.

¶ 3 Defendant appeals, asserting the circuit court erred by denying his claim of ineffective assistance of counsel based on trial counsel's erroneous advice about the maximum

sentence he faced. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In Livingston County case No. 11-CF-262 (appellate case No. 4-17-0707), the State charged defendant by information with three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006 and 2008)), asserting defendant knowingly placed his penis in Z.T.'s vagina (count I), anus (count II), and mouth (count III) during the period of March 21, 2008, through March 20, 2009. In Livingston County case No. 11-CF-263 (appellate case No. 4-17-0708), the State charged defendant by information with two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010) (both versions of the statute are applicable)), which alleged defendant knowingly placed his penis in La. C.'s vagina (count I) and mouth (count II) during the period of August 26, 2010, through August 25, 2011. The information in both cases stated the sentencing range for each count was 6 to 60 years in prison.

¶ 6 The first victim Z.T. (born in 2003) was the oldest daughter of defendant's former girlfriend, Amanda G. The second victim La. C. (born in 2004) was the daughter of both defendant and Amanda. Defendant and Amanda had another daughter, Le. C. (born in 2006). After their relationship ended, Amanda and defendant established their own visitation schedule, with defendant having Z.T., La. C., and Le. C. every weekend. At some point, defendant stopped taking Z.T. for visitation. Then, in August 2011, Amanda took La. C. to a counselor, who asked Amanda if she thought La. C. had been sexually abused. Amanda told the counselor she did not think so. However, later that day, Amanda asked Z.T. about a statement she had made about defendant when Z.T. was younger. Z.T. again indicated defendant had placed his penis in her vagina. Amanda called the police on the evening of August 16, 2011, to report

Z.T.'s statements about defendant. On August 25, 2011, Ellen Joann Sipes of the Children's Advocacy Center interviewed Z.T., La. C., and Le. C.

¶ 7 At the August 29, 2011, arraignment hearing, the circuit court addressed defendant's bond. In arguing for a $75,000 bond, the State asserted defendant was subject to a sentencing range of 6 to 60 years in prison and the sentences would run consecutively. On October 25, 2011, the court held the preliminary hearing. The following exchange took place:

> "THE COURT: If you are found guilty or you plead guilty to these charges, you face—Is this I believe a mandatory minimum?
>
> MR. YEDINAK (ASSISTANT STATE'S ATTORNEY): Yes, Judge. Six to 60 is what the range is, and it's our position that all the offense would run consecutive to one another because they are separate acts.
>
> THE COURT: Okay. So there would be a mandatory six years if you are found guilty or you plead guilty to the charges. The maximum is 30 years plus a three year mandatory supervisory release period and a $25,000 maximum fine.
>
> MR. YEDINAK: I apologize, Judge. The maximum in this, for this particular offense is 60 years.
>
> THE COURT: 60. Pardon me. Minimum six years, maximum 60 years plus the three year mandatory supervisory release period.
>
> In addition, it's the State's position, and we have not, I haven't made a ruling on that or confirmed it, but it's the State's position that if you are found guilty in both cases or you plead guilty in both cases that any sentence would run consecutive. That means you are facing six to 60 in one case. That would be served. And then another six to 60 in another case. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Any questions about the range of penalties you are facing?

THE DEFENDANT: No."

¶ 8 On June 11, 2013, the circuit court commenced a joint bench trial on the charges in both cases. The State presented the testimony of Amanda; Z.T.; La. C.; Sipes; and Maureen Hofmann, an advanced practice nurse with the Pediatric Resource Center. Pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/115-10 (West 2008 and 2010)), the State also played the DVDs of Sipes's interviews of Z.T. and La. C. Defendant testified on his own behalf and presented the testimony of Dr. Theodore Hariton, a forensic gynecologist; Leland Brooke, a Livingston County sheriff's deputy; Amanda; Melissa Johnson, a former girlfriend; and Sandra Connor, his mother. The evidence presented at trial was set forth in our prior order and need not be repeated here. See *People v. Connor*, 2015 IL App (4th) 140307-U. We do note the trial evidence showed La. C. had two positive urine tests for chlamydia and one positive culture test for chlamydia. Both experts agreed, it was highly unlikely she got chlamydia during the birthing process and still had it at age six. Based on the positive chlamydia test, the State's expert opined La. C. was the victim of sexual abuse. The parties stipulated defendant's test was negative for chlamydia.

¶ 9 After a lengthy trial, the circuit court found defendant guilty of all five charges. The State then moved to revoke defendant's bond. The prosecutor argued the following: "It's the State's position based on Your Honor's ruling today that obviously the Defendant's no longer cloaked in the presumption of innocence. He's now been found guilty of five counts of predatory criminal sexual assault, Class X felonies. It's the State's position that he is subject to natural life in prison." The court revoked defendant's bond. Thereafter, defendant filed a

motion for a new trial and several supplemental motions. In his November 2013 motion for a new trial, defendant asserted the circuit court erred by failing to admonish defendant that he was facing a prison term of natural life imprisonment under section 11-1.40(b)(1.2) of the Criminal Code of 1961 (Criminal Code) (see 720 ILCS 5/12-14.1(b)(1.2) (West 2010) (eff. until July 1, 2011); 720 ILCS 5/11-1.40(b)(1.2) (West 2010) (eff. July 1, 2011)). The presentence investigation report for defendant was also filed in November 2013 and stated the following as to sentencing: "Illinois Department of Corrections—6 to 60 years (per 720 ICLS 5/11-1.40(b)(1); possible sentence of natural life imprisonment (per 720 ILCS 5/11-1.40(b)(2)."

¶ 10 On April 2, 2014, the circuit court held a joint hearing on defendant's posttrial motions and sentencing. The court first denied defendant's motions for a new trial and the supplemental motions. In making its oral pronouncement, the court did not specifically address the admonishment issue. At sentencing, the prosecutor noted the applicable sentencing range for predatory criminal sexual assault was 6 to 60 years in prison and argued the sentences were mandatorily consecutive. He also explained section 11-1.40(b)(1.2) of the Criminal Code (720 ILCS 5/12-14.1(b)(1.2) (West 2010) (eff. until July 1, 2011); 720 ILCS 5/11-1.40(b)(1.2) (West 2010) (eff. July 1, 2011)) provided "a person who is convicted of predatory criminal sexual assault against two or more persons regardless if the offenses occurred at the same time or results of several unrelated actions shall be sentenced to a natural life imprisonment." The prosecutor argued the State felt the appropriate and mandated sentence was natural life in prison.

¶ 11 Defense counsel argued defendant was never admonished in the pleadings or at any proceedings in this case that he was subject to natural life in prison and to sentence him now to natural life would be a due process violation. Defense counsel asserted defendant should receive a sentence of consecutive six-year prison terms. After the State's and defense counsel's

recommendations, defendant made a statement. He continued to profess his innocence. Specifically, defendant stated, "The thing that even if I had known the outcome of a guilty verdict in this I still would have not changed my plea because simply I cannot bring myself to admit to something I just didn't do just to get a lesser sentence." He also stated the court made a mistake in his case.

¶ 12 After hearing the parties' arguments, the court sentenced defendant to consecutive prison terms of 30 years in Z.T.'s case and natural life in La. C.'s case. Under the one-act, one-crime rule, the court only sentenced defendant on the first count in each case.

¶ 13 On April 10, 2014, in both cases, defendant filed a motion to reconsider his sentence, asserting the sentence was excessive and not consistent with the ends of justice. As to his sentence in La. C.'s case, defendant also argued the information did not state he was subject to natural life imprisonment, and the court never admonished him about natural life imprisonment. At an April 17, 2014, hearing, the court denied defendant's motions to reconsider his sentence.

¶ 14 Defendant appealed his convictions. On appeal, he argued the following: (1) the circuit court erred by (a) admitting the victims' hearsay statements under section 115-10 of the Procedure Code and (b) considering such statements as substantive evidence of abuse; (2) the court erred by admitting entire medical publications into evidence and considering them as substantive evidence; (3) the court abused its discretion by barring defendant from cross-examining Amanda about the money she owed Sandra to show Amanda manipulated the children to accuse defendant; (4) the State's evidence was insufficient to prove defendant guilty beyond a reasonable doubt of all five of the charges; (5) the court improperly shifted the burden of proof to defendant; and (6) a fatal variance existed between the information in La. C.'s case

and the evidence at trial, which exposed defendant to double jeopardy. This court affirmed defendant's convictions. *Connor*, 2015 IL App (4th) 140307-U. Regarding defendant's claim about cross-examining Amanda, this court found defendant forfeited his argument because he failed to make an offer of proof in the circuit court. *Connor*, 2015 IL App (4th) 140307-U, ¶ 52. Defendant filed a petition for leave to appeal to the Supreme Court of Illinois, which was denied. *People v. Connor*, No. 119547 (Ill. Sept. 30, 2015) (supervisory order denying petition for leave to appeal).

¶ 15 On June 27, 2016, defendant filed his postconviction petition at issue in this appeal. Defendant argues his trial counsel was ineffective for failing to (1) inform him he could be sentenced to natural life in prison, (2) make an offer of proof of the barred cross-examination of Amanda, and (3) cross-examine the State's expert regarding false positive results of testing for chlamydia. Defendant also raised a claim of actual innocence based on evidence of Amanda's financial motivation for making the accusations. At the second stage of postconviction proceedings, the State filed an answer, contesting defendant's assertions.

¶ 16 In July 2017, the circuit court held a third-stage evidentiary hearing on defendant's petition. Defendant testified on his own behalf and presented the testimony of Sandra, his mother. Sandra testified that, in March 2013, trial counsel met with her, defendant, and defendant's father and informed them the State had offered 18 years in exchange for a guilty plea. Trial counsel further stated the sentencing range for defendant was 6 to 30 years and it would be served at 85% of the sentence. Sandra did not recall what the court said about potential sentences. She also testified no one ever mentioned defendant was facing a life sentence.

¶ 17 Sandra further testified she, defendant, and defendant's father met with trial counsel a month after the plea offer. Trial counsel did not give them any suggestions on whether

to accept or turn down the plea offer. They had retained an expert, and the expert's report was favorable to defendant. The expert's report was something they took into consideration in deciding whether to accept the plea offer. Defendant decided not to accept the plea deal. If she had known defendant faced a life sentence, Sandra would have told defendant to take the plea deal so he would still have a life after prison.

¶ 18 Defendant testified the State offered him 18 years in prison at 85%, which defendant figured would be a little over 15 years in prison. Like Sandra, defendant testified trial counsel said defendant faced a sentencing range of 6 to 30 years at 85%. According to defendant, trial counsel never mentioned defendant was facing natural life in prison. After trial counsel informed him of the plea offer, defendant went home and discussed it with his family. He decided to turn it down because he thought that as a first-time offender he would receive more of a minimum sentence at 85%. Defendant also admitted he did not think he would be found guilty because he was innocent and had a strong defense with trial counsel and the expert. Defendant felt 18 years in prison was too much to take. He did not understand he was actually facing a mandatory life sentence.

¶ 19 Additionally, defendant testified he would have accepted the plea offer if he had known he would receive a mandatory life sentence as a result of being convicted of the crimes against both children. Defendant stated he would not have gambled with his life even when he was innocent. He explained that, when facing life in prison, 18 years was short. Defendant admitted he stated at sentencing he would not have pleaded guilty to something he did not do. Defendant explained he prepared his statement of allocution before he was aware he faced life in prison. He was nervous when he read it and stuck to what he had written. Defendant also stated he had read the presentence investigation report in his case. Defendant also denied knowing the

State was recommending life in prison when he made his statement. Defendant said the statement was prepared and read before he knew he was subject to mandatory natural life in prison.

¶ 20 On August 25, 2017, the circuit court filed a written order denying defendant's postconviction petition. As to defendant's first claim of ineffective assistance of counsel related to the natural life sentence, the court noted defendant had been informed numerous times he faced a sentencing range of 6 to 60 years in prison on each case and the sentences would run consecutive to each other if found guilty in both cases. It found defendant's testimony at the evidentiary hearing was "self-serving, insincere and unbelievable" and Sandra was a biased witness. The court stated that, "[f]or all practical purposes, defendant was well aware that there was a very real and likely possibility that given the consecutive sentences, he could spend the rest of his life in prison." Moreover, the court noted defendant maintained his innocence throughout the proceedings and wanted to have a trial. The court found defendant was willing to risk what would effectively be a life sentence (even if sentenced near the middle of the sentencing range) rather than plead guilty in exchange for an 18-year sentence. Due to the lack of independent and objective evidence indicating defendant rejected the State's plea offer based on counsel's erroneous advice, the court concluded defendant's rejection of the plea offer was based on other considerations. It also pointed out defendant failed to offer any evidence showing a reasonable probability the plea would have been entered without the State cancelling the offer or the circuit court rejecting it.

¶ 21 On September 22, 2017, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017). See Ill. S. Ct. R. 651(d) (eff. July 1, 2017) (providing the procedure for appeals in postconviction proceedings is in

accordance with the rules governing criminal appeals). Thus, we have jurisdiction of defendant's appeal under Illinois Supreme Court Rule 651(a) (eff. July 1, 2017).

¶ 22 II. ANALYSIS

¶ 23 Defendant challenges the circuit court's denial of his postconviction petition after an evidentiary hearing.

¶ 24 The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) provides a remedy for defendants who have suffered a substantial violation of constitutional rights at trial. *People v. Pendleton*, 223 Ill. 2d 458, 471, 861 N.E.2d 999, 1007 (2006). The Postconviction Act sets forth three stages of proceedings. *Pendleton*, 223 Ill. 2d at 471-72, 861 N.E.2d at 1007. At the first stage, the circuit court independently reviews the defendant's postconviction petition and determines whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). If it finds the petition is frivolous or patently without merit, the court must dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2016). If the court does not dismiss the petition, it proceeds to the second stage, where the court may appoint counsel for an indigent defendant. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Defense counsel may amend the defendant's petition to ensure the defendant's contentions are adequately presented. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Also, at the second stage, the State may file a motion to dismiss the defendant's petition or an answer to it. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1008. If the State does not file a motion to dismiss or the court denies such a motion, the petition advances to the third stage, wherein the court holds a hearing at which the defendant may present evidence in support of his or her petition. *Pendleton*, 223 Ill. 2d at 472-73, 861 N.E.2d at 1008. At both the second and third stages of the postconviction proceedings, "the *defendant bears the burden* of making a

substantial showing of a constitutional violation." (Emphasis added.) *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008. When a petition advances to an evidentiary hearing and fact-finding and credibility determinations are involved, this court will not reverse the circuit court's decision unless it is manifestly erroneous. *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008. A "manifest error" is one that "is clearly evident, plain, and indisputable." *People v. Ruiz*, 177 Ill. 2d 368, 384-85, 686 N.E.2d 574, 582 (1997).

¶ 25 On appeal, defendant only argues the circuit court erred by denying his ineffective assistance of counsel claim based on counsel's failure to inform him he was facing a sentence of mandatory natural life during the plea negotiation process. The State contends the court's denial was proper.

¶ 26 Our supreme court has "recognized a sixth amendment right to effective assistance of counsel during plea negotiations." *People v. Hale*, 2013 IL 113140, ¶ 16, 996 N.E.2d 607. Specifically, " '[a] criminal defendant has the constitutional right to be *reasonably* informed with respect to the direct consequences of accepting or rejecting a plea offer.' " (Emphasis in original.) *Hale*, 2013 IL 113140, ¶ 16 (quoting *People v. Curry*, 178 Ill. 2d 509, 528, 687 N.E.2d 877, 887 (1997)). That right "extends to the decision to reject a plea offer, even if the defendant subsequently receives a fair trial." *Hale*, 2013 IL 113140, ¶ 16. This court analyzes ineffective assistance of counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999).

¶ 27 To obtain reversal under *Strickland*, a *defendant must prove* (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163.

To satisfy the deficiency prong of *Strickland*, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment (U.S. Const., amend. VI). *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64. Under *Strickland*, when a case is more easily decided on the ground of lack of sufficient prejudice rather than that counsel's representation was constitutionally deficient, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 28 As to the prejudice prong in the context of a plea offer, the United States Supreme Court has held a *defendant must show* a reasonable probability of the following: (1) he or she would have accepted the plea offer but for counsel's deficient advice, (2) the plea would have been entered without the State canceling it, (3) the circuit court would have accepted the plea bargain, and (4) "the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." *Missouri v. Frye*, 566 U.S. 134, 147 (2012); see also *Lafler v. Cooper*, 566 U.S. 156, 164 (2012). In this case, the circuit court found defendant's evidence was insufficient to prove the first factor and defendant failed to present any evidence as to the second and third factors.

¶ 29 In *Hale*, 2013 IL 113140, ¶ 21, our supreme court found the defendant did not meet the prejudice prong because he failed to show the first factor. The *Hale* court noted the only evidence the defendant offered regarding his decision to not plead guilty was "his own self-

serving testimony that, if he had known that he 'could get consecutive sentencing,' he 'would have been inclined to take the 15 years then.' " *Hale*, 2013 IL 113140, ¶ 24. The circuit court found the aforementioned testimony was incredible, and the supreme court concluded that finding was not against the manifest weight of the evidence. *Hale*, 2013 IL 113140, ¶ 24.

¶ 30 In determining the circuit court's credibility finding was not against the manifest weight of the evidence, the *Hale* court compared the facts of the case before it with the ones in *Curry*, 178 Ill. 2d at 528, 687 N.E.2d at 887. It noted that, in *Curry*, the defendant's statement was supported by additional evidence, which included the defendant's weak case, the disparity between the defendant's sentence and the plea offer, and defense counsel's affidavit that stated the defendant rejected the plea offer based on counsel's erroneous advice. *Hale*, 2013 IL 113140, ¶ 25 (quoting *Hale v. Curry*, 2011 IL App (1st) 090110-U, ¶ 24). Conversely, in *Hale*, no other evidence substantiated the defendant's claim of prejudice. *Hale*, 2013 IL 113140, ¶ 25.

¶ 31 The *Hale* court also pointed out the evidence that indicated defendant would have rejected the plea offer regardless of counsel's deficient advice. First, it noted the defendant repeatedly professed his innocence and followed a trial strategy consistent with that innocence claim. *Hale*, 2013 IL 113140, ¶¶ 26-27. Thus, we reject defendant's assertion the circuit court in this case could not hold defendant's protestations of innocence against him in the context of a claim of ineffective assistance of counsel related to a plea offer. Second, the *Hale* court stated that, while a disparity existed between the 15-year plea offer and "the mandatory 12-year to 60-year consecutive sentences" for both counts of attempt (first-degree murder), "there was also the possibility, however remote, that defendant could receive the minimum 12-year consecutive term." *Hale*, 2013 IL 113140, ¶ 28. It also noted trial counsel testified the defendant was not interested in pleading. *Hale*, 2013 IL 113140, ¶ 28. Thus, the supreme court agreed with the

State defendant's rejection of the plea offer was based upon considerations other than counsel's deficient advice. *Hale*, 2013 IL 113140, ¶ 28.

¶ 32 We conclude this case is similar to *Hale.* Like in *Hale*, the circuit court did not find defendant's testimony at the evidentiary hearing credible. The court also did not find credible defendant's other witness, his mother. We give great deference to credibility determinations made by the circuit court and will only reverse such determinations if they are against the manifest weight of the evidence. *People v. Richardson*, 234 Ill. 2d 233, 251, 917 N.E.2d 501, 512 (2009). "A determination is against the manifest weight of the evidence when the opposite conclusion is clearly evident from the record." *People v. Carlson*, 307 Ill. App. 3d 77, 80, 716 N.E.2d 1249, 1251 (1999).

¶ 33 In this case, the record clearly contradicts parts of defendant's and Sandra's testimony. Both testified they believed defendant was subject to a single prison term of 6 to 30 years, which is contradicted by the information in both cases and statements by both the State and the circuit court at various hearings. Another instance of the record contradicting defendant's testimony is his testimony he did not learn he was facing a natural life sentence until the April 2014 sentencing hearing. The possibility of a sentence of natural life was raised in the State's September 2013 request to revoke defendant's bond, defendant's November 2013 motion for a new trial, and the November 2013 presentence investigation report. At the evidentiary hearing, defendant also denied knowing the State was recommending life in prison when he made his statement at the sentencing hearing. Defendant said his statement was prepared and read before he knew. However, the record shows the State made its argument defendant was subject to mandatory natural life in prison under section 11-1.40(b)(1.2) before defendant made his statement at the sentencing hearing.

¶ 34 Moreover, we note defendant did not present the testimony of his trial counsel or other independent evidence supporting defendant's and Sandra's testimony. For example, defendant did not present independent evidence trial counsel did not inform them defendant was subject to mandatory natural life in prison if found guilty as to both victims. Trial counsel's statements at the sentencing hearing only indicated the court and the State never put defendant on notice he was subject to mandatory life in prison.

¶ 35 Additionally, the facts of the case do not support defendant's assertion he would have accepted the guilty plea but for counsel's deficient advice. The circuit court found defendant maintained his innocence throughout the proceedings and wanted to go to trial because he believed he had a strong defense. Our review of the record supports that finding. Defendant hired an expert to refute the State's expert, testified on his own behalf, and presented reasons why the victims' mother would coach the victims to make allegations against defendant. He also tested negative for chlamydia. Moreover, at the sentencing hearing, defendant stated he was innocent and would still plead not guilty even knowing the guilty verdict. Defendant's testimony he did not know he was facing a life sentence when he drafted the aforementioned statements to the court is contradicted by the record as noted in the previous paragraph. We also point out defendant did not present any evidence from his trial counsel about the plea offer and defendant's rejection of it. Additionally, defendant's mother testified the favorable report of the expert retained for defendant was taken into account in determining whether to plead guilty. Defendant himself testified at the evidentiary hearing he thought he was going to be found not guilty because he was innocent and had a strong defense. Defendant was confident in his case before trial and that impacted whether he was going to plead guilty. The fact the circuit court found after trial the evidence against defendant was overwhelming is irrelevant to defendant's

perception of the strength of his case when he was determining whether to accept a plea offer.

¶ 36 One difference between this case and the *Hale* case is defendant, if found guilty of assaulting both girls, could not have received a sentence lower than the plea offer as in *Hale*. We also recognize the disparity in the 18-year plea offer and defendant's sentence of natural life in prison to run consecutively with a 30-year prison term is great. Thus, the disparity can be considered independent evidence supporting defendant's claim of prejudice. See *Hale*, 2013 IL 113140, ¶ 18 ("The disparity between the sentence a defendant faced and a significantly shorter plea offer can be considered supportive of a defendant's claim of prejudice."). However, as the circuit court notes, defendant was informed he was facing a sentence of 6 to 60 years on each count, and the State continuously asserted the sentences would be served consecutively. Thus, as noted by the circuit court, even a sentence in the middle of the sentencing range on more than one count would have arguably resulted in a *de facto* sentence of natural life in prison. While we do agree with defendant mandatory natural life in prison is different than a possible discretionary sentence that results in a *de facto* life sentence, the strength of the disparity evidence is weakened by the potential lengthy consecutive sentences of which defendant was informed before he rejected the plea offer.

¶ 37 Given defendant's strong insistence in his innocence, his belief he had a strong defense, and the weakened disparity evidence that is the only independent evidence supporting defendant's claim, we find the circuit court's determination defendant's rejection of the plea offer was based on other considerations was not manifestly erroneous. Since defendant failed to meet the first factor for establishing prejudice, he cannot establish the prejudice prong of the *Strickland* test, and we do not address the other three factors. Accordingly, this court concludes the circuit court properly denied defendant's ineffective assistance of counsel claim related to the

plea offer.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the Livingston County circuit court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 40 Affirmed.