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FIRST DIVISION
FILED: July 29, 2013

No. 1-11-0094

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. 98 CR 28548
)	
STEVE CAMPBELL,)	Honorable
)	Rickey Jones,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

- ¶ 1 Held: The circuit court did not err in dismissing the defendant's postconviction petition, because he did not make a substantial showing of a constitutional violation.
- ¶ 2 The defendant, Steve Campbell, appeals from the second-stage dismissal of his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West 2008)). On appeal, the defendant contends that his petition made a substantial showing that he was denied effective assistance of counsel where trial counsel did not raise his alleged mental illness as a mitigating factor at sentencing and appellate counsel did not argue trial counsel's ineffectiveness. We affirm.
- ¶ 3 At the defendant's bench trial in 2000, the State produced evidence that the defendant killed Sheila Hudson before driving to her brother's house and firing a shot in his direction. The defendant

was found guilty of first degree murder and aggravated discharge of a firearm. The presentence report stated that the defendant had no juvenile or criminal history, and it said that his childhood was pleasant and that his mother provided a caring and loving home. According to the report's summary of the defendant's mental health history, the defendant was diagnosed with depression after he was incarcerated in September 1998. The report also states that he claimed to have experienced auditory hallucinations in 1996. The report indicated that the defendant had attempted suicide multiple times and had been prescribed various medications to treat his depression.

¶ 4 The presentence report references a November 1999 examination conducted by Dr. Paul Fauteck, who evaluated whether the defendant was legally insane at the time of the offense. Dr. Fauteck diagnosed the defendant with possible depressive disorder and antisocial personality disorder, not otherwise specified (NOS). However, Dr. Fauteck tempered these diagnoses by noting that the defendant could be malingering. Included in the report is Dr. Fauteck's assertion that the defendant did not suffer from any major mental disease but possibly had mild depression. Dr. Fauteck declared the defendant legally sane at the time of the offense. Also included in the record is the rest of the report submitted by Dr. Paul Fauteck, in which he noted that the defendant alleged he heard voices but called his honesty "suspect." Dr. Fauteck also noted that the defendant "appear[ed] to be making an attempt to give himself numerous avenues of escape." Dr. Fauteck noted that the defendant was prescribed Sinequan, then Zoloft to treat his depression.

¶ 5 Also included in the presentence report was a summary of evaluations conducted by Dr. Roni Seltzberg in January and May of 2000, which reflected diagnoses of dysthymic disorder, major depressive disorder, and personality disorder. The report indicated that the defendant was fit to stand trial with Zoloft and that he was legally sane at the time of the offense.

¶ 6 Included in the record along with the presentence report was a psychological history of the defendant, provided by his mother and taken by licensed clinical social worker Christina Vitale on January 6, 2006. Vitale's history states, among other things, that the defendant became increasingly depressed after the death of his grandmother the year prior; that he was prescribed medication for

his depression; that he had a history of chronic depression and suicidal behavior resulting in three hospitalizations for attempted suicides; that he was under outpatient psychiatric care prior to the offense; and that despite his history of mental illness, he never received any ongoing formal psychiatric or mental health treatment. From this history, Vitale concluded that "there [was] indication of a prior psychiatric history, but details [were] *** unknown. [T]here was no indication of any serious cognitive defects. Rule out Depressive Disorder, NOS."

¶ 7 Also included in the record is a 1996 letter from the Social Services Department stating that the defendant denied any emotional or mental problems. In addition, the record contains a report of a psychological evaluation conducted and submitted in March of 1997 by Dr. Timothy Cummings after a prior arrest in which the defendant denied experiencing the symptoms of a mood disorder, denied having any history of hallucinatory or delusional symptomatology, and showed no indications of any psychotic manifestation. Based on his exam, Dr. Cummings declared that "the results of this evaluation do not reveal Mr. Campbell is suffering from any type of major mental illness."

¶ 8 During the sentencing hearing, the defendant's trial counsel made only a passing reference to the defendant's mental status, which he called "an abnormality. That has some basis or some life in matters that we are not really privy to and is articulated by the psychological report *** and is contained in his presentence report here."

¶ 9 In announcing the defendant's sentence, the trial court said:

"The evidence established beyond any doubt that the defendant *** shot down the mother of his three children in the presence of his four-year-old child without any provocation whatsoever.

This is one of the most horrific crimes that has been brought to this Court's attention while assigned to the criminal division. A more innocent victim, someone more undeserving of the fate that occurred to her than Sheila Hudson, this Court cannot imagine.

And the fact that this occurred in the presence of a 4-year-old child and was followed by conduct that threatened the health and safety of the victim's brother only further

aggravates the factual scenario ***.

This Court has considered all of the information contained in the presentence investigation report [and] the eloquent arguments of [defense counsel] ***.

But given the violence and the nature of this particular offense, I have to say that I am surprised that that is the situation because it is just so incredible to this Court that a 34-year-old man would go and do something like this without any background violence whatsoever. But that's what happened.

*** And I don't understand how, based on your family background, Mr. Campbell, and the advantages you had in your life, that you could engage in this kind of conduct. It is inexplicable.

I have considered the fact that the defendant has no prior criminal background at least of a felony nature. I have considered the nature of this offense, which is very aggravating for the reasons previously stated. I have considered the potential for the defendant to be rehabilitated with the assistance of family.

*** You are sentenced to 38 years in the Illinois Department of Corrections."

¶ 10 On appeal, the defendant's counsel filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and this court granted the motion and dismissed the defendant's appeal. *People v. Campbell*, No. 1-01-1081 (2002) (unpublished order pursuant to Supreme Court Rule 23).

¶ 11 On January 8, 2003, the defendant filed a pro se post-conviction petition, alleging, among other things, that his trial counsel was ineffective for failing to mention his mental illnesses at sentencing, and that appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness on direct appeal. In his petition, the defendant asserted that counsel should have emphasized his previous diagnosis of major depression with symptoms including feelings of sadness;

worthlessness; unhappiness; irritability; frustration; agitation; anger; and frequent thoughts of death, dying, or suicide. The defendant also would have had counsel mention his previous diagnosis of dysthymic disorder, a mild but chronic form of depression. Finally, the defendant would have had trial counsel note that these illnesses were severe enough to require treatment with medication. The State responded with a motion to dismiss the petition.

¶ 12 On March 28, 2006, the circuit court appointed an assistant public defender to represent the defendant, but the defendant petitioned to have her removed and proceed pro se. On March 12, 2008, the assistant public defender filed a Rule 651(c) certificate (Ill. S. Ct. R. 651(c) (eff. Mar. 12, 2008)) stating that defendant's petition adequately presented his issues and that she would not file a supplemental petition.

¶ 13 On January 7, 2010, the court granted the defendant leave to withdraw his initial post-conviction petition and file an amended petition. The court then allowed the amended pro se post-conviction petition to supplement the original 2003 petition. The State, whose original motion to dismiss remained pending, requested that its motion cover any new claims raised in the amended petition. The court granted the State's request and then granted the State's motion to dismiss, finding that the defendant failed to make a substantial showing of a constitutional violation. The defendant timely appeals.

¶ 14 On appeal, the defendant argues that the circuit court erred in dismissing his post-conviction petition. We disagree.

¶ 15 "The Post-Conviction Hearing Act provides a method by which a defendant may challenge his conviction or sentence for violations of federal or state constitutional rights." *People v. McNeal*, 194 Ill.2d 135, 140, 742 N.E.2d 269 (2000); *People v. Tenner*, 175 Ill.2d 372, 377, 677 N.E.2d 859 (1997). The scope of post-conviction review is limited to constitutional issues that have not been, and could not have been, previously adjudicated. *People v. Coleman*, 168 Ill.2d 509, 522, 660 N.E.2d 919 (1995). The Act sets out a three-stage process for reviewing post-conviction petitions in non-capital cases. 725 ILCS 5/122-1 et seq. (West 2008). At the first stage, the trial court

considers the petition without any input from the State and summarily dismisses it if it is frivolous and patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2008); *People v. Bocclair*, 202 Ill.2d 89, 99, 789 N.E.2d 734 (2002). If the trial court does not summarily dismiss the post-conviction petition, it advances to the second stage, where counsel is appointed to represent an indigent defendant and amend the petition as necessary. 725 ILCS 5/122-2.1(b) (West 2008); 725 ILCS 5/122-4 (West 2008); *People v. Edwards*, 197 Ill.2d 239, 246, 757 N.E.2d 442 (2001). After the defendant's counsel has made any necessary amendments to the petition, the State may move to dismiss it. 725 ILCS 5/122-5 (West 2008); *Id.* If the State does not file a motion to dismiss or the motion to dismiss is denied, it must answer the petition as it advances to the third stage. *Edwards*, 197 Ill.2d at 246; *People v. Pendleton*, 223 Ill.2d 458, 473, 861 N.E.2d 999 (2006). At the third stage, the trial court conducts an evidentiary hearing. *Edwards*, 197 Ill.2d at 246.

¶ 16 Here, the defendant's petition was dismissed at the second stage. The dismissal of a post-conviction petition is warranted at the second stage of proceedings 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 (2005); *Coleman*, 183 Ill.2d at 382. We review the court's dismissal of a post-conviction petition without an evidentiary hearing *de novo*. *Coleman*, 183 Ill.2d at 389.

¶ 17 The defendant argues that his petition made a substantial showing that he was deprived of effective assistance of both trial and appellate counsel. In determining whether a defendant received ineffective assistance of counsel, this court follows the two-prong test laid out in *Strickland v. Washington*, 46 U.S. 668 (1984). Under the *Strickland* test, a defendant arguing ineffective assistance of counsel must show that (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) the deficient performance prejudiced him by depriving him of a fair outcome. *Strickland*, 466 U.S. at 687. In order to show that the deficient performance of counsel prejudiced him, the defendant must show that there is a reasonable probability that, but for counsel's conduct, the result of the proceedings would have been different.

Strickland, 466 U.S. at 694. A reasonable probability is a probability sufficient to undermine the confidence of the outcome. *Id.* To prevail, the defendant must satisfy both the performance and the prejudice prongs of the Strickland test. *People v. Sanchez*, 169 Ill.2d 472, 487, 662 N.E.2d 1199 (1996).

¶ 18 In this case, the defendant argues that his appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness. However, "[a]ppellate counsel is not required to raise every conceivable issue on appeal, *** and it is not incompetence for counsel to refrain from raising issues that counsel believes are without merit." *People v. Barrow*, 195 Ill.2d 506, 522-23, 749 N.E.2d 892 (2001). Further, "unless the underlying issue has merit, there is no prejudice from appellate counsel's failure to raise an issue on appeal." *Barrow*, 195 Ill.2d at 523. Therefore, the defendant's claim of ineffective assistance of appellate counsel will succeed only if he can establish that his underlying issue-that trial counsel was ineffective-is meritorious.

¶ 19 The defendant argues that he made this showing by alleging that his trial counsel failed to emphasize his history of mental health problems, including possible depression and its symptoms, as mitigation at sentencing. According to the defendant, if counsel had emphasized these points, the circuit court would not have called his actions "inexplicable," and it would have imposed a lighter sentence. However, we conclude that the defendant has established neither prong of the Strickland test.

¶ 20 On the first prong, "defense counsel cannot be faulted for failing to introduce mitigation evidence that was already contained in the presentence report." *People v. Griffin*, 178 Ill.2d 65, 87, 687 N.E.2d 820 (1997). The presentence report here described the defendant's diagnosis of depression and stated that he took medication. Thus, the information the defendant would have had trial counsel introduce was already presented in the presentence report, and trial counsel cannot be ineffective for failing to introduce it again.

¶ 21 On the second prong, even if we were to accept the defendant's position that his trial counsel failed to argue his mental illness as a mitigating factor, we would see no resulting prejudice. In this

context, in order to establish prejudice from trial counsel's ineffectiveness, the defendant must establish that, but for trial counsel's failure to highlight his mental illness at sentencing, he would have received a lighter sentence. See Griffin, 178 Ill.2d 65 (addressing ineffective assistance claim by determining whether there was a reasonable probability that, absent trial counsel's alleged deficiencies, the court would have found that the mitigating circumstances precluded the sentence). As noted above, even without argument from counsel, the trial court was provided a presentence report that detailed the defendant's mental health problems. Further, included in the record along with the report were the full evaluations from a psychiatrist and psychologist who diagnosed the defendant with possible depression and noted he was treated with multiple medications. Absent some indication to the contrary, reviewing courts presume that a trial court considered any mitigating evidence before it. *People v. Thompson*, 222 Ill.2d 1, 45 (2006). Because the defendant offers no evidence, aside from the sentence itself, that the trial court failed to consider the mitigating evidence, we must assume that the trial court properly considered it. See *People v. Jarrell*, 248 Ill.App.3d 1043, 1051, 618 N.E.2d 944 (1993) (a trial court need not articulate the process by which it determines the appropriateness of a given sentence); *People v. Tirado*, 254 Ill.App.3d 497, 193, 626 N.E.2d 1114 (1993) (the trial court need not expressly indicate its consideration of mitigating factors, and absent evidence to the contrary other than the sentence imposed, is presumed to have considered mitigating factors brought before it); *People v. Powell*, 159 Ill.App.3d 1005, 1011, 512 N.E.2d 1364 (1987) (where the presentence report is before the court, it is presumed that the court considered the defendant's potential for rehabilitation). Because the circuit court was exposed to, and considered, all mitigating evidence, no prejudice exists due to trial counsel's failure to highlight it further.

¶ 22 Based on the above discussion, we conclude that the defendant failed to establish that he was denied effective assistance of trial counsel due to counsel's failure to raise his mental illness as mitigation during sentencing. In light of our determination that trial counsel was not ineffective, we cannot say that appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness. Therefore, the trial court did not err in dismissing the defendant's petition for lack of a substantial

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showing that his constitutional rights were violated.

¶ 23 For the forgoing reasons, we affirm the judgment of the circuit court.

¶ 24 Affirmed.