

June 28, 2013

No. 1-11-1306

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 95 CR 20806 (3)
	)	
ANGEL ROSADO,	)	
	)	
Defendant-Appellant.	)	Honorable Dennis J. Porter,
	)	Judge Presiding.

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Justice Simon delivered the judgment of the court.

Presiding Justice Harris and Justice Quinn concurred in the judgment.

**ORDER**

- ¶ 1 *HELD:* Denial of defendant's postconviction claim of ineffective assistance of counsel for failing to move to suppress defendant's statement following an evidentiary hearing was proper where defendant's claim was untimely and defendant failed to raise the issue of the voluntariness of his statement for years and the trial court's credibility determinations of witnesses' testimony at evidentiary hearing supported finding that a motion to suppress would not have succeeded.
- ¶ 2 *HELD:* Dismissal of defendant's claim of ineffective assistance of trial counsel for failure to attack the credibility and testimony of a witness in his amended postconviction petition at second stage of proceedings was proper where defendant's claim was untimely

and defendant failed to demonstrate prejudice.

¶ 3 On February 3, 1999, following a simultaneous but severed bench trial, defendant Angel Rosado was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 1995)). On March 9, 1999, defendant was sentenced to a term of 39 years' imprisonment. Defendant filed a direct appeal contending that he suffered ineffective assistance of counsel for failing to file an answer in discovery or properly prepare for trial, failing to file a motion to suppress defendant's statement, and several other deficiencies during trial. Defendant also argued that his sentence was excessive. On February 27, 2001, this court entered an order affirming defendant's conviction and sentence. *People v. Rosado*, 1-99-1423 (2001) (unpublished order pursuant to Supreme Court Rule 23).

¶ 4 On April 24, 2003, defendant filed the underlying *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2002)) (Act). Defendant filed a *pro se* "addendum" to the petition on January 6, 2006. On March 25, 2009, a supplemental petition was filed by defendant's appointed counsel. Defendant asserted, *inter alia*, several claims of ineffective assistance of counsel and an actual innocence claim. The State moved to dismiss the petition, which the trial court granted in part and denied in part, allowing one ineffective assistance claim and the actual innocence claim to advance to a third stage hearing.

¶ 5 Defendant argues on appeal that after the hearing, the trial court erred in denying his claim that he suffered ineffective assistance of counsel for failing to file a pretrial motion to suppress his statement to the police. Defendant also contends that the trial court erred in

dismissing his claim of ineffective assistance of counsel for his failure to attack the credibility of the State's witness William Rivera. For the following reasons, we affirm the judgment of the trial court.

¶ 6

## I. BACKGROUND

¶ 7 As noted above, on February 27, 2001, this court entered an order affirming defendant's conviction for first degree murder and sentence of 39 years' imprisonment. *People v. Rosado*, 1-99-1423 (2001) (unpublished order pursuant to Supreme Court Rule 23). The parties cited liberally to the record from that appeal and the transcripts from his simultaneous, severed bench trial with codefendant Neftaly Rodriguez. While that record is not a part of the record on this appeal, we present facts from the 2001 order of this court as background in addition to the postconviction record before this court.

¶ 8 Defendant was represented by privately retained counsel at trial. After a pretrial plea conference, defendant chose to advance to trial, refusing a 30-year sentence offered by the court instead of his request for a 20-year sentence. At trial, the evidence showed that on April 13, 1995, the victim, Dennis Rodriguez, was beaten and fatally shot during a gang-related altercation near North Sacramento Avenue and North Willets Court in Chicago, Illinois.

¶ 9 Ylara Soto, the victim's sister, testified as a life and death witness. Defendant's counsel cross-examined Soto about whether she knew if the victim was armed during the fatal altercation. The State attempted to call a doctor in place of a doctor who was out of the country concerning the medical examiner's report, but the trial court sustained defendant's and codefendant's objections.

¶ 10 Dana Ford testified that she was on her back porch on North Sacramento Avenue on the

date of the altercation when she heard a gunshot from the front of her home. She then heard a second gunshot when she walked toward her front yard. When she reached her front porch, Ford saw codefendant and another man walking away and she called the police. Ford later saw the victim's body in the back of the alley toward North Willets Court. Defendant's counsel cross-examined Ford about the streets in the area, but did not cross-examine the remaining witnesses.

¶ 11 Michael Storey, Jr. testified that he was a security officer at a restaurant near the altercation and when he heard there was a disturbance in the area he went to the parking lot and saw a person on the street firing a gun toward North Willets Court.

¶ 12 Randy Soto, a member of the Imperial Gangsters street gang with the victim, testified that he went to the Mega Mall on North Sacramento and Milwaukee Avenues on the date of the altercation and saw the victim in a store with his six-month-old baby. When Soto and the victim went outside to look at the victim's new car stereo a car passed by and occupants disrespected the Imperial Gangsters with hand signals. Soto responded and then returned into the mall with the victim because they were unarmed, but then moved the victim's car to the back of the mall to avoid trouble with the rival Insane Orchestra Albany gang from the area. When they reached the back of the mall, Soto saw a group of men armed with bats, sticks and "the Club," an automobile anti-theft device who asked if they were Imperial Gangsters and upon Soto's affirmative response, they chased the men into the mall. The victim left his baby with a store clerk and the men ran through the mall, out the front door, and outside until the victim stopped and said he could not run anymore. The victim attempted to defend himself but a gun was fired and the victim was wounded. Soto and the victim ran into an alley where the victim collapsed and was attacked by the men. The men dispersed when the police arrived, but Soto was unable to

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identify any of the perpetrators.

¶ 13 William Rivera, a former member of the Insane Orchestra Albany gang with defendant and codefendant, testified that he quit the gang before April 1995. However, on April 13, 1995, he was approached by two women in a vehicle who told him there were members of the Imperial Gangsters near West Fullerton and North Sacramento Avenues. He testified the two gangs were in a "standby" at that time, meaning they were uncertain whether to go to "war" or not, but he got into the vehicle because he said he would be beaten if he did not. They drove to an alley near the Mega Mall where he saw codefendant hit a man in the leg with a baseball bat and another man, "Tank", hit the man in his arm with a "Club." Defendant arrived and shots were fired from defendant's direction. Everyone left when the police arrived. Rivera was arrested later that night.

¶ 14 Sybil Thomas testified that she was the assistant State's Attorney who interviewed defendant on June 23, 1995, and took his statement. Defendant indicated that his nickname was "Playboy" and he was a "foot soldier" in the Insane Orchestra Albany street gang, meaning he worked "security," making sure other gangs did not intrude on their "territory." Defendant stated that his gang was "at war" with the Imperial Gangsters and this meant that if they saw defendant, they would shoot at him. He stated that on April 13, 1995, he was approached by "Tank," who gave him a gun to provide security, returned later to say there were Imperial Gangsters at the Mega Mall, and went with "Tank" there to fight them. Defendant carried the gun there in his waistband. When they arrived at the Mega Mall, defendant saw the victim and his friends standing outside the mall and they began to fight. "Tank" asked for the gun and then chased the men through the mall and out onto North Willets Court where defendant and codefendant beat

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the victim and "Tank" shot the victim in the back. Defendant left the scene alone and visited a friend.

¶ 15 Detective Daniel Engel testified that he and his partner investigated the incident, speaking to Dana Ford, investigated the crime scene, and took codefendant's statement. The parties stipulated to the medical examiner's report and rested. The trial court indicated that the primary evidence of defendant's guilt came from Rivera's testimony because he saw Tank and defendant involved in the beating and shooting. The court noted that defendant's statement corroborated much of Rivera's testimony and, alone would be sufficient to convict defendant on a theory of accountability. After defendant was convicted, defense counsel made an oral motion for a new trial based on insufficient evidence, which was denied. Following presentation of evidence in aggravation and mitigation by the parties, defendant was sentenced. A motion to reconsider was denied.

¶ 16 On direct appeal, defendant argued that he received ineffective assistance of trial counsel because: "1) trial counsel was unprepared for trial on the day trial began; 2) trial counsel never filed a motion to suppress defendant's incriminating statement; 3) trial counsel never filed an answer to discovery, which defendant argues, shows that counsel failed to investigate and interview witnesses; 4) trial counsel's participation in the trial was "virtually nonexistent"; 5) trial counsel did not make a motion for a directed finding; 6) trial counsel described defendant as "highly suspicious" during closing argument; 7) trial counsel never filed a written motion for a new trial; and 8) trial counsel did not present specific evidence in mitigation at the sentencing hearing." This court rejected each of these arguments, noting that several were insufficiently argued, conclusory or contained material misstatements of the record. On March 19, 2003,

defendant filed an affidavit of intent to file a petition for leave to appeal to our Supreme Court.

Defendant did file a petition for leave to appeal, but that was later rejected.

¶ 17 In the interim, defendant filed his *pro se* postconviction petition for relief on April 23, 2003. Defendant alleged he was denied a fair trial by the trial court's allowing the State and codefendant's counsel to make prejudicial and inflammatory remarks not based on the evidence, that he was not found guilty beyond a reasonable doubt because he conviction was based solely on Rivera's testimony, that he was denied effective assistance of counsel by counsel's failure to perfect an appeal, and that the trial court erred in entering judgment on intentional and knowing murder.

¶ 18 The State moved to dismiss the postconviction petition. On January 26, 2006, defendant filed a *pro se* "addendum" to the postconviction petition to assert a claim of actual innocence based on newly discovered evidence. Defendant attached the affidavits of Neftaly Rodriquez and Robert "Tank" Munoz. Rodriguez and Munoz averred that they were the men who beat the victim, that Munoz shot the victim as instructed by Rodriguez and defendant was not involved. Defendant attached an affidavit that he only learned of these facts on February 24, 2005, when Rodriguez admitted them to him in the yard at Dixon Correctional Center where they were imprisoned.

¶ 19 The Office of the Cook County Public Defender was appointed to represent defendant and filed a supplemental petition for postconviction relief. Defendant asserted that, while untimely, his petition should be heard because: defendant was not informed he had lost his appeal until about a year after it was decided; defense counsel had the trial transcripts for about a year and did not provide the transcripts until after a complaint was filed with the Attorney

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Registration and Discipline Commission; and defendant had not received a copy of the appellate briefs until February 21, 2003, after which he filed a petition for leave to appeal. In addition, defendant asserted that his petition must be allowed to proceed because he advanced a claim of actual innocence.

¶ 20 The supplemental petition also contained a claim of ineffective assistance of trial and appellate counsel for failing to argue that defendant's sentence was excessive and demonstrated that he was penalized for going to trial. Defendant also argued that the trial court relied on prejudicial and unreliable evidence by relying on Rivera's testimony, thereby also exposing defendant to ineffective assistance of counsel for failing to discredit Rivera's testimony based on inconsistencies with evidence and also Rivera's credibility. And, for the first time, defendant asserted that trial counsel was ineffective for failing to move to suppress defendant's statement on the grounds that it was involuntary and obtained in violation of his right to counsel. The State moved to dismiss defendant's supplemental petition.

¶ 21 The State argued that the petition was untimely and defendant failed to demonstrate a lack of culpable negligence in failing to file a timely petition as well as arguing substantive grounds for dismissal. The trial court agreed that defendant failed to demonstrate that he was free from culpable negligence. The court highlighted that there was no evidence that the attorney that allegedly withheld the trial transcripts was defendant's attorney or any specific details of when or how defendant was obstructed from timely filing. The trial court added that there were "other reasons" that defendant was culpably negligent and noted that, even if not, his petition would be barred by *res judicata* or waiver or be dismissed as frivolous. Nonetheless, the trial court considered defendant's substantive claims.



¶ 22 Of importance to this appeal, the trial court dismissed defendant's claim that trial counsel was ineffective for failing to challenge Rivera's testimony. The court noted that cross-examination is typically an issue of trial strategy and will not by itself support a claim of ineffective assistance, but a complete failure to impeach a sole eyewitness when impeachment is available is not trial strategy. However, the trial court pointed to defense counsel's argument stressing that Rivera had not testified to seeing a gun in defendant's hand. The trial court continued to reason that, even if deficient, defendant did not suffer prejudice because it would not overcome defendant's own confession implicating himself in the crime.

¶ 23 At the evidentiary hearing, defendant testified that he was 19 years-old at the time of the shooting and a foot soldier for the Insane Orchard Albany street gang. Defendant was picked up by the police the evening of June 21, 1995, and taken to the police station. The lockup officer told defendant that he was being held for disorderly conduct. He was allowed to make a call in private and was not handcuffed. Defendant called his grandmother, who called his attorney, Earl Washington, who in turn was connected to defendant. Defendant spoke with Washington, but Washington did not speak to any of the police personnel.

¶ 24 Defendant was then transported to the larger Area 5 police station. Defendant was placed in a lock up room and handcuffed to the wall before being placed in a lineup and then returned to the room. Two detectives then questioned defendant about a murder. Defendant testified that he requested another phone call at this time to talk to his attorney, but the detectives told him that he had already made his phone call.

¶ 25 Defendant testified that he originally denied involvement in the fighting or murder of the victim and the detectives responded by choking and punching him. He said that the detectives

told him he was lying and continued this process through the night. He testified that the detectives told him if he identified Munoz as the shooter, he "would come out all right." Eventually defendant agreed and gave a written statement to an attorney with the detectives present. Defendant stated that his statement was provided by the detectives and was not based on his own actual knowledge of what happened because he was not at the scene of the crime. He testified that he simply agreed with what they said, implicated Munoz, and thought that he would then be released.

¶ 26 Defendant was transported back to the police station he originally was taken to and then was brought to court for a bond hearing where he was represented by a public defender. The next day he was able to call his attorney. Defendant told his attorney that he was charged with murder and told him everything about his statement, how the detectives had beaten him, and that he was not allowed a second telephone call. His attorney told him not to worry about it.

¶ 27 On cross-examination, defendant testified that he came to court with Robert "Tank" Munoz and Neftaly "Silent" Rodriguez, his codefendants in the case and formerly members of the same street gang. In denying that he was read his *Miranda* rights, defendant stated that "They don't read the rights in our neighborhoods. They just arrest us." He also testified that the State's Attorney did not advise him of his rights but only informed him that she was not his attorney. Defendant stated that he told her that he was fine and treated fine because the detectives were in the room at the time.

¶ 28 Defendant stated that he told his attorney that he was beaten and the police fabricated his statement when they initially met. Therefore, he did not reiterate the fact his confession was coerced again to his attorney. Defendant also responded that his appellate attorney knew about

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his treatment and the statement so he did not feel the need to repeat the fact that he was beaten by the police and gave a false statement. He stated that he also was told prior to his trial to remain quiet, therefore he did not mention this during trial either.

¶ 29 Munoz testified that he shot the victim, firing two to three times in his direction, and codefendant Rodriguez beat the victim with "the Club." Munoz testified that he knew of defendant from the neighborhood did not personally know defendant in 1995. Munoz did know defendant at the time of the hearing. He admitted to the police that he was at the scene, but not the shooter. He testified that the detectives told him to say defendant was at the scene and was involved in the shooting and he used defendant as a scapegoat. Munoz admitted the did not acknowledge that he was the shooter until after his appeal had been decided.

¶ 30 The State presented the testimony of Sybil Thomas. Thomas testified that she was an assistant State's Attorney in 1995 and took defendant's statement at approximately 6 a.m. on June 23, 2005. Thomas testified that she informed defendant that she was a prosecutor and was not defendant's attorney. She advised defendant of his rights, and defendant indicated that he understood everything.

¶ 31 Thomas then spent about 10 to 15 minutes alone with defendant in an interview room. She asked if he was alright and offered a drink, a cigarette, and an opportunity to use the bathroom. She asked defendant what happened and prepared a summary of his statement. Thomas then asked if defendant would memorialized his statement and he reviewed her written statement and signed it.

¶ 32 Thomas testified that she always asked interviewees if they had been treated well when she advised them of their *Miranda* rights and she asked defendant if he had been treated well at

that time. He responded that he had been treated well and did not register any complaint when she interviewed him alone. Defendant never informed Thomas that he was tired either.

¶ 33 Lieutenant Wojcik also testified for the State. Wojcik testified that he was a detective assigned to Area 5 and he transported defendant there for questioning on June 22, 1995. He testified that he informed defendant of his *Miranda* rights and he and his partner questioned defendant. Wojcik told defendant that he had checked with the Cook County jail if defendant had been there on the date of the shooting. Defendant admitted that he lied that he was at the jail at the time of the shooting because he knew he had been named the shooter. Defendant then claimed that he was with two sisters at the time. Wojcik testified that they found and interviewed the woman defendant said he was with.

¶ 34 Wojcik stated that they again questioned defendant and advised defendant of his rights at this time. They informed defendant that the women stated they were not with defendant the day of the shooting. After the police showed defendant that they had the women at the station, defendant gave his statement implicating himself in the shooting. Wojcik testified that Thomas came to the station and took defendant's statement. He stated that defendant gave the statement and nobody else dictated the statement to Thomas.

¶ 35 The parties gave closing arguments and the trial court rendered an oral opinion. The trial court noted that the decision to file a motion to suppress is typically a matter of trial strategy. More importantly however, it opined that the testimony presented at the hearing would not have supported a successful motion to suppress. It rejected defendant's arguments that defense counsel's failing eyesight did not factor as counsel was a very experienced attorney at the time. The trial court found Thomas and Wojcik to be more credible than defendant and Munoz. The

trial court noted that there is no evidence that defendant's will was broken as he continued to maintain his innocence after the police twice disproved his alibi. Only when presented with the women he claimed supported his alibi did defendant finally confess.

¶ 36 In denying the actual innocence claim, the trial court explained its reasoning for finding that testimony by Munoz inconsistent with his original statements to the police demonstrated his lack of credibility. Munoz's appeal was final and he was serving his sentence and due to be released in 2014. This factor further damaged his credibility because his sentence could not change no matter what he said, and the trial court opined that this freed Munoz to say whatever he wanted. The trial court concluded that the evidence supports defendant's conviction and denied the petition.

¶ 37

## II. ANALYSIS

¶ 38 The Act provides a means for a criminal defendant to seek relief where he has suffered a substantial denial of his constitutional rights. *People v. Rossi*, 387 Ill. App. 3d 1054, 1059 (2009). The Act requires a petitioner to file his petition within three years of the date of his conviction. 725 ILCS 5/122-1(c) (West 2002). However, under the Act, a petitioner may be allowed to advance an untimely postconviction petition where he alleges facts showing that the delay in filing was not due to his culpable negligence. *People v. Cruz*, 2013 IL 113399, ¶ 19.

¶ 39 At the first stage of postconviction proceedings, the trial court undertakes a facial review of the petition to determine if it is frivolous or patently without merit. Our supreme court has recognized a low threshold for a *pro se* petitioner at the first stage of postconviction proceedings. To withstand dismissal, a *pro se* defendant must merely allege enough facts, with supporting

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affidavits, records or other evidence, to support the “gist” of a constitutional claim. *People v. Hodges*, 234 Ill. 2d 1, 11 (2009). If the court determines that the petition is either frivolous or patently without merit, the court must dismiss the petition in a written order. 725 ILCS 5/122-2.1(a)(2) (West 2002).

¶ 40 If the petition survives to proceed to stage two, section 122-4 of the Act (725 ILCS 5/122-4 (West 2002) provides for counsel to be provided for an indigent defendant, who may file an amended petition. *People v. Bocclair*, 202 Ill. 2d 89, 100 (2002). At this second stage, the State must answer or move to dismiss within 30 days. 725 ILCS 5/122-5 (West 2002). The Act is not an avenue for a defendant to simply rephrase an issue previously addressed on direct appeal. *People v. Simpson*, 204 Ill. 2d 536, 559 (2001). To be successful in his petition, a defendant must demonstrate that his rights were substantially deprived in the proceedings against him and that his challenge has not been raised and could not have been adjudicated earlier. Issues that could have been raised on direct appeal or in prior proceedings, but were not, are procedurally defaulted. Previously decided issues are barred by the doctrine of *res judicata*. *Whitfield*, 217 Ill. 2d at 183.

¶ 41 Appellate review of a trial court’s dismissal of a postconviction petition without an evidentiary hearing is *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 380-89 (1998). We review the trial court’s judgment, not the reasons cited, and we may affirm on any basis supported by the record if the judgment is correct. *People v. Lee*, 344 Ill. App. 3d 851, 853 (2003). At this stage, factual disputes not rebutted by the record must be resolved in a third-stage evidentiary hearing. *People v. Whitfield*, 217 Ill. 2d 177, 200 (2005). Determinations by a postconviction

court following a third stage evidentiary hearing will not be reversed on review unless they are manifestly erroneous. *People v. Montgomery*, 192 Ill. 2d 642, 654 (2000). Particular deference is given to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the witnesses, and we will not substitute its judgment for that of the trial court regarding the credibility of the witnesses, the weight to be given to the evidence, or the inference to be drawn. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 42 The State argues that defendant did not file a timely postconviction petition under the Act as he was found guilty on February 3, 2009, sentenced on March 9, 1999, but did not file his postconviction petition until April 23, 2003, more than four years after his conviction.

Furthermore, the State asserts that defendant's claims do not rely on newly discovered evidence and defendant's claim that he was unable to obtain the trial transcripts is not only unsubstantiated, but unavailing under *People v. Diefenbaugh*, 40 Ill. 2d 73, 74-75 (1968). We agree that the trial court properly determined that defendant failed to prove that he was free of culpable negligence and the record supports dismissal of his petition.

¶ 43 Forfeiture notwithstanding, we also agree that the trial court properly denied and dismissed defendant's claims of ineffective assistance of counsel on substantive grounds.

Defendant contends that the trial court erred in dismissing his claim of ineffective assistance of counsel for the failure to challenge the credibility of State's witness William Rivera. He also argues that the trial court erred in denying, after a third stage hearing, his ineffective assistance claim for failing to move to suppress his statement.

¶ 44 A claim of ineffective assistance of counsel is reviewed under the standard announced by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 694, 80 L. Ed. 2d 674, 698, 104 S. Ct. 2052, 2068 (1984). Under *Strickland*, to determine whether there has been a violation of the defendant's sixth amendment right to effective assistance of counsel, the defendant must show: (1) that his counsel's "representation fell below an objective standard of reasonableness;" and (2) that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 80 L. Ed. 2d at 698, 104 S. Ct. at 2068; *People v. Shatner*, 174 Ill. 2d 133, 144 (1996). A strong presumption exists that counsel's conduct fell within the range of reasonable professional conduct. *Strickland*, 466 U.S. at 689, 80 L. Ed. 2d at 694, 104 S. Ct. at 2065. If the second prong cannot be satisfied, a reviewing court need not consider the first prong. *Strickland*, 466 U.S. at 697, 80 L. Ed. 2d at 699, 104 S. Ct. at 2069.

¶ 45 In this case, defendant has only presented broad assertions that he was mistreated and that counsel failed to move to suppress his statement or effectively attack Rivera's testimony. The trial court found the testimony and affidavits of defendant, Munoz and Rodriguez incredible and the testimony of Thomas and Wojcik credible. Therefore, it determined that defendant's inculpatory statement supported his conviction and did not support defendant's arguments in his postconviction petition. We agree.

¶ 46 The record indicates that defendant was picked up on June 22, 1995, and questioned by the police. According to the testimony that the trial court found credible, defendant was repeatedly advised of his *Miranda* rights while in custody. Defendant was told by the police that



they discredited his alibi, and defendant admitted he lied and presented a new alibi. The police then immediately went about disproving this second alibi and defendant ultimately admitted to his involvement in the crime.

¶ 47 Thomas arrived at the police station the morning of June 23, 1995, advised defendant of his rights and interviewed him. Thomas did not see any indications of harm to defendant or that he was under any duress. Thomas met with defendant alone for 10 to 15 minutes and defendant did not indicate that he had been mistreated or that he was forced to make a false confession. Defendant waived his rights and confessed in a written statement memorialized by Thomas. Defendant signed the statement that also indicated that he gave the confession freely.

¶ 48 There were no specific allegations, no evidence that defendant suffered mental or physical trauma, and no witnesses to any abuse. In fact, defendant filed a direct appeal, a *pro se* postconviction petition and a supplemental petition before this claim was finally made in his supplemental petition in 2009, almost 14 years after he was arrested. Defendant testified that he told his attorney initially that his statement was false and never repeated this allegation until 2009 because his attorneys knew or already knew about the alleged beating.

¶ 49 Accordingly, based on this record and the trial court's credibility determinations at the hearing and the facts of record, defendant's statement confessing his involvement in the beating and shooting was sufficient evidence to support his conviction. Counsel cannot be said to be ineffective for failing to file a meritless motion. Based on the evidence and credibility determinations of the court, counsel was not ineffective for failing to move to suppress

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defendant's statement based on these false allegations or to attack Rivera's testimony as defendant argues.

¶ 50 Defendant alleges that Rivera should have been impeached with the fact that he had a prior juvenile adjudication and that the inconsistencies in his testimony required cross-examination. As the trial court stated in its order at the second-stage proceedings, discrediting Rivera or attacking his testimony would not change defendant's confession. Furthermore, the court was aware of Rivera's infirmities as a witness and their affect on his credibility and highlighting them would not have affected the outcome of the trial. Accordingly, the second prong of *Strickland* was not met, defendant did not suffer ineffective assistance of counsel on the grounds asserted, and the rejection of his claims was proper. Judgment of the trial court is affirmed.

¶ 51

### III. CONCLUSION

¶ 52 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 53 Affirmed.