

No. 1-11-1913

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County
	)	
v.	)	No. 06 CR 2627
	)	
GREGORY WILLIAMS,	)	Hon. Joseph M. Claps,
	)	Judge Presiding
Petitioner-Appellant.	)	
	)	

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in summarily dismissing defendant's *pro se* postconviction petition alleging ineffective assistance of counsel where defendant failed to state the gist of a claim for ineffective assistance of counsel.

¶ 2 Defendant Gregory Williams was indicted on a number of charges, including aggravated criminal sexual assault and aggravated kidnaping, stemming from events involving a woman referenced herein as "Jessica." Following a Supreme Court Rule 402 conference (Ill. S. Ct. R. 402 (eff. July 1, 2012) (the Rule 402 conference)), the court told the parties that if defendant pled

1-11-1913

guilty to the charges he would be sentenced to a 21-year prison sentence in the instant case involving Jessica, consecutive to a 20-year sentence in an unrelated case with similar charges.

Defendant declined to accept that disposition. After a bench trial, defendant was convicted and sentenced to aggregate consecutive sentences of 66 years in prison in the instant case.

¶ 3 Defendant filed a *pro se* postconviction petition alleging, among other things, that his trial attorney was ineffective for advising him to go to trial because the plea offer was "too much time." In a written order, the trial court dismissed the petition, finding defendant's claims to be "frivolous and patently without merit." The trial court stated, among other things, that defendant failed to "corroborate his claims with any supporting affidavits or documents" or to "explain why he was prevented from including the required documentation with his petition." The court further noted that "[n]othing about counsel's advice to [defendant] is unreasonable or misleading" and defendant did not "show that he would have accepted the plea had counsel acted differently."

¶ 4 On appeal, defendant contends that summary dismissal of his petition should be reversed because he "set out a legally and factually arguable claim of ineffective assistance of counsel where he claimed that he was not properly advised about the potential sentences and was given erroneous advice about his chances at trial, since the plea offer was nearly the minimum sentence for these offenses and the State's evidence of his guilt was overwhelming." Defendant further contends that the petition meets the "procedural requirements" of the Post-Conviction Hearing Act (725 ILCS 5/122-1, *et seq.* (West 2010) (the Act)) or that his failure to meet such requirements "is excused."

¶ 5 For the reasons stated below, we affirm the decision of the trial court.

¶ 6 BACKGROUND

¶ 7 Events Prior to Trial

¶ 8 A grand jury indicted defendant on a number of charges, including multiple counts of aggravated criminal sexual assault and aggravated kidnaping, in connection with events on January 9, 2006, involving Jessica. In February, 2006, defense counsel requested, and the court ordered, a behavioral clinical examination for both "fitness and sanity."

¶ 9 Roni L. Seltzberg, M.D., a staff forensic psychiatrist at Forensic Clinical Services who evaluated defendant at least four times in 2006 and 2007, opined that defendant was (a) fit to stand trial with medications, (b) was legally sane at the time of his alleged offenses, and (c) "has the ability to understand Miranda." In a letter to the court filed November 30, 2007, Dr. Seltzberg stated that "[w]hile cocaine intoxication may have resulted in a 'substantial disorder of thought, mood or behavior' at the time of his alleged offense which could have impaired his judgment, it was not to the extent that he would have been unable to appreciate the wrongfulness of his behavior."

¶ 10 In December, 2006, the Public Defender's office retained a psychiatrist to evaluate defendant. At a hearing in January, 2008, assistant public defender Margaret Domin stated that she received Dr. Seltzberg's report, but it was not clear from the report whether Dr. Seltzberg and Dr. Carl Wahlstrom, the defense expert, agreed "[o]n whether or not [defendant] is *** guilty but mentally ill because that would save a lot of time and even avoid a trial."

¶ 11 On March 11, 2008, the court held the Rule 402 conference. The conference apparently related to two cases: the instant case – 06 CR 2627 – and 06 CR 2625. Although the record

1-11-1913

contains very limited information regarding the second, unrelated case, the appellate briefs filed herein indicate that case involved a different victim but similar facts. Following the conference, the court offered defendant "on the first case, 20 years; on the second case, 21 years consecutive."¹

¶ 12 On August 25, 2008, the scheduled trial date, Ms. Domin stated, in part, as follows:

"The defense is guilty but mentally ill, but technically isn't an affirmative defense. But I don't know given a jury, I have to ask my client because his position is completely changed today."

After an exchange between the trial court and defendant about whether defendant wanted a jury trial, defendant indicated he wanted a bench trial. Defendant then stated that although Ms. Domin was a "good person" and "did a lot to help [him] on [his] case," he was "really not comfortable with a female" representing him. After defendant spoke with Ms. Domin's supervisor – and the court confirmed that defendant's sole complaint was his concern about her gender – defendant agreed to Ms. Domin's continued representation. Defendant also waived his right to a jury trial.

¶ 13 Trial

¶ 14 After the attorneys waived opening statements, Jessica testified that at approximately 7:10 a.m. on January 9, 2006, she was walking near Cicero Avenue and Madison Street from a

¹ Although there is some ambiguity in the record and the parties' appellate briefs, our understanding is that the 21-year offer related to the instant case and the 20-year offer related to the other case. Even if our understanding is incorrect, *i.e.*, the 20-year offer related to the instant case, it does not affect our analysis herein.

1-11-1913

hotel to her home approximately one block away. Defendant walked in front of her and asked if she had a brother who had clothes he could have because the police were looking for him; Jessica had never seen defendant before. Jessica said she did not and kept walking. Defendant then grabbed Jessica's arm and said he had a gun. Defendant told her all she had to do was walk to his baby's mother's home. Defendant's hand was in his pocket; he did not show her a gun.

¶ 15 Jessica testified that as she and defendant walked together, the side of his body was pressed against her. Approaching an intersection, Jessica saw her mother and brother at a bus stop; Jessica told defendant that the two were her mother and brother. Defendant told Jessica to "[j]ust be cool." As defendant and Jessica approached her mother and brother, defendant instructed Jessica to "just tell them that [she] was walking him home." Jessica testified, "I said it, but it's like I mumbled it." Defendant and Jessica continued walking past her mother and brother.

¶ 16 Defendant and Jessica arrived at an apartment building and went into an apartment at the top floor. Jessica testified that no one else was in the apartment. Defendant told Jessica to look out of the window to see if any police were coming; she looked and there were no police. Jessica looked around the room for something to hit defendant with and saw a comb with a sharp end, but defendant took it.

¶ 17 Defendant told Jessica to remove her clothes, and he put a pornographic movie on the television. When she did not remove her clothes immediately, defendant went into the kitchen, got a knife and returned to Jessica, saying he was not negotiating with her anymore. Defendant put the knife to her neck with the blade touching her skin. After telling her to remove her clothes, defendant had Jessica get on her knees and slapped her face. Defendant told Jessica to

1-11-1913

perform oral sex on him; as she performed oral sex, he smoked cocaine out of a pipe. Then he told Jessica to lie down, and he performed oral sex on her. Defendant then forced intercourse on Jessica, as she scratched and bit him and tried to push him off.

¶ 18 Jessica testified that defendant apologized to her and told her to dress. Defendant brought in a baby from another room and made Jessica hold and feed the baby. After Jessica used the bathroom, defendant gave her the telephone and told her to call the police. Jessica did not call the police; she testified she knew that defendant was trying to see if she would call so he could hurt her. Defendant then went to another room and got a purse; he asked Jessica if it looked "okay." She said "yes," and he offered to walk Jessica home. Jessica said she would "be okay." After Jessica and defendant left the apartment, he walked behind her until, at some point, she was able to walk away without the defendant following her. Jessica then saw a police officer and told her what had happened. The police took her to hospital and afterwards to the police station, where, at approximately 5:45 p.m., Jessica identified defendant in a line-up.

¶ 19 On cross-examination, Jessica testified that before entering the apartment, defendant made her check if the police were in the apartment. She testified that she did not remember hearing the door lock. Jessica further testified that, after his apology, defendant said he felt like killing himself. After Jessica's testimony, the parties stipulated to the admission of the police line-up photograph. The parties also stipulated that biological samples collected at the hospital from Jessica's vaginal area matched defendant's DNA.

¶ 20 Jessica's mother, Beatrice T., testified that she saw defendant walking with her daughter on the morning on January 9, 2006. Beatrice testified that Jessica "looked very afraid" and that

1-11-1913

Jessica "never looked" at her. Beatrice asked her daughter where she was going; Jessica did not respond. Defendant said, "she's walking me home." Beatrice then said that "it should be the other way around," *i.e.*, defendant walking Jessica home. The court questioned Beatrice about her activities on the morning of January 9 and her understanding of Jessica's whereabouts.

Beatrice testified that Jessica had not spent the night at home. When Beatrice and Jessica spoke on the telephone at approximately 6:30 that morning, Jessica indicated that she was going to look at apartments with her mother and would "be there at 7:00 o'clock."

¶ 21 Detective Elizabeth Miller testified that she and another detective were assigned defendant's case. At approximately 7:30 p.m. on January 9, 2006, Miller had a conversation with defendant. The other detective advised defendant of his Miranda rights, and defendant said he understood his rights.

¶ 22 According to Detective Miller's testimony, defendant told her and the other detective the following during a series of conversations. After defendant left his apartment to buy cigarettes, he saw Jessica and started walking and talking with her. Jessica told defendant that she was going home and that she had been with her boyfriend. Jessica "asked him for a phone number and he told her he didn't have a cell phone or a phone at home." He stated that she asked him if he had any children, and he said he had a two-month old daughter. She then asked him if his daughter looked like him, and he told her to come to his apartment to see her. As they approached Jessica's mother and brother at a bus stop, Jessica told her mother she was going to walk her friend home. After arriving at defendant's apartment building, Jessica told him that she did not feel comfortable going inside because she had a boyfriend, but defendant convinced her

1-11-1913

by telling her to come in and see his daughter. He said he knew it would be okay to take her up in the apartment because his girlfriend was at work.

¶ 23 Detective Miller then testified that defendant said that after he and Jessica entered his apartment, he "got his daughter and he changed her and made her a bottle." He stated that he let Jessica feed the baby. As Jessica fed the baby, defendant put on a pornographic movie and starting smoking crack cocaine. When he had finished smoking and Jessica had given the baby a bottle and put the baby to bed, defendant sat down on the sofa next to Jessica and "started coming on to her."

¶ 24 According to Detective Miller, defendant stated that he told Jessica to take off her clothes and "that if she took her clothes off he wouldn't hurt her." Miller testified that defendant "said he had to force her legs apart" to perform oral sex on her and that he then "grabbed her by the hair and made her orally copulate him." Defendant then stated that he laid Jessica on the floor and began having vaginal intercourse with her. Miller testified that defendant "could tell that she didn't like it, she was just laying there but that he did it anyway."

¶ 25 Detective Miller then testified that defendant stated that when he "was done he got up, went back and got his baby." Defendant told the detectives that he saw that Jessica was crying, he apologized to her, and he told her that he knew what he did was wrong and that if she wanted to call the police, she could. According to Detective Miller's testimony, defendant then stated that "he made the baby another bottle, Jessica had gotten dress [*sic*], fed the baby the bottle and he allowed her to leave and he walked her out of the apartment." Detective Miller testified that she called the state's attorney after an identification was made in a line-up; defendant would not

1-11-1913

Speak with the state's attorney.

¶ 26 On cross examination, Detective Miller testified that at one point during their conversation, defendant asked Miller to leave the room. Miller stated that initially defendant spoke with the other detective but after the other detective was done speaking with defendant, "he came out and we conferred about what he had talked about and then I went back in the room and we went over it again." Miller testified that defendant told her that he hears voices telling him to do bad things and that he was sexually abused by his cousins when he was young.

Defendant was crying "[t]owards the end" of their conversation. When asked by defense counsel, "And he never told you that he grabbed this woman out on the street, correct?" Miller responded "[c]orrect."

¶ 27 The defense moved for a directed finding, which the court granted with respect to eleven counts. The defense then called Dr. Wahlstrom, a physician specializing in forensic psychiatry who examined defendant in jail for approximately three hours in June, 2007. Dr. Wahlstrom testified that the purpose of the examination "was to determine the nature and extent of any mental illness that might be present in Mr. Williams and to what effect that may have had on the offense that he is charged with, along with looking at issues regarding fitness, mental fitness to stand trial." Before his examination, Dr. Wahlstrom reviewed a number of documents, including police records and health reports from the Cook County Jail health facility. He also reviewed Chicago Reed Mental Health Center records for the defendant from 1987, various medical and mental health records from seven correctional centers, and Forensic Clinical Services psychiatric summaries and notes.

1-11-1913

¶ 28 Dr. Wahlstrom testified that defendant was on psychiatric medications at the time of his examination and that defendant had a "long standing history of mental illness beginning in childhood." Defendant was an abused child and had past diagnoses of mental illness, including schizophrenia. When asked his opinion "to a reasonable degree of medical and psychiatric certainty as to whether [defendant] was suffering from a mental illness at the time of the offense," Dr. Wahlstrom responded:

"That he was suffering from *** mental illness and at the time of the offense, and that those illnesses were in my opinion substantial disorders of thought, mood, and behavior and they affected his judgment and perceptions but not to the extent that he lacked substantial capacity to appreciate the criminality of his conduct."

Dr. Wahlstrom further opined that defendant, at the time of the doctor's testimony, suffered from "schizophrenia paranoid type, a major depressive disorder that was recurrent in partial remission, cocaine abuse, and borderline intellectual functioning." When asked his opinion as to whether defendant was insane at the time of the offense, Dr. Wahlstrom opined that he did not meet the legal criteria for insanity at that time.

¶ 29 After defendant declined to testify and the defense rested, the State questioned Dr. Seltzberg as a rebuttal witness. Dr. Seltzberg testified that, in addition to interviewing defendant several times, she reviewed various records and Dr. Wahlstrom's report. When questioned about her professional opinion regarding whether defendant was mentally ill at the time of the offense, Dr. Seltzberg testified, in part:

[W]hile Mr. Williams does have a history of some psychiatric disturbances that at the

1-11-1913

time of the commission of the offenses the really only disturbance that was associated with the incidents involved was cocaine intoxication. Cocaine intoxication can be considered a disturbance of mood, thought or behavior, which afflicted a person and carries judgment, but not to the extent that he could not appreciate the material act of his conduct. So that if cocaine intoxication is considered by your Honor, by the court to be, to fulfill the criteria, that that's at your discretion. But based on my training in forensic psychiatry and expertise, substance intoxication is generally not considered in the forensic field, from my experience, to be consistent with the type of disorder that's generally considered to be something that would be accepted as a mental illness."

Dr. Seltzberg did not believe there was information to support a diagnosis of schizophrenia. She also testified that "there really was little reason to doubt" her initial impression that defendant was malingering, noting that "the symptoms that he presented with were not consistent with a psychotic mental illness nor with a mood disturbance or mental retardation."

¶ 30 In closing arguments, defense counsel argued that for "each and every count with respect to the element of knowledge or intention, we would rely on Dr. Wahlstrom not to the point where it affected that he knew he was doing, obviously, it's not an insanity defense, Judge, but based on on [*sic*] the mens rea we would argue that he was mentally ill at the time of the offense."

Defense counsel confirmed the court's clarification that the defense's position was that its expert's opinion "is that the defendant is responsible for his actions but mentally ill."

¶ 31 Defense counsel further argued, in part, that:

Certainly, you heard the facts and we had facts that showed that [Jessica] entered

1-11-1913

this building, [Jessica] was given a cell phone, [Jessica] was in a building with many entrances or at least one, more than one entry and exit, that she saw her 19-year-old brother and her mother at a bus stop, she did not cry out within arm's length was her testimony.

Judge, we would argue that she was not confined against her will for each and every charge which includes the charges of kidnaping or aggravated kidnaping.

* * *

With respect to a threat of force, your Honor, I don't believe the State in the two, the burden of beyond a reasonable doubt has shown that either in terms of what occurred and how [Jessica] described what had occurred in that apartment building, and your Honor, we would ask for a finding of not guilty or guilty but mentally ill.

¶ 32 The trial court found defendant guilty of a number of charges, including multiple counts of aggravated criminal sexual assault and aggravated kidnaping. The court rejected the defense's guilty but mentally ill position, stating it was "clear" that "Dr. Selzberg's opinion on this matter is the correct opinion."

¶ 33 Events after trial

¶ 34 After denying defendant's motion for a new trial, the court stated that sentencing would be on eight counts – 1, 5, 12, 8, 15, 19, 22 and 33. The court stated that "[s]ince 1, 8, and 15 are all aggravated sexual assaults, but different assaults, those would be consecutive, to 1, 8 and 15." After counsel argued at the sentencing hearing, defendant's mother testified on his behalf. Defense counsel pointed out that the pre-sentence report (PSI) reported abuse. Before

1-11-1913

sentencing, defendant thanked Ms. Domin "for being there for [him], and helping [him] at the trials and tribulations," and he apologized to his family and community.

¶ 35 Defendant was sentenced to three consecutive 22-year terms for aggravated criminal sexual assault convictions and received concurrent 22-year sentences for the remaining convictions. Defendant's motion to reconsider sentence was denied.

¶ 36 Defendant filed a direct appeal. On February 4, 2011, this court entered an order affirming defendant's conviction and sentences and correcting the mittimus to add one additional day of presentencing custody credit.

¶ 37 On March 11, 2011, defendant filed his *pro se* postconviction petition. In the petition, defendant contended, among other things: (a) defense counsel failed "to investigate and/or produce any additional evidence after requesting a fitness hearing"; (b) defense counsel failed to keep defendant reasonably informed about the status of his criminal proceedings; (c) defense counsel failed to advise defendant regarding the "strategic difference between a bench and jury trial"; (d) defense counsel failed to seek a third opinion in light of the two conflicting expert opinions; (e) defense counsel never sought independent testing of the DNA evidence; (f) the trial court failed to properly admonish defendant; and (g) appellate counsel failed to raise or preserve the admonishment issue. Defendant also contended, in part, as follows:

**** Defense counsel, while fully cognizant of the instant case in its entirety, furnished Petitioner with erroneous advice, which consequently misled him into rejecting the Court's plea offer. Subsequent to the Court's offer, Petitioner asked defense counsel how many years would he have to serve. Defense counsel asserted that since Petitioner was

1-11-1913

not on bond when the instant case allegedly occurred, 85% of the largest term [21 years] would have to be served. Then defense counsel express [*sic*] that the Court's offer was 'too much time' and that the State had no evidence. Defense counsel conveyed that with a plea offer of that much time it would be best to just go to trial. Defense counsel then proceeded to demand trial while asserting that Petitioner was guilty but mentally ill.

Defense counsel's questionable practices appeared oxymoronic, unconscionable, and absent any strategic foundation. While it's axiomatic that 'guilty, but mentally ill' is not a defense, but rather an alternative verdict premised on an insanity defense; it remains unclear as to why defense counsel would attempt to raise 'insanity' after the court denied a fitness hearing and conducted a '402' conference. ***"

¶ 38 On May 20, 2011, the circuit court entered a written order summarily dismissing defendant's claims as "frivolous and patently without merit" and denying defendant's request for leave to proceed *in forma pauperis* and for appointment of counsel. Noting that defendant "only attached an affidavit verifying the truth and accuracy of his petition," the court concluded that defendant "failed to corroborate his claims with any supporting affidavits or documents" in accordance with section 122-2 of the Act. The court further held that defendant's claims were without merit. Among other things, the court addressed defendant's contention that trial counsel gave erroneous advice that misled him into rejecting the court's plea offer:

"Petitioner contends that counsel's advice was unsound and that her trial strategy after the failed plea negotiations were 'oxymoronic' and 'unconscionable.' However, petitioner also stated that counsel informed him that 85% of the largest term for which he was eligible,

1-11-1913

21 years, would have to be served. Petitioner goes on to mention that counsel told him that court's plea offer was too much time and it would be best to go to trial. Nothing about counsel's advice to petitioner is unreasonable or misleading. Further, petitioner does not show that he would have accepted the plea had counsel acted differently.

Petitioner's disagreement with counsel's choice of defense strategy does not amount to ineffective assistance of counsel."

Defendant timely appealed the dismissal of his postconviction petition.

¶ 39 ANALYSIS

¶ 40 On appeal, defendant contends that the summary dismissal of his *pro se* petition should be reversed where trial counsel rendered ineffective assistance by advising defendant to reject the trial court's 21-year offer. Defendant also contends that he has met the requirements of the Act or that his failure to do so is excused.

¶ 41 We begin our analysis with the requirements of the Act. If defendant's failure to comply with the Act's filing requirements warrants summary dismissal, then we need not consider defendant's contentions regarding trial counsel's alleged ineffective assistance.

¶ 42 Defendant's petition and related documents

¶ 43 The parties disagree regarding whether defendant's petition complies with the Act. We provide below a brief description of defendant's filing.

¶ 44 The first document is captioned "Certificate/Proof of Service." It provides, in part, that "I placed the attached petition for post-conviction relief and motion to proceed in forma pauperis in the institutional mail system at Stateville Correctional Center." It is signed by defendant. The

1-11-1913

following language is below defendant's signature:

"I, Gregory Williams, affiant, do hereby declare and affirm pursuant to 735 ILCS 5/109, under penalty of perjury, that everything contained herein is true and accurate to the best of my knowledge and belief. Finally, I do declare and affirm that the matter at hand is not taken either frivolously or maliciously and that I believe the forgoing [*sic*] matter is taken in good faith."

Defendant then dated and signed this page – a second time – as "Affiant," and his signature was notarized.

¶ 45 The next document is captioned "Motion to Proceed in Forma Pauperis and to Appoint Counsel." Below defendant's signature is the following language:

"I, GREGORY WILLIAMS, affiant, do hereby declare and affirm pursuant to 735 ILCS 5/109, under penalty of perjury, that everything contained herein is true and accurate to the best of my knowledge and belief. I further declare and affirm that the contents of the foregoing documents are known to me and are accurate to the best of my knowledge and belief. Finally, I do declare and affirm that the matter at hand is not taken either frivolously or maliciously and that I believe the foregoing matter is taken in good faith."

Defendant signed – a second time – and dated the page; there is no notarization.

¶ 46 The next document is the Petition for Post-Conviction Relief. On the last page of the petition, after the prayer for relief, defendant signed the petition. Below his signature is an "Affidavit" which provides, that "I, Gregory Williams, being first duly sworn, state that I have read the foregoing petition and that the contents contained therein are true and accurate to the

1-11-1913

best of my knowledge, information and belief." Defendant then signed again. Below his second signature is the following paragraph:

"I, Gregory Williams, affiant, do hereby declare and affirm pursuant to 735 ILCS 5/109, under penalty of perjury, that everything contained herein is true and accurate to the best of my knowledge and belief. I further declare that the contents of the foregoing documents are known to me and accurate to the best of my knowledge and belief. Finally, I do declare and affirm that the matter at hand is not taken either frivolously or maliciously and that I believe the foregoing matter is taken in good faith."

Defendant then signed – a third time – as "Affiant" and dated the page; there is no notarization.

¶ 47 Requirements of the Act

¶ 48 "In noncapital cases, the Act establishes a three-stage process for adjudicating a postconviction petition." *People v. Turner*, 2012 IL App (2d) 100819, ¶ 18. "At the first stage, 'the trial court, without input from the State, examines the petition only to determine if [it alleges] a constitutional deprivation unrebutted by the record, rendering the petition neither frivolous nor patently without merit." *Id.* (quoting *People v. Phyfiher*, 361 Ill. App. 3d 881, 883 (2005)). "Section 122-2.1 of the Act directs that, if the trial court determines that the petition is frivolous or patently without merit, it shall dismiss it in a written order." *Id.* (Citing 725 ILCS 5/122-2.1(a)(2) (West 2010)); see also *People v. Hodges*, 234 Ill. 2d 1, 10 (2009); *People v. Brown*, 236 Ill. 2d 175, 184 (2010). A petition is frivolous or patently without merit only if it has no arguable basis either in law or fact. *Hodges*, 234 Ill. 2d at 16. A petition has no arguable basis in law or fact if it is based on an indisputably meritless legal theory or on a fanciful factual

1-11-1913

allegation. *Id.* at 16-17; *Brown*, 236 Ill. 2d at 185. At the first stage of postconviction proceedings, a *pro se* defendant need only allege the "gist" of a constitutional claim. *Hodges*, 235 Ill. 2d at 11. We review the summary dismissal of a postconviction petition *de novo*. *People v. Torres*, 228 Ill. 2d 382, 394 (2008).

¶ 49 Section 122-1 of the Act requires, in part, that a defendant file a petition "verified by affidavit." 725 ILCS 5/122-1(b) (West 2010). Courts have referred to the affidavit required by section 122-1 of the Act as a "verification affidavit." See *People v. Cage*, 2013 IL App (2d) 111264, ¶ 12. Defendant contends that "[e]ven if [he] failed to verify his petition by notarized affidavit, which [he] does not concede, such lack should not be fatal to [his] petition at this stage, as the first stage is the time to evaluate *substantively* whether a petition states a claim."

(Emphasis in original). The State counters that "[d]efendant's unsworn verification documentation attached to his petition does not satisfy the requirement under the Act mandating that the petition be verified by 'affidavit.' " The State further contends that the "notarized 'affidavit' " attached to his proof of service "merely certifies that he placed his post-conviction petition in the institutional mail system at Statesville on February 18, 2011. It offers no verification or support for the allegations contained in the post-conviction petition itself."

¶ 50 Section 122-2 of the Act provides, in part, that "[t]he petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2010). Defendant contends that he "cannot be faulted for not having gotten his public defender to swear an affidavit that she rendered ineffective assistance." Defendant also argues that because section 122-2 of the Act requires "affidavits,

1-11-1913

records, or other evidence," even if defendant's "affidavit" did not qualify as an affidavit under the Act, it "qualifies as 'other evidence' ***." The State asserts that defendant's failure to attach the necessary "affidavits, records, or other evidence" or explain their absence is fatal to the postconviction petition. Specifically, the State contends that "[d]efendant's petition lacks the necessary evidentiary support insofar as he attached no affidavit, not even his own, to establish the factual details in support of his claim."

¶ 51 In its order dismissing defendant's postconviction petition, the circuit court stated that defendant "only attached an affidavit verifying the truth and accuracy of his petition." The order provided, however, that defendant "failed to corroborate his claims with any supporting affidavit or documents" and "fail[ed] to explain why he was prevented from including the required documentation with his petition." The court stated that defendant's claims "are conclusory and fail to meet the legal requirements of the Act."

¶ 52 Courts addressing the requirement of section 122-1 that a postconviction petition be "verified by affidavit" have reached different conclusions regarding whether a lack of notarization justifies summary dismissal of a petition. The Second District generally has held that "[a]ffidavits filed pursuant to the Act must be notarized to be valid." *People v. Carr*, 407 Ill. App. 3d 513, 515 (2011) (citing *People v. Niezgoda*, 337 Ill. App. 3d 593, 597 (2003)). See also *People v. Hommerson*, 2013 IL App (2d) 110805, ¶ 15; *People v. McCoy*, 2011 IL App (2d) 100424, ¶ 10; *People v. Nitz*, 2011 IL App (2d) 100031, ¶ 17 (noting that defendant's "inclusion of a 1-109 certification" could not cure his failure to have a properly notarized affidavit). But see *People v. Cage*, 2013 IL App (2d) 111264, ¶ 14 (disagreeing with *Carr*, *McCoy*, and

1-11-1913

Hommerson); *People v. Gardner*, 2013 IL App (2d) 110598, ¶ 14; *People v. House*, 2013 IL App (2d) 120746, ¶ 21. The First and Fourth Districts have held that the failure to attach a notarized affidavit to a postconviction petition is not an appropriate reason to summarily dismiss the petition at the first stage. See, e.g., *People v. Terry*, 2012 IL App (4th) 100205, ¶ 22 (noting that "[t]he notarization issue is a more appropriate objection at the second stage"). See also *People v. Stephens*, 2012 IL App (1st) 110296, ¶ 85.

¶ 53 In *People v. Collins*, 202 Ill. 2d 59 (2002), the defendant filed a *pro se* post-conviction petition alleging that his attorney said he would file an appeal but had not. *Id.* at 62. The sole attachment to defendant's petition was the following sworn verification: "I, London Collins, a prisoner incarcerated in Tamms Minimum Security Unit, have read and understand the above Petition for Post Conviction Relief. All the facts presented are true and correct to the best of my recollection." *Id.* The Illinois Supreme Court rejected the defendant's contention that his sworn verification could serve as a substitute for the "affidavits, records, or other evidence" mandate by Section 122-2 of the Act. *Id.* at 66. The court discussed the distinction between the requirements of section 122-1 and 122-2 of the Act:

"[U]nder the plain language of the Act, the sworn verification described in section 122-1 serves a purpose wholly distinct from the 'affidavits, records, or other evidence' described in section 122-2. The former, like all pleading verifications, confirms that the allegations are brought truthfully and in good faith. [Citations.] The latter, by contrast, shows that the verified allegations are capable of objective and independent corroboration. To equate the two is not only to confuse the purposes of subjective verification and independent

1-11-1913

corroboration but also to render the 'affidavits, records, or other evidence' requirement of section 122-2 meaningless surplusage. We will not adopt such a reading. [Citations.]"

Id. at 67.

The supreme court also distinguished two cases cited by the defendant for the proposition that a sworn verification is all that is needed to substantiate a postconviction claim arising from discussions between a criminal defendant and his attorney: *People v. Washington*, 38 Ill. 2d 446 (1967) and *People v. Williams*, 47 Ill. 2d 1 (1970). The *Collins* court observed that the petition at issue in *Washington* contained an explanation of why the necessary "affidavits, records, or other evidence" were unobtainable, and thus "explicitly complied" with the requirements of section 122-2. *Collins*, 202 Ill. 2d at 67. Although the petition in *Williams* did not "explicitly explain" why affidavits, records or other evidence were not attached, "it did contain facts from which this court easily inferred that 'the only affidavit that petitioner could possibly have furnished, other than his own sworn statement, would have been that of his attorney.'" *Id.* at 68, citing *Williams*, 47 Ill. 2d at 4.

¶ 54 The *Collins* court recognized that requiring the attachment of affidavits, records, or other evidence "will, in some cases, place an unreasonable burden upon post-conviction petitioners," such as in *Washington* and *Williams*, but stated that "[t]his does not mean *** that the petitioners in such cases are relieved of bearing any burden whatsoever." *Id.* at 68. The court stated that "[o]n the contrary, section 122-2 makes clear that the petitioner who is unable to obtain the necessary 'affidavits, records, or other evidence' must at least explain why such evidence is unobtainable." *Id.* Noting that the defendant was asking to be excused "not only from section

1-11-1913

122-2's *evidentiary* requirements but also from section 122-2's *pleading* requirements" (emphasis in original), the court concluded that the petition was properly dismissed. *Id.* at 68-69.

¶ 55 In *People v. Henderson*, 2011 IL App (1st) 090923, the defendant attached to his *pro se* post-conviction petition a signed but unnotarized affidavit in which he swore to the truth of the allegations in his petition pursuant to section 1-109 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/1-109) (West 2008)). *Id.* at ¶ 5. After reviewing decisions from various districts, the court concluded that "the Act allows summary dismissal only where a defect renders a petition frivolous or patently without merit. By their traditional meaning, we do not find those terms would encompass the mere lack of notarization of a verification affidavit." *Id.*, ¶ 34. The court further noted that "[n]otarization of the verification affidavit has no relation to the substance of a defendant's alleged constitutional claim." *Id.* The court distinguished between section 122-1 and 122-2:

"[U]nlike a section 122-2 affidavit, a section 122-1 verification affidavit does not show that the defendant's allegations can be corroborated and is not considered when determining whether a defendant has a factual basis for his claims. Even where a section 122-1 affidavit is a technical nullity for lack of notarization, this simply does not affect the petitioner's claims or right to relief." *Id.*

The court concluded that "an unnotarized verification affidavit is not an appropriate basis for first-stage dismissal of a petition." *Id.*, ¶ 36.

¶ 56 In defendant's case, even if the notarization on the "Certificate/Proof of Service" filed by defendant did not apply to the petition itself, we agree with the *Henderson* conclusion that the

1-11-1913

failure to notarize is not fatal for a postconviction petition at first stage proceedings. We conclude that noncompliance with section 122-1's verification affidavit requirement does not warrant first stage dismissal of defendant's *pro se* petition.

¶ 57 As to the requirements of section 122-2 of the Act, defendant contends that *Collins* did not "absolutely eliminate the exception that allowed the reviewing court to excuse noncompliance with Section 122-2 where it may be reasonably expected that an attorney would not provide an affidavit attesting to her [own] ineffectiveness." He asserts that our supreme court "itself distinguished *Collins* on these grounds in *People v. Hall*, 217 Ill. 2d 324, 333 (2005)." We agree. It does not appear that anyone other than defendant and his attorney were privy to their conversation. Thus, only two affidavits were possible: defendant's and his attorney's. We recognize the challenges of obtaining trial counsel's affidavit under the circumstances of this case. An attorney is unlikely to attest to his or her own shortcomings, even if they do not rise to the level of ineffective assistance of counsel. Thus, defendant's failure to obtain an affidavit from his attorney should be excused. We believe that the Illinois Supreme Court's decision in *People v. Hall*, 217 Ill. 2d 324, 333-34 (2005), supports this result:

"Here, defendant's explanation for the absence of additional documentation can easily be inferred from the allegations of his petition and affidavit. In these filings, defendant described in detail his consultations with his attorney. Defendant referred only to himself and counsel in these descriptions and did not mention the presence of anyone else. These allegations indicate counsel's legal advice was rendered within the bounds of a private consultation between

1-11-1913

defendant and his attorney. This implication is strengthened because attorney-client consultations generally occur in private to protect the confidentiality of privileged information. [CITATION] Thus, the circumstances of this case permit a reasonable inference that the only people present during this consultation were defendant and his attorney. Given these circumstances, the only affidavit defendant could have furnished to support his allegations, other than his own, was that of his attorney. As noted in *Williams*, the “difficulty or impossibility of obtaining such an affidavit is self-apparent.” [CITATION] Accordingly, we conclude the documentation attached to defendant's petition is sufficient to comply with the Act."

As in *Hall*, defendant refers to an apparently private conversation with his attorney. It would be difficult in these circumstances to obtain his attorney's affidavit.

¶ 58 This leaves defendant's own affidavit, which would be duplicative of his petition. The purpose of a section 122-2 affidavit is to provide independent corroboration of the petition's claims through affidavits, records, or other means. *Collins*, 202 Ill. 2d at 67. Defendant already set forth his substantive claims in his petition and stated in his section 122-1 verification that the claims in his petition are true. A section 122-2 affidavit repeating the claims in his petition could not be considered independent corroboration. See *People v. Teran*, 376 Ill. App. 3d 1, 4 (2007) ("[T]he *Hall* court did not determine that the defendant's affidavit provided objective or independent corroboration of his claim; indeed, common sense dictates that a defendant's own affidavit is not at all objective or independent."); see also *Williams*, 47 Ill. 2d at 2-4 (advancing a

1-11-1913

post-conviction petition unsupported by affidavits where "the only affidavit that petitioner could possibly have furnished, other than his own sworn statement, would have been that of his attorney ***"). We conclude that defendant's failure to comply with section 122-2 of the Act does not warrant summary dismissal of his petition. We therefore turn to the petition's merits.

¶ 59 Merits of claim

¶ 60 On appeal, defendant contends that his factual allegations are not "fantastic or fanciful." Defendant states that "the post-conviction court accepted [defendant's] factual claims that after the Rule 402 conference his lawyer advised him to reject the offer of 21 years and a consecutive 20 years because his counsel told him that the offers 'was too much time' and that it would 'be best to go to trial.' " Specifically, defendant contends that "[i]t was completely unreasonable for counsel to advise [defendant] to go to trial in the case at bar because [defendant] was facing three mandatory consecutive counts of aggravated criminal sexual assault plus at least one count of aggravated kidnapping." According to the defendant, if he received the minimum sentence of six years on each count, the minimum consecutive sentence in the case at bar would be 24 years. Thus defendant contends that the offer of 21 years was not too high "because it was lower than the required minimum sentence." Given the strength of the State's case, defendant contends, "it was likely that [defendant] would be convicted of three Class X mandatory consecutive sentences of ACSA (aggravated criminal sexual assault) and a Class X aggravated kidnapping."

¶ 61 Defendant asserts that he has alleged a valid legal theory under *People v. Curry*, 178 Ill. 2d 509 (1997) and *Lafler v. Cooper*, 132 S. Ct. 1376 (2012), discussed below. The State contends that the "circuit court was *** correct in finding that defendant had failed to state the

1-11-1913

gist of a constitutional claim because: his allegations did not establish that counsel's advice was deficient; and defendant did not specifically allege that he was willing to plead guilty to the charges in exchange for the court's offer of a 41-year aggregate sentence absent the alleged deficient advice." Distinguishing *Curry* and *Cooper*, the State contends that defendant "cannot show that his attorney's advice that the aggregate offer of 41 years[] was 'too much' and defendant should go to trial, was an 'unequivocal, erroneous, misleading representation[].'" *Curry*, 178 Ill. 2d at 529. The State argues that defendant's petition "portrays trial counsel's advice to defendant in terms of strategy and tactical decision-making clearly involving counsel's assessment of the defense" as opposed to *Curry* or *Cooper*, wherein "the attorney's advice was clearly deficient because it was based on misapprehension and ignorance of the law."

¶ 62 *Lafler v. Cooper*

¶ 63 In *Cooper*, the defendant was charged with intent to murder and other charges. *Cooper*, 132 S. Ct. at 1383. On two occasions, the prosecution offered to dismiss two of the charges and to recommend 51 to 85 months for the other two, in exchange for a guilty plea. *Id.* In a communication with the court, the defendant admitted guilt and expressed a willingness to accept the offer. *Id.* The defendant, however, later rejected the offer on both occasions, allegedly after his attorney convinced him that the prosecution would be unable to establish his intent to murder the victim because she had been shot below the waist. *Id.* On the first day of trial, the prosecution offered a "significantly less favorable" plea deal, which the defendant again rejected. *Id.* After trial, the defendant was convicted on all counts and received a mandatory minimum sentence of 185 to 360 months' imprisonment. *Id.* After both state and federal appeals, the

1-11-1913

United States Supreme Court granted certiorari. *Id.* at 1383-84.

¶ 64 The Supreme Court discussed *Strickland v. Washington*, 466 U.S. 668 (1984), which addresses the constitutional standards for effective assistance of counsel. The court noted that, with respect to the "performance prong" of *Strickland* – which requires a defendant to show "that counsel's representation fell below an objective standard of reasonableness" – all of the parties agreed that the performance of the defendant's counsel was "deficient when he advised [defendant] to reject the plea offer on the grounds he could not be convicted at trial." *Cooper*, 132 S. Ct. at 1384. Thus the question for the court was how to apply *Strickland*'s second prong – the "prejudice" test – where ineffective assistance results in a rejection of a plea offer and the defendant is convicted at the ensuing trial. *Id.* "To establish *Strickland* prejudice 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.' [Citation.]." *Id.* In the context of pleas, "a defendant must show the outcome of the plea process would have been different with competent advice." *Id.* Specifically, in circumstances where "[h]aving to stand trial, not choosing to waive it, is the prejudice alleged," a defendant must show that:

"[B]ut for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." *Id.* at 1385.

1-11-1913

The court rejected the prosecution's argument that essentially "[a] fair trial wipes clean any deficient performance by defense counsel during plea bargaining," observing that such argument "ignores the reality that criminal justice today is for the most part a system of pleas, not a system of trials." *Id.* at 1388. The Supreme Court ultimately ordered the prosecution to reoffer the plea agreement, and then, assuming the defendant accepts the offer, the state trial court could exercise its discretion to vacate the convictions and resentence the defendant on some or all of the convictions or to leave the convictions and sentences from trial undisturbed. *Id.* at 1391.

¶ 65 *People v. Curry*

¶ 66 The defendant in *Curry* was charged with one count of residential burglary and two counts of criminal sexual assault. *Curry*, 178 Ill. 2d at 512. During plea negotiations prior to trial, the State offered to dismiss the count of residential burglary and one of the two criminal sexual assault charges if defendant agreed to plead guilty to the remaining count of criminal sexual assault and accept the State's recommendation that he receive a sentence of 4-1/2 years' imprisonment. *Id.* The defendant rejected the plea offer and was subsequently convicted by a jury on all three counts. *Id.* The trial judge sentenced defendant to three consecutive terms of four years' imprisonment, and the appellate court affirmed. *Id.*

¶ 67 The Illinois Supreme Court considered whether the defendant "was denied his right to effective assistance of counsel during plea negotiations with the State when his counsel failed to advise him that he would receive mandatory consecutive sentences *** if convicted of more than one of the counts with which he was charged." *Id.* At the defendant's sentencing hearing, both the State's attorney and defense counsel "indicated that they were unaware that consecutive

1-11-1913

sentences were mandatory for defendant's offenses." *Id.* at 515. Defendant filed a motion to reconsider his sentence, arguing that he had rejected the 4-1/2 year offer because his attorney mistakenly advised him that he would face only concurrent sentences of approximately four years' imprisonment if he were convicted of any of the three charges. *Id.* In support of these assertions, the defendant attached to his motion an affidavit from his trial attorney and a stipulation stating that if the defendant were called to testify, he would testify that if he had known the consecutive sentences were mandatory, he would have accepted the State's plea offer. *Id.* at 516.

¶ 68 Our supreme court noted that "it has been well established that the right to effective assistance of counsel extends to the decision to reject a plea offer, even if the defendant subsequently receives a fair trial." *Id.* at 518. Applying the *Strickland* test, the court concluded that the defense counsel's performance during plea negotiations was objectively unreasonable and "fell outside 'the wide range of reasonable professional assistance.'" *Id.* Specifically, defense counsel "affirmatively misstated the consequences of rejecting the plea offer and made 'unequivocal, erroneous, misleading representations.' [Citation.]" *Id.* at 529. Based on the trial court's stated reluctance to impose an aggregate sentence of twelve years, the supreme court also found that there was "direct evidence" that the trial court was amenable to accepting a plea agreement and thus the defendant was prejudiced by defense counsel's performance during plea negotiations. *Id.* at 536.

¶ 69 *Application of Cooper and Curry*

¶ 70 This case is distinguishable from *Cooper* and *Curry* in significant ways. In *Cooper*, the

1-11-1913

parties agreed that trial counsel's performance was deficient; the sole issue was the "prejudice" prong of the *Strickland* test. In *Curry*, the court concluded that defense counsel "affirmatively misstated" the consequences of rejection of the plea offer and "made 'unequivocal, erroneous, misleading representations.'" By contrast, the State in this case contends that "there was nothing legally wrong with counsel's alleged advice that the 41 years was 'too much'[" Defendant counters that his trial counsel did, in fact, provide erroneous information. The parties' disagreement centers primarily on the minimum sentence that could have been available to defendant following a trial.

¶ 71 The State contends that "[b]ecause consecutive terms were mandatory on the three sexual assault charges, defendant faced a minimum of 18 years in this case": three consecutive, minimum six year terms. See 720 ILCS 5/11-1.30 (formerly 720 ILCS 5/12-14(d)(1)); 730 ILCS 5/5-4.5-25(a) (formerly 730 ILCS 5/5-8-1(a)(3)); 730 ILCS 5/5-8-4(d)(2). The State asserts that "[w]hile the evidence on [the sexual assault] charges was virtually uncontested, the defense did contest the kidnapping insofar as defendant's statement to police indicated that the victim accompanied defendant to his home voluntarily and defense counsel argued that defendant did not 'snatch' the victim off the street." Because there was a possibility that defendant could face only an 18-year term following trial, according to the State, the "aggregate 41-year term may actually have been 'too much time' given counsel's chosen defense."

¶ 72 Defendant contends that the correct calculation of the mandatory minimum he faced was 24 years: "three mandatory consecutive counts of aggravated criminal sexual assault for at least six years on each count, followed by at least one count of aggravated kidnapping for at least six

1-11-1913

years." Defendant asserts that the trial court was required to order that defendant serve his ACSA sentences consecutive to each other as well as consecutively to the sentence on the aggravated kidnaping charge. See 730 ILCS 5/5-8-4(a)(i). According to defendant, the 21-year plea deal was three years less than the mandatory minimum, and thus was not "too much time." Defendant argues that, in light of the uncontested ACSA counts, Jessica's account of how she was forced to go to defendant's home, and Jessica's mother's testimony that her daughter appeared frightened, the defense that Jessica went willingly with defendant was almost certain to fail.

¶ 73 We agree with the State. Defendant could have been acquitted of aggravated kidnaping. The defense that Jessica went willingly with defendant, although ultimately unavailing, was a reasonable trial strategy. The Illinois Supreme Court in *Curry* distinguished between (a) when counsel's advice is predicated on an understanding "which was plainly erroneous when viewed at the time of plea negotiations" and (b) when a defense recommendation is "the product of strategy or judgment which was proven to be unwise only in hindsight." *Curry*, 178 Ill. 2d at 529. In the instant case, the alleged defense advice was, at worst, the latter. Nothing in defendant's postconviction petition suggests that his counsel affirmatively misstated the consequences of rejecting the plea offer.

¶ 74 Even if we agreed with defendant that defense counsel's advice to reject the guilty plea offer was unsound as to this case, defendant ignores that the offer pertained to two cases. The court told the parties that if defendant pled guilty to the charges he would be sentenced to a 21-year prison sentence in the instant case, consecutive to a 20-year sentence in an unrelated case.

1-11-1913

We know that the second offense concerned "similar charges" and a person named "S.D.," but defendant has not described the offense in any detail, much less shown that counsel's advice to reject the offer was unsound as to the second offense. It is entirely possible that counsel advised defendant to reject the plea offer, because he stood a chance of acquittal or a lesser sentence in the second case. Accordingly, defendant has not satisfied the first *Strickland* prong.

¶ 75 Because we find that the first *Strickland* prong was not met, we need not consider the "prejudice" prong. Defendant stated in the petition that "it is a far cry to contend that had [defendant] been fully cognizant and appreciative of the potential detriment following a finding of guilt, he would have knowingly rejected the Court's merciful offer." However, we note that, even read liberally in light of defendant's *pro se* status, we do not see any express statement in defendant's postconviction petition that, absent his counsel's alleged deficient performance, that he would have accepted the plea offer.²

¶ 76 Finally, in its appellate brief, the State references the "defense of mental illness" and notes that "[t]hroughout the proceedings, defense counsel urged the court to act leniently towards defendant because of his severe mental illness." In his reply brief, defendant observes that "[w]hile it is true that counsel did hope for a GBMI verdict, such a verdict would not have resulted in a more lenient sentence than that offered in the plea deal." Section 5-2-6 of the

²We recognize that Illinois Supreme Court in *People v. Hale*, 2013 IL 113140, ¶ 20, stated that the United States Supreme Court's decisions in *Missouri v. Frye*, 132 S. Ct. 1399 (2012), "and *Cooper*, rather than *Curry*, control and the factors set forth in those cases must now be relied upon in deciding if prejudice has been shown where a plea offer has lapsed or been rejected because of counsel's deficient performance." In light of our conclusion regarding the first *Strickland* prong, we need not investigate the *Frye* and *Cooper* "prejudice" factors discussed in *Hale*.

1-11-1913

Criminal Code provides, in part, that after a verdict of guilty but mentally ill (GBMI), the court "may impose any sentence upon the defendant which could be imposed pursuant to law upon a defendant who had been convicted of the same offense without a finding of mental illness." 730 ILCS 5/5-2-6 (West 2012). After an imposition of a sentence of imprisonment, the defendant "shall be committed to the Department of Corrections." (Emphasis added.) *Id.* The Department of Corrections "may transfer the defendant's custody to the Department of Human Services ***." (Emphasis added). *Id.*

¶ 77 Defendant contends that the State does not cite to any authority that allows a sentencing court to act "leniently" toward a defendant found GBMI "such that the court would disregard statutory sentencing requirements and order a void sentence." However, nothing in the record indicates that defendant's trial counsel believed that a GBMI finding would permit deviation from the statutorily imposed sentencing ranges. Furthermore, although defense counsel's efforts at trial focused primarily on potentially obtaining a GBMI finding, counsel also argued, among other things, against a finding of guilt on the kidnaping and aggravated kidnaping charges. During cross examination of Jessica, counsel established that (a) Jessica saw her adult brother and her mother as she and defendant walked to defendant's apartment, (b) Jessica had a cell phone with her, although it was turned off, (c) defendant left Jessica alone in his living room briefly after they entered the apartment, and (d) Jessica did not remember hearing the door lock. During cross examination of Detective Miller, counsel confirmed that defendant never told the detectives that he "grabbed [Jessica] out on the street." During closing arguments, defense counsel argued that Jessica was "not confined against her will for each and every charge which

1-11-1913

includes the charges of kidnapping or aggravated kidnaping." As noted above, counsel's alleged advice that the court's sentencing offer after the Rule 402 conference was "too much time" did not fall below an objective standard of reasonableness, particularly in light of the defense arguments regarding the kidnapping and aggravated kidnaping charges. Similarly, the defense's attempt to obtain an GBMI finding, while also unsuccessful, does not support an ineffective assistance of counsel claim.

¶ 78 We conclude that defendant's petition failed to state the gist of a claim for ineffective assistance of counsel.

¶ 79 CONCLUSION

¶ 80 Defendant's postconviction petition lacks any arguable basis in law or fact. We therefore affirm the trial court's summary dismissal of the petition.

¶ 81 Affirmed.