FIFTH DIVISION
August 8, 2014

No. 1-12-1719

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 2672
	)	
KELVIN MURRAY,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon concurred in the judgment.
Justice Palmer dissented.

ORDER

¶ 1 *Held*: The trial court's order summarily dismissing defendant's petition for post-conviction relief is reversed where defendant sufficiently pled that he would have accepted the State's plea offer if defense counsel had correctly informed him of the applicable sentencing range.

¶ 2 Defendant Kelvin Murray appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq*. (West 2012). On appeal, defendant contends that he set forth the gist of a constitutional claim that he was denied effective assistance of counsel where counsel provided him misinformation as to the sentencing

range he faced, causing him to reject an alleged favorable plea offer by the State. We reverse and remand.

¶ 3 The record shows that defendant was charged with one count of aggravated criminal sexual abuse and two counts of criminal sexual abuse after an October 2009 incident during which he allegedly touched the vaginal area of the victim, his 12-year-old great-niece C.D. Following a bench trial, the court found him guilty of aggravated criminal sexual abuse and sentenced him, based upon his background as a Class X offender, to 14 years' imprisonment.

¶ 4 Before the bench trial commenced, defense counsel informed the court that defendant was Class X mandatory. At that point, the court admonished defendant that:

> "[Y]ou are accused of aggravated criminal sexual abuse, a class 2 felony. Based on your criminal history, though, if you are found guilty as charged I have to sentence you as a class X felon, which means the minimum is 6, a maximum of 30 years in the penitentiary, you can be fined up to $25,000, you cannot receive probation, and you have to serve at least 3 years of mandatory supervised release which is like parole. Do you understand that?"

Defendant responded affirmatively.

¶ 5 At sentencing, the trial court again noted that defendant's criminal history made him Class X mandatory, and sentenced him to 14 years' imprisonment on the aggravated criminal sexual abuse conviction. This court affirmed the trial court's judgment on direct appeal after allowing appellate counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). *People v. Murray*, 2012 IL App (1st) 103631-U (unpublished summary order under Supreme Court Rule 23).

¶ 6 In April of 2012, defendant filed the instant *pro se* post-conviction petition, alleging that his trial counsel provided ineffective assistance. In particular, defendant alleged that during a

meeting several months before trial, his trial counsel told him that he was facing a Class 2 felony carrying three to seven years' imprisonment, and that the State was offering six years' imprisonment in exchange for a guilty plea. In response, defendant told counsel that "he would not plead guilty to something he did not do in exchange for a sentence of 6 years, when the maximum sentence on the charge was only 7 years." On a later date, but prior to trial, counsel told defendant that his case was "Class X mandatory," but did not explain what that meant. Defendant believed that his conviction would be Class X, but that the maximum sentence he could receive was seven years.

¶ 7 Defendant also alleged in his petition that, while his direct appeal was pending, he spoke to his appointed appellate counsel on the phone and asked him why he could not argue that his sentence was excessive where he was sentenced to a term greater than the seven-year maximum. Appellate counsel explained that because of defendant's prior convictions, he had to receive a Class X sentence between 6 and 30 years. According to defendant, the conversation he had with appellate counsel was the first time he became aware that the applicable sentencing range was from 6 to 30 years. Defendant told appellate counsel that trial counsel stated that the applicable sentencing range was three to seven years' imprisonment, and that was why he had rejected a plea offer of six years. Furthermore, had he known he faced a maximum sentence of 30 years, he would have accepted the plea offer. Defendant attached to his petition an affidavit from his appellate counsel, which confirmed the content of their conversation. Defendant also attached his own affidavit, reiterating the claims in his petition.

¶ 8 On April 27, 2012, the circuit court found defendant's petition meritless and summarily dismissed it. In doing so, the court held that it was skeptical any plea offer was made because "[a]ny offers ever made in this courtroom would have to run through the Court." In addition, the

court noted that it would not have accepted any plea offer in this case because defendant maintained that he was innocent of the charges. This appeal followed.

¶ 9 On appeal, defendant contends that the trial court erred in summarily dismissing his petition because it contained an arguable claim of ineffective assistance of counsel. Defendant specifically maintains that his counsel advised him that he faced a maximum penalty of 7 years' imprisonment, where he in fact faced a maximum sentence of 30 years. As a result of this misinformation, defendant asserts that he was prejudiced because he rejected a 6-year plea offer from the State, which he would have accepted knowing he faced a 30-year maximum.

¶ 10 The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. 725 ILCS 5/122-1 (West 2012). At the first stage of a post-conviction proceeding, the circuit court independently reviews the petition, taking the allegations as true, and determines if it is frivolous or patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). A petition should be summarily dismissed as frivolous or patently without merit only when it has no arguable basis in either fact or law. *Id*. at 11-12; see also *People v. Tate*, 2012 IL 112214, ¶ 9 ("the threshold for survival [is] low"). Our supreme court has held that a petition lacks an arguable basis in fact or law when it is based on "an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. Fanciful factual allegations are those which are "fantastic or delusional" and an indisputably meritless legal theory is one that is completely contradicted by the record. *Id*. at 16-17. We review the summary dismissal of a post-conviction petition *de novo*. *Tate*, 2012 IL 112214, ¶ 10.

¶ 11 To state a claim of ineffective assistance of trial counsel in the plea bargain context, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). *People v. Hale*, 2013 IL 113140, ¶ 15. Thus, to survive the first stage of post-conviction proceedings, a petition claiming ineffective assistance of counsel must show "that it is arguable that counsel's performance fell below an objective standard of reasonableness and that it is arguable that the defendant was prejudiced by counsel's performance." *People v. Trujillo*, 2012 IL App (1st) 103212, ¶ 8.

¶ 12 Here, it is arguable that trial counsel's performance was objectively unreasonable for allegedly failing to inform defendant that he was subject to a maximum sentence of 30 years; not 7 years. Taking the allegations in defendant's petition as true (*Hodges*, 234 Ill. 2d at 10), defendant's trial counsel only told him of the sentencing range for a Class 2 felony, and failed to advise him that, as a Class X offender, he would actually be subject to a much higher sentencing range, *i.e.*, 6 to 30 years. For purposes of a plea offer or negotiations, " '[a] criminal defendant has the constitutional right to be *reasonably* informed with respect to the direct consequences of accepting or rejecting a plea offer[,]' " (emphasis in original) (*Hale*, 2013 IL 113140, ¶ 16, quoting *People v. Curry*, 178 Ill. 2d 509, 528 (1997)), and, concomitantly, a criminal defense attorney is obligated to inform his client about the maximum and minimum sentences that can be imposed for the offenses which his client is charged (*Id*. at 528).

¶ 13 The State observes that defendant only relies on cases which occur in the context of actual guilty plea offers or discussions. *See e.g.*, *Lafler v. Cooper*, 566 U.S. __, 132 S. Ct. 1376, 1383, 1390-91 (2012) (holding that an attorney who rendered constitutionally deficient advice to reject a plea bargain was ineffective where his advice caused his client to reject the plea and go

to trial, only to receive a much harsher sentence); *People v. Brown*, 309 Ill. App. 3d 599, 604-07 (1999) (defense counsel failed to advise the defendant that he faced mandatory natural life as a habitual offender after a trial finding of guilt, which led the defendant to reject a beneficial plea offer from the State). However, the court in *Clark* rejected the concept that "when a defendant enters a plea of *not* guilty, it is *solely* the court's responsibility, not counsel's, to inform the defendant of the maximum and minimum sentences that can be imposed for the offense with which the defendant is charged." (Emphasis in original). *People v. Clark*, 406 Ill. App. 3d 622, 640 (2010).

¶ 14 Moreover, we find unpersuasive the State's contention that the absence of any evidence in the record showing that a plea offer was made in this case defeats defendant's assertion that counsel's advice about the sentencing range induced him to forego accepting the alleged offer. The fact that there is no record of any plea offer does not contradict defendant's claim that one was made. See *People v. Coleman*, 183 Ill. 2d 366, 385 (1998) (unless "*positively* rebutted by the original trial record," the defendant's allegations are taken as true (emphasis added)). This is particularly true where defendant asserted that the State offered him six years in exchange for a guilty plea "several months before the trial," and appellate counsel attested in his affidavit that defendant told him that he rejected this offer based on counsel's misrepresentation of the actual sentencing maximum.

¶ 15 We acknowledge that the record contradicts defendant's allegation that he first became aware of the applicable Class X sentencing range during a conversation with appellate counsel. The record establishes that immediately before trial, the court informed defendant that he would have to be sentenced as a Class X felon with a sentencing range of 6 to 30 years in prison based on his criminal history. Again, after trial and during sentencing, the court observed that

defendant's criminal history made him Class X mandatory. Although these pretrial and sentencing admonishments by the trial court demonstrate that defendant knew the actual sentencing range before being told by appellate counsel, these admonishments do not rebut defendant's allegation that his trial counsel misadvised him at the time of the alleged plea discussions.

¶ 16 The core of defendant's allegations are premised on his knowledge of the sentencing range as provided by counsel during plea discussions, which occurred "[s]everal months before trial." The record does not contradict defendant's allegations that the State made an offer of six years in prison in exchange for a guilty plea, that counsel incorrectly advised defendant the applicable maximum sentence was seven years, and that defendant rejected that plea offer because he thought he could not receive a sentence of more than seven years. Moreover, defendant's failure to object when the trial court admonished him of the proper sentencing range immediately before the start of trial or to raise the issue in a post-sentencing motion does not rebut defendant's allegations because the State's purported plea offer from several months before trial had been rejected by defendant and, therefore, no longer existed or had been retracted. "At the dismissal stage of a post-conviction proceeding, all well-pleaded facts that are not positively rebutted by the original trial record are to be taken as true." *Coleman*, 183 Ill. 2d at 385.

¶ 17 We also find that defendant demonstrated he was arguably prejudiced by his trial counsel's performance. In his petition, defendant specifically stated that he was prejudiced because if he "had known that the sentencing range was 6 to 30 years at the time [defense counsel] told him about the State's offer of 6 years in exchange for a guilty plea, [he] would have accepted the State's offer and pled guilty, rather than go to trial and face a much longer possible sentence." Nevertheless, the State argues on appeal that defendant's mere assertion that he would

have accepted the purported plea offer was not enough in light of *Hale*.

¶ 18 In *Hale*, our supreme court, relying on the United States Supreme Court companion cases of *Lafler*, 132 S. Ct. at 1376 and *Missouri v. Frye*, __ U.S. __, 132 S. Ct. 1399 (2012), recently analyzed the *Strickland* prejudice prong, as applied to a plea offer that has been rejected because of counsel's deficient performance. Specifically, the *Hale* court stated:

> " 'To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability that they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. *Defendants must also demonstrate a reasonable probability that the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law*.' " (Emphasis added in *Hale*.) *Hale*, 2013 IL 113140, ¶ 19, quoting *Frye*, 132 S. Ct. at 1409.

Relying on *Hale*, the State now asserts that defendant here must show the purported plea agreement would have been accepted by the circuit court. The State maintains that defendant cannot do so because the circuit court, in summarily dismissing his post-conviction petition, stated that it would not have accepted the plea based on defendant's assertion that he was innocent. We initially note that the State's argument is unpersuasive because we review the circuit court's dismissal of his petition *de novo*, and do not defer to its reasoning. See *People v. Lee*, 344 Ill. App. 3d 851, 853 (2003).

¶ 19 More importantly, although we recognize that the prejudice test articulated in *Hale* is controlling in the context of a rejected plea based on trial counsel's deficient performance, *Hale* was not decided at the first-stage of post-conviction proceedings. Instead, the matter in *Hale* was initiated by defendant's motion for a new trial, which proceeded to an evidentiary hearing on the allegations of ineffective assistance of trial counsel where defendant and defense counsel both

testified. *Hale*, 2013 IL 113140, ¶¶ 11-12. Here, as stated above, defendant need only present the gist of a constitutional claim, *i.e.* that defendant received ineffective assistance of counsel where counsel was arguably deficient, and defendant was arguably prejudiced. *Hodges*, 234 Ill. 2d at 11, 17. Based on the standard set out in *Hodges*, we find that defendant has stated the gist of an ineffective assistance of counsel claim where the record does not rebut his allegations that counsel misinformed him of the sentencing range, and that he was prejudiced by counsel's deficient performance where he rejected a plea offer that was less than half of the amount of time he must now serve after being convicted of the charged offense.

¶ 20 For the foregoing reasons, this court reverses the summary dismissal of defendant's post-conviction petition and remands the cause for a second stage proceeding.

¶ 21 Reversed and remanded.

¶ 22 JUSTICE PALMER, DISSENTING

¶ 23 I respectfully dissent from the majority's decision remanding this case for second stage post-conviction proceedings. I do so because, not only is there no support in the record for defendant's claim that he turned down a plea offer and proceeded to trial as a result of being misadvised as to the potential penalties he was facing, but additionally his claims are belied by the record. Lastly, even accepting defendant's claim that his attorney misadvised him resulting in his rejection of the plea offer, which I do not, he cannot show that he was prejudiced by his attorney's alleged ineffectiveness. I feel that the majority's decision here is an unwarranted and very troublesome extension of *People v. Curry*, 178 Ill. 2d 509 (1997).[1]

[1] In *Curry*, the defendant maintained that, but for his attorney's failure to inform him during plea negotiations with the State that he faced mandatory consecutive sentencing, he would have accepted the plea offer and avoided trial. The court concluded that the record as well as defense counsel's affidavit provided independent, objective confirmation that the defendant's rejection of the proffered

¶ 24 There is no support in the record for defendant's claims. There is no discussion before the court of a plea offer and its rejection at any time. There is no mention of a plea offer and its rejection in the post-trial motion. Similarly, there is no mention of defense counsel's alleged faulty advice in the record prior to trial or in the posttrial motion. Other than defendant's own self-serving and unsupported affidavit, there are no affidavits attached to the post-conviction petition from either the prosecutor or defense lawyer supporting this claim of a rejected plea offer. While I agree that one cannot usually expect an attorney to admit to ineffectiveness, the attorney could reasonably be expected to at least verify the existence of a plea offer. This has not been done and the absence of such an affidavit has not been explained. This is a claim that comes out of the thin air.

¶ 25 Not only is defendant's claim that he turned down a plea offer because he was misadvised as to the potential penalties he was facing not supported by the record, it is belied by the record. In his *pro se* post-conviction petition, defendant claims that he turned down a plea offer and proceeded to trial as a result of being misadvised as to the potential penalties he was facing. He even goes so far as to claim that the first time he was advised that he was facing 6 to 30 years' imprisonment was when he was told such by his appellate lawyer. This claim is demonstrably false. It is a flat out lie. "Where the record rebuts the allegations in a petition, summary dismissal is proper." *People v.* Trujillo, 2012 IL App (1st) 103212, ¶ 12. The record is crystal clear in this regard: defendant's claims are positively belied by the record.

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plea was based upon his counsel's erroneous advice. *Curry*, 178 Ill. 2d at 532. It found "defendant was prejudiced by defense counsel's performance during plea negotiations [and because] defendant has also shown that counsel's performance was objectively unreasonable, we hold that defendant has established his claim of ineffective assistance of counsel." *Curry*, 178 Ill. 2d at 536. "A criminal defendant has the constitutional right to be *reasonably* informed with respect to the direct consequences of accepting and rejecting a plea offer," even if, after rejecting a plea offer, the defendant subsequently receives a fair trial. (Emphasis in original.) *Curry*, 178 Ill. 2d at 518, 528.

¶ 26 It was defendant's attorney who advised the court, just prior to the start of trial and in defendant's presence, that defendant was facing Class X sentencing if convicted. This is the same attorney that defendant claims told him he was only facing a seven year maximum. Prior to trial, the court and defense counsel engaged in the following colloquy:

> "THE COURT: This is Kelvin Murray, in custody, represented by Wendy Steiner.
>
> MS. STEINER [Defense Counsel]: Class 2 offense, Judge. He is X mandatory.
>
> THE COURT: He is?

So it was defendant's own attorney, the attorney who allegedly misadvised defendant, that advised the judge that defendant was facing Class X time. The attorney even stated it twice, showing that she was well aware of the potential penalties. Defendant stood mute. Notably, he did not say, "Wait a minute, you told me my maximum was seven years."

¶ 27 Lest there be any question that defendant did not understand the import of what his own attorney just stated, the ever thorough and experienced Judge Linn then went on to fully and correctly admonish defendant as to the exact penalties he was facing, as follows:

> "THE COURT: Mr. Murray, you are accused of aggravated criminal sexual abuse, a [C]lass 2 felony. Based on your criminal history, though, if you are found guilty as charged I have to sentence you as a [C]lass X felon, which means the minimum is 6, a maximum of 30 years in the penitentiary, you can be fined up to $25,000, you cannot receive probation, and you have to serve at least 3 years of mandatory supervised release which is like parole. Do you understand that?
>
> DEFENDANT: Yes, sir.
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> THE COURT: You have the right to a jury trial where twelve people would be selected from the community to hear the evidence. All twelve would have to unanimously agree

you were proven guilty beyond a reasonable doubt before you could be found guilty. If you do not want a jury trial, you could have a bench trial where I would hear the evidence myself and I would decide myself whether you were proven guilty beyond a reasonable doubt or not. What type of trial would you prefer, a bench or jury trial?

DEFENDANT: A bench.

THE COURT: Do you understand that by signing the piece of paper your lawyer gave me that means you are telling me in writing that you do not want a jury trial?

DEFENDANT: Yes, sir.

THE COURT: Jury is waived. Motion to exclude is allowed."

¶ 28 Thus, upon being advised that he was facing a maximum term of 30 years in prison, defendant told the judge that he understood what he had just been told. Again, notably he did not say, "Wait a minute, Judge, my lawyer told me that I was only facing 7 years and now you are saying I am facing 30. What gives"? He also did not say, "Well, Judge, my lawyer told me I was facing only 7 years, so I turned down the State's offer of 6, can I still have the 6?" Defendant said none of those things and he certainly would be expected to if he had been so misinformed.

¶ 29 The next thing that Judge Linn did was to admonish defendant with regard to his right to a jury trial. Defendant indicated that he wanted a bench trial and the judge accepted his jury waiver. What I find to be of most importance is the fact that Judge Linn fully admonished defendant that he was facing up to 30 years in prison *before he accepted his jury waiver and before the start of the bench trial***.** Defendant could have stopped this train at any time after he was told what sentence he was facing. He did not do so. His voluntary waiver of jury and his decision to go forward with a bench trial after being fully admonished as to the penalties he was

facing are wholly inconsistent with his contention that he turned down a plea offer and went to trial because he was told by his lawyer that he was only facing seven years' imprisonment.

¶ 30 The majority acknowledges that defendant was fully advised as to his potential penalties before going to trial. The majority even acknowledges that defendant's claim that he did not know he was facing 30 years' imprisonment until his appellate attorney told him is simply false. The majority somehow glosses over this lie by finding that the admonitions were not given at the time defendant turned down the alleged plea offer, a time "months earlier," the exact date of which defendant tellingly cannot provide. The majority goes further and states that, after the alleged offer was rejected, the offer "no longer existed *or* had been retracted." I reject this attempt to minimize such crucial facts for two reasons.

¶ 31 First, I reject the idea that there is some temporal line, the unspecified date this alleged offer was rejected, after which we may not review the record to discern if this claim is belied by the record. The majority seems to hold that, if the record does not show that defendant was correctly admonished at the same time that he rejected the offer, this matter must go forward. Since there is no record at all of this plea offer and rejection, I find that perusing the whole record instructs us that defendant's claim has no basis at all. All we find after reviewing the entire record is that defendant's attorney stated in his presence that he was facing Class X time, after which defendant remained mute. Then we find that the trial court correctly admonished defendant that he is facing 6 to 30 years, after which defendant voiced no complaints of prior incorrect advice. Next, we see that defendant waived his right to a jury trial and proceeded to a bench trial after being told the sentence he was facing, again without voicing any complaints of prior incorrect advice. Defendant is then convicted and sentenced as a Class X offender to 14 years imprisonment, 7 more years than he claims he believed he was facing, and again he says

nothing at sentencing or in his posttrial motion about prior incorrect advice. The record as a whole, not at some frozen unspecified time, shows that defendant's claims are wholly inconsistent with reality.

¶ 32 Second, the majority claims that it does not matter that defendant was correctly admonished as to his potential penalties prior to trial because the offer "no longer existed or had been retracted." However, there is absolutely nothing in the record that establishes that an offer was made to defendant and that it "no longer existed or had been retracted" before trial. In fact, defendant himself does not even mention anything regarding the alleged offer no longer existing or being retracted in his pro se post-conviction petition or attached affidavit. The fact that the majority states this in the alternative shows that there is no support for that statement. It is mere speculation. As such, it is not a persuasive argument which excuses defendant's failure to raise the alleged prior incorrect advice with the trial judge after being correctly admonished by the judge and going forward with his trial.

¶ 33 Finally, even accepting defendant's unsupported claim, which I do not, I also do not believe that defendant has shown that he was prejudiced by any deficiency in his representation. As such, he has failed to establish the prejudice prong of the *Strickland* analysis. Simply put, the trial court's correct admonitions given to defendant prior to the start of his trial cured any deficiencies in his counsel's advice. In reviewing the many cases cited by defendant and the majority, one crucial fact is missing in all of them. In none of the cases cited did the court correctly admonish the defendant as to the potential penalties he faced prior to the commencement of trial as the trial judge did here.[2] I come to the conclusion that defendant was

[2] For example, the majority cites, *inter alia*, to *People v. Clark*, 406 Ill. App. 3d 622 (2010), in which the issue on appeal was the defendant's contention that his defense attorney provided him with false

not prejudiced as, just as there is no indication in the record of the existence of a plea offer, there is no indication in the record or in defendant's sworn affidavit that the offer was no longer available to defendant prior to the start of trial. As stated earlier, it would have been a simple matter for defendant to air this grievance in the trial court by simply responding to the court's admonitions by asking whether he could still take the six-year offer.

¶ 34 When *Curry* was decided, the response in the criminal trial courts, at least in this venue, was to develop what came to be known as "Curry admonitions." Generally, prior to the commencement of trial, trial judges began inquiring if there had been failed plea discussions and if so, then admonishing defendants as to the potential penalties they were facing upon conviction. Often this results in guilty pleas just prior to trial. The purpose is to avoid the very situation presented in the case at bar, a defendant claiming in a post-conviction petition that he turned down a plea offer and went to trial without knowing the potential penalties. Essentially, that's what Judge Linn did here. While not ascertaining that there were failed plea discussions, he nevertheless made sure that defendant knew the sentence he was facing upon conviction before the start of trial.

¶ 35 Those of us serving in the criminal trial courts at the time that *Curry* was decided were concerned as to how far its holding could be expanded. We took solace in the fact that it was very clear from the record in *Curry*, by way of the defense counsel's statements at the sentencing hearing and his posttrial affidavit and the prosecutor's statements at the sentencing hearing, that neither counsel was aware prior to the trial that the defendant would be subject to consecutive sentencing upon conviction. The defense counsel's affidavit also set forth the fact that the

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information during the plea negotiation process by misrepresenting what the trial court stated during a Rule 402 conference regarding the sentence it would impose on the defendant upon conviction.

defendant, while laboring under this misconception regarding sentencing, turned down a plea offer from the State, thus corroborating the defendant's claim that he suffered prejudice as a result of his counsel's erroneous advice. That is not the case here. Unlike in *Curry*, the record is silent as to all these matters and there is no evidence substantiating defendant's claims.

¶ 36 The import of the majority's decision should not be understated. Curiously, the decision is being issued as an unpublished Rule 23 order. But once its import is realized, publication will be quickly requested. Following this decision, assuming timeliness, every defendant currently incarcerated after trial, where the record is silent as to plea discussions, can now make the same claim as defendant here and have the case advanced to the second stage post-conviction proceeding, even if that defendant was correctly admonished prior to trial of the penalties being faced. Advancement to the second stage is no small matter. Counsel is appointed and an investigation of the whole case begins anew. It often takes three to four years to get to the point where appointed counsel will finally file any amended supplemental petition so that the matter can be adjudicated. This case is the expansion of *Curry* that was feared. It is a floodgate ruling.