2011 IL App (2d) 091300-U
No. 2—09—1300
Order filed September 2, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Respondent-Appellee,	)	
v.	)	No. 03—CF—3241
RONALD R. MILES,	)	Honorable Steven G. Vecchio,
Petitioner-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: The trial court's summary dismissal of petitioner's post-conviction petition as frivolous and patently without merit was proper where petitioner's allegation of ineffective assistance of counsel for failing to pursue the state's plea offer was completely contradicted by the record of proceedings.

¶ 1 Petitioner, Ronald R. Miles, was convicted of felony first degree murder of Rochelle Moore, predicated on aggravated criminal sexual assault. 720 ILCS 5/9—1(a)(3); 12—14 (West 2002). He was sentenced to natural life imprisonment. This court affirmed the judgment of the trial court. *People v. Miles*, No. 2—06—1200 (2008) (unpublished order under Supreme Court Rule 23). On

September 2, 2009, Miles filed a *pro se* petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122—1 *et seq*. (West 2008)). The petition was summarily dismissed by the trial court. Miles now appeals the trial court's dismissal of his petition that is based on a claim of ineffective assistance of counsel. For the following reasons, we affirm the dismissal of petitioner's post-conviction petition.

¶ 2 I. BACKGROUND

¶ 3 The facts of this case are discussed in detail in our order affirming petitioner's conviction of felony first degree murder predicated on aggravated criminal sexual assault and subsequent life sentence. 720 ILCS 5/9—1(a)(3); 12—14. See *People v. Miles*, No. 2—06—1200 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 On September 2, 2009, petitioner filed a *pro se* petition for post-conviction relief alleging ineffective assistance of counsel on the ground that counsel failed to effectively assist him in the following ways: (1) to ask for independent DNA analysis; (2) to have evidence excluded that was seized by the police; (3) to challenge the chain of custody on the murder victim's ring and clothing; (4) to move for a continuance when the State added two witnesses to its witness list during *voir dire*; and (5) to make any investigation or follow up concerning a plea offer that was made to him by two detectives on November 11, 2003. The petition was summarily dismissed in a written order by the trial court on November 19, 2009, which was filed the following day.

¶ 5 We summarize the history of the case as it relates to the only argument advanced by petitioner here: that his allegation that trial counsel was ineffective for failing to investigate or follow up on a November 11, 2003, plea offer, which was adequately supported and stated the gist

of a claim, warranted appointment of counsel and a second stage post-conviction proceeding. 725 ILCS 5/122—2.1(b) (West 2008).

¶ 6 At the time of the indictment in this case, petitioner was serving a sentence of 24 years (12 years on each of two counts) to be served consecutively in the Illinois Department of Corrections for aggravated criminal sexual assaults he committed on another young woman on June 16, 2002 (02 CF 1983). Rochelle Moore was murdered on July 14, 2002, in the same vicinity where the assaults in case number 02 CF 1983 took place, as well as two other sexual assaults that occurred on June 22, 2002 and July 3, 2002, each involving different victims. Petitioner became a suspect in each of these cases when DNA taken from the victims was matched to petitioner's DNA profile in the statewide DNA database of convicted felons. Petitioner was indicted for Rochelle's murder on November 3, 2003 (filed November 5, 2003). Pursuant to an Order of Habeas Corpus Ad Prosequendum, petitioner was brought to Winnebago County from the Western Illinois Correctional Center for his arraignment on November 12, 2003.

¶ 7 Petitioner alleges in his petition that on November 11, 2003, he was visited by two Rockford police department detectives who had been involved in the investigations of the sexual assault and murder of Rochelle Moore. Petitioner alleges that during the visit, Detectives Monica Heatherington and Eric Bruno conveyed a plea offer with the approval of the State's Attorney's Office. Petitioner alleges that he agreed to these terms. He attached a copy of the purported agreement to the petition. The document is printed by hand and reads:

> "If the S/A office is willing to offer Ronald Miles the minimum sentence on the murder charge of Rochelle Moore
>
> Ronald Miles is willing to provide a truthful confession concerning the facts and

circumstances surrounding her death.

The time/sentence would run concurrent with Ronald Miles' present sentence.

Ronald Miles agrees that if he is not completely honest/truthful the State can refuse the terms of this agreement. Ronald Miles (signature)

11-11-03

6:50 p.m.

M. Heatherington #179 (signature)

E. Bruno #198 (signature)"

The adjective "truthful" appears to have been added over the noun "confession."

¶ 8 On November 12, 2003, petitioner was arraigned on this case. The State informed the trial court that they were electing to proceed first on this case rather than on the pending sexual assault charge. The court appointed deputy public defender Edward Light, the same attorney who had represented petitioner on the aggravated criminal sexual assault which resulted in the 24 year sentence of imprisonment. The State informed the court and petitioner that while they would not be asking for the death penalty, petitioner would be eligible for a sentence of natural life upon conviction.

¶ 9 During the proceedings, the case was passed to afford petitioner an opportunity to confer with Light. The case was recalled. No mention was made of any plea discussions. Petitioner was remanded to the Winnebago County jail until the next court date.

¶ 10 On December 17, 2003, petitioner personally addressed the court and stated, "I do not want Ed Light to handle my case due to I was found guilty. I went to trial with him last time, was found guilty with him representing me, and I would rather have somebody else representing me."

¶ 11 Both Light and the State addressed the court. The court then asked petitioner if he had anything else to add, and petitioner stated:

> "If I went to trial with this lawyer – why should I go again and have the same thing happen again? I figure if he wouldn't help me in the first trial, I figure he isn't going to represent me in the second trial. I'm going to get stuck and go to trial and found guilty again, with the same lawyer. I ain't that stupid now."

No mention was made of any plea discussions. The trial court took the issue of representation under advisement.

¶ 12 On December 23, 2003, petitioner filed a *pro se* "motion for Bar Association Attorney." Petitioner's motion made no reference to a desire to enter into a negotiated plea of guilty. In the motion, petitioner alleged that there existed an unspecified conflict of interest between him and the Winnebago County public defender's office. At the hearing on the motion, Light acknowledged that "there had been a breakdown in communication" between him and petitioner. The court then appointed attorney Greg Clark to represent petitioner.

¶ 13 On January 14, 2004, Clark acknowledged receipt of discovery and reported that he had been corresponding with petitioner, who, per his request, had been remanded to the Department of Corrections. The case was periodically continued on defense motion with no mention being made of any plea negotiations.

¶ 14 On March 23, 2005, Clark reported to the court that the trial court administrator indicated that petitioner's case would be removed from his caseload and that attorney David Caulk would take over the representation of petitioner. An order permitting Clark to withdraw and appointing Caulk

to represent petitioner was entered. Clark turned his file over to Caulk in open court. Petitioner remained in the department of corrections and was not present for these proceedings.

¶ 15 On April 13, 2005, Caulk reported to the court that, "Mr. O'Connor (the assistant state's attorney assigned to prosecute the case) has given me a plea. I need to meet with Mr. Miles who is in the department of corrections." No detail was provided regarding the substance of the plea offer. The case was continued to May 4, 2005.

¶ 16 On May 4, 2005, Caulk reported to the court that he had "conversed with Mr. Miles by letter, but I haven't seen him yet." The case was continued by agreement to June 29, 2005 for the filing of motions with a tentative trial date of September 1, 2005.

¶ 17 On September 1, 2005, the trial was continued to November 14, 2005, due to an illness suffered by Caulk that affected his ability to prepare. Caulk reported that petitioner understood the reason for the continuance. Petitioner remained in the department of corrections and his appearance was waived. No mention was made of any possible plea negotiation. The State answered ready for trial, but based upon the circumstances did not object to the continuance.

¶ 18 On November 9, 2005, assistant state's attorney O'Connor and Caulk reported to the court that petitioner was supposed to be "writted back today" but that the judge "wasn't available to sign the writ." Assistant state's attorney O'Connor also reported to the court that:

> "We did have an offer outstanding to the defense and today would normally be the final cutoff for that offer. I have agreed to extend that offer until Friday at 5:00."

Neither the State nor Caulk discussed the substance of the offer.

¶ 19 On November 14, 2005, petitioner was present in open court when Caulk requested a continuance of the trial date until February 2, 2006. The court granted the defense a continuance

over the State's objection. The case was continued again on February 2, 2006. No further mention was made on the record concerning any proposed disposition by way of a plea agreement.

¶ 20 On March 8, 2006, Caulk reported to the court that petitioner "refused to speak with him" because more than 20 years earlier, Caulk had been an assistant state's attorney. The court had further discussions with Caulk and petitioner. Caulk reported to the court that he was "willing to do whatever needs to be done, but if he's not going to speak with me, I guess that's his choice." The court admonished petitioner that if he had problems with Caulk, to "put it in writing so I can look at it." The case was continued to March 29, 2006.

¶ 21 On March 29, 2006, Caulk reported that petitioner, who was present in open court, was still refusing to speak to him. The case was continued to March 31, 2006, for setting for trial. On that date, Caulk reported to the court that petitioner's problem with Caulk representing him had been resolved. Upon questioning as to how he felt about Caulk representing him, petitioner stated, "[W]ell, we talked, we talked, you know, he told me. We okay now for like that." No further mention was made of any potential resolution of the case by way of a plea agreement.

¶ 22 On October 22, 2006, after a hearing on petitioner's motion to suppress, the assistant state's attorney asked that petitioner "be re-admonished of the penalty range prior to trial *** the possibility of a natural life sentence." The court so admonished petitioner. Later, Mr. Caulk asked the court to answer petitioner's questions as to whether a natural life sentence upon conviction would be mandatory or discretionary. The court advised petitioner that such a sentence would be discretionary. The State then requested that petitioner "be admonished just one more time about what the charges are." To which petitioner responded, "I heard it already." The trial court remarked, "[O]kay. I read it to him. I don't know that he's - - - Mr. Miles is shown to be very intelligent, and

you understand what I said, don't you, sir?" Mr. Caulk responded for petitioner by saying, "[H]e understands." The case proceeded to jury trial, resulting in petitioner's conviction. The court then sentenced petitioner to a term of natural life imprisonment.

¶ 23 This court affirmed the conviction. On September 3, 2009, petitioner filed a *pro se* petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122—1 *et seq*. (West 2008)). The only affidavit attached to the petition was his own, asserting that "the facts in this petition are true and correct in substance and in fact." The trial court summarily dismissed the petition by written order on November 20, 2009, finding that the claims were barred by *res judicata* and that they had been waived. The court also held that the claims were insufficient to show that counsel's representation met the standard for ineffective assistance of trial or appellate counsel. Therefore, the court found that the petition was without merit and patently frivolous.

¶ 24 The bulk of the pre-trial proceedings, the trial and sentencing were presided over by Judge Richard Vidal. Petitioner's *pro se* petition for post-conviction relief was assigned to Judge Steven Vecchio, who entered the order dismissing the petition pursuant to 725 ILCS 5/122—2.1(a)(2) (West 2008).

¶ 25 II. ANALYSIS

¶ 26 Petitioner's *pro se* petition for post-conviction relief alleged multiple claims of ineffective assistance of counsel. However, on appeal petitioner argues only one of those claims, namely, that trial counsel was ineffective for failing to investigate or follow up on the November 11, 2003, plea offer from the State. The failure to argue any of his other claims results in waiver of those claims. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006); see *People v. Brown*, 363 Ill. App. 3d 838, 840 (2005). Petitioner asserts that the allegation concerning the failure of counsel to investigate or follow up on

the State's plea offer should have survived first stage review because "[a] *(pro se)* post-conviction petition is considered frivolous or patently without merit only if the allegations in the petition, taken as true, and liberally construed, fail to present the 'gist of a constitutional claim.'" *People v. Edwards*, 197 Ill. 2d 239, 244 (2001) (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996)).

¶ 27 The threshold for first stage survival is low because most petitions are drafted by petitioners with little legal knowledge. *People v. Torres*, 228 Ill. 2d 382, 394 (2008). Petitioner argues that his claim "was more than a bare assertion" because he attached to his petition a copy of the plea agreement bearing his signature, along with the signatures of Detectives Heatherington and Bruno, and the allegations in his petition are supported by his own affidavit. The State argues that the trial court properly dismissed the petition because petitioner failed to provide the necessary evidentiary support for his claim, noting that petitioner did not provide an affidavit from either of the detectives or the State's Attorney Office. The State also argues that the wording of the "plea offer," liberally construed, appears to be a solicitation of a plea offer by petitioner and not vice versa. The State also points out that nowhere in the petition or affidavit does petitioner allege that he informed trial counsel about the plea offer.

¶ 28 Before addressing the merits of this appeal, we note the inadequacies of the briefs submitted in this case. Given the fact that the judge who ruled on the petition was new to the case, it could have only been through a review of the petition and the record of the trial court proceedings that the court could have determined that petitioner's allegations were nonmeritorious. Yet in their briefs, neither petitioner nor the State made a single reference to the trial court proceedings, knowing full well that our review of a dismissal of a post-conviction petition is *de novo* and that we will review the record. Adherence to the requirements in Illinois Supreme Court Rule 341(h)(7)(i) (eff. Sept.

1, 2006) to cite relevant pages in appellate briefs is necessary to expedite and facilitate the administration of justice.

¶ 29 The Post Conviction Hearing Act (Act) establishes a three-stage process for adjudicating a post-conviction petition. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). During the first stage, the court determines whether the petition's allegations sufficiently demonstrate that petitioner's constitutional rights were violated. *People v. Coleman*, 183 Ill. 2d 366, 280 (1998). Trial courts are encouraged to "closely scrutinize supporting documents, including the record, at this stage of the process." *People v. Patten*, 315 Ill. App. 3d 968, 972 (2000). A post-conviction petition must include affidavits, records, or other evidence supporting its allegations or state why these documents are not available. 725 ILCS 5/122—2 (West 2008). To survive summary dismissal, "a post-conviction petition need present only a limited amount of detail and is not required to set forth a constitutional claim in its entirety." *People v. Brown*, 236 Ill. 2d 175, 188 (2010). A *pro se* petition may be summarily dismissed as frivolous or patently without merit pursuant to section 122—2.1(a)(2) of the Act "only if the petition has no arguable basis in law or in fact. A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). A legal theory that is completely contradicted by the record is an example of an indisputably meritless legal theory. *Hodges*, 234 Ill. 2d at 16. The Illinois Supreme Court has consistently upheld dismissals of post-conviction petitions "when the allegations are contradicted by the record from the original trial proceedings." *People v. Torres*, 228 Ill. 2d 382, 394 (2008). We review a dismissal of a post-conviction petition *de novo*. *Coleman*, 183 Ill. 2d at 389. That is, we review the petition

and any supporting documents along with the record of the trial court proceedings in order to make our "own independent assessment of the allegations." *People v. Edwards*, 197 Ill. 2d at 247.

¶ 30 Petitioner alleges that his trial attorney was ineffective for failing to follow up or investigate the State's purported plea offer. To establish ineffective assistance of counsel, petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness as measured by reference to prevailing professional norms and that prejudice resulted from that performance. *People v. Brown*, 236 Ill. 2d at 185; *People v. Palmer*, 162 Ill. 2d at 475. A criminal defendant is entitled to effective assistance of counsel throughout the trial process, including plea discussions. In *People v. Palmer,* the Illinois Supreme Court made the following observations regarding an attorney's decision on whether to pursue plea negotiations:

> "Although strong in their advocation, neither the ABA standards nor *Brown* (*People v. Brown*, 177 Cal. App. 3d 537 (1986)) suggests that counsel has an absolute duty to engage in plea negotiations. Clearly, implicit in these separate authorities, however, is that the failure to pursue plea negotiations may, in certain cases, properly support a claim of ineffective assistance of counsel. (Accord Anno., 8 A.L.R.4th 660 (1981).) Equally as clear from the Standards is that the decision to pursue plea negotiations may be a matter of trial strategy.
>
> Consistent with the view expressed in the Standards, we conclude that the extent of an attorney's duty to engage in plea negotiations is necessarily defined by the particular facts and circumstances of each individual case. However, an attorney's decision on whether to initiate or pursue plea negotiations may legitimately fall within the realm of trial strategy or

professional judgment. With the duty thus defined, we next consider whether defense counsel's failure to enter into negotiations in this case rendered his assistance ineffective." *Palmer*, 162 Ill. 2d at 478.

¶ 31 As the court observed in *Palmer*, a defendant has no constitutional right to be offered the opportunity to plea bargain. *Palmer*, 162 Ill. 2d at 476-77. Likewise, a defendant's inability to enforce a prosecutor's offer once made and withdrawn prior to the entry of a plea of guilty is without constitutional significance. See *Mabry v. Johnson*, 467 U.S. 504, 510 (1984); see *People v. Navarroli*, 121 Ill. 2d 516, 524 (1988). That being said, we accept petitioner's premise that if the State was in fact willing to offer him "the minimum sentence on the murder" in exchange for "a truthful confession," defense counsel had a duty to investigate the offer and the failure to do so would have resulted in prejudice, assuming the offer was still open, which we cannot infer from petitioner's pleading.

¶ 32 We first consider the State's argument concerning petitioner's failure to attach "affidavits, records, or other evidence supporting its allegations" or explain why they are not attached. Petitioner's allegation of ineffective assistance of counsel is not supported by a single affidavit, including his own. There is no allegation that defense counsel Caulk was ever even made aware of the November 11, 2003, conversation between petitioner and the detectives. Petitioner fails to explain the absence of his own affidavit verifying that he spoke to his trial attorney and indicated a willingness to accept the terms of the proposed agreement. Petitioner is correct that the "standard of a gist of a claim presents a low threshold which the petition must meet." *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). But there is still a threshold. Forgiving petitioner's failure to allege anywhere, either in his petition or in his affidavit, that he discussed the November 11, 2003, offer

with trial counsel would convert a "low threshold into a "no" threshold. Petitioner cites to *People v. Hall*, 217 Ill. 2d 324 (2005), for the proposition that his claim of ineffective assistance of counsel in plea negotiations may be advanced in the context of a post-conviction petition. In contrast to this petitioner, however, the petitioner in *Hull* attached a detailed affidavit describing a conversation he had with his appointed attorney following his arrest. *People v. Hall*, 217 Ill. 2d at 329-30. Contrary to petitioner's argument, his affidavit does not explain why he was unable to provide additional support for his claim. Petitioner also contends that his affidavit is akin to the affidavits of the petitioner in *People v. Williams*, 47 Ill. 2d 1 (1970) and *People v. Washington*, 38 Ill. 2d 446 (1967).

¶ 33 Petitioner's reliance on *Williams* and *Washington* is misplaced. In both cases, the sworn petitions set out in detail the petitioners' discussions with their respective trial attorneys. While recognizing the difficulty of obtaining an affidavit from an attorney who is being accused of ineffective assistance, we cannot condone the failure on the part of the petitioner to set out in his petition or affidavit his communication with his attorney regarding the State's offer. Unless trial counsel was made aware of the offer, there can be no deficient representation for failing to pursue it. The petition and affidavit lack not only an explanation for the absence of supporting evidence, but also a single allegation from which we could infer that his attorney was aware of the offer. See *People v. Collins*, 202 Ill. 2d 59, 62 (2002).

¶ 34 We agree with the State that failure by petitioner to comply with section 122—2 is fatal and justified the trial court's summary dismissal. *People v. Harris*, 224 Ill. 2d 115, 126 (2007). Petitioner acknowledges the deficiencies in his petition, but argues in his reply brief that:

> "While admittedly the defendant's contention regarding counsel's failure to follow up on the plea offer is not completely supported by the copy of the signed proposed

> agreement, the record as a whole does not support a finding that the allegation is 'based on an indisputably meritless legal theory or a fanciful factual allegation.' *Hodges*, 234 Ill. 2d at 16."

Appellate counsel then fails to cite even a single reference to the record of proceedings in the trial court which in any way supports petitioner's claim, in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2006).

¶ 35 The trial court did not specify its findings of fact that it made in reaching its decision as required by the Act. However, where the reasons for the dismissal are readily discernible from the record, there is no need to remand for clarification. *People v. Cooper*, 148 Ill. App. 3d 412, 416-17 (1986). Furthermore, we may affirm the trial court's judgment on any basis supported by the record. *People v. Little*, 335 Ill. App. 3d 1046, 1051 (2003). Unless petitioner's allegations are positively rebutted by the record, all well-pled allegations are taken as true during the trial court's first stage review. *Coleman*, 183 Ill. 2d at 380-81. Our supreme court has consistently upheld first-stage dismissals of a post-conviction petition when the trial court record of proceedings contradicts the petitioner's allegations.

¶ 36 With theses principles in mind, we turn our attention to the record of proceedings in the trial court. While we have found that the allegation of ineffective assistance of counsel for failing to pursue the plea agreement was not well pled, we find that even assuming that the petition was in proper form, the allegation is completely contradicted by the record.

¶ 37 We first note that petitioner's guilt was overwhelming, not only of the murder of Rochelle Moore, but the other crimes which were introduced at trial and considered at sentencing. As our supreme court noted in *Palmer*, there are cases in which an accused's risks warrant the exploration

"of a result favorable to the accused through the process of plea negotiations." *People v. Palmer*, 162 Ill. 2d at 477. While we express no opinion as to whether or not trial counsel has an absolute duty to engage in plea negotiations, we find that from the record of proceedings in this case trial counsel did in fact engage in plea discussions with the State and was in communication with petitioner concerning the State's offer, whether it was the offer allegedly communicated on November 3, 2003, or an amended offer at some later point. Furthermore, on numerous occasions petitioner engaged in a dialogue with the trial court regarding his dissatisfaction with his appointed attorneys. Not once did petitioner ever suggest that he as dissatisfied because he wanted his attorney to pursue a plea offer. On the contrary, from early on in the proceedings, petitioner expressed his intention to go to trial.

¶ 38 On December 17, 2003, petitioner told the court he did not want Light to represent him because the last time Light represented him, he was found guilty. It is clear from the record in this case that early on in his defense of petitioner, trial counsel pursued an offer from the State and discussed the offer with petitioner. Caulk was appointed on March 23, 2005. On April 13, 2005, Caulk reported to the court that he had received an offer from the State, which he would discuss with petitioner, who at his own request had been remanded to the Department of Corrections. As late as November 9, 2005, the State's offer, whatever it was, remained open. We are not privy to what that offer was, nor should we be. Until the parties have a tentative plea agreement to present to the trial court, the trial court is in no position to inquire as to any details. See Ill. S. Ct. R. 402(d) (eff. July 1, 1997).

¶ 39 It is obvious from the record in this case that trial counsel's strategy included obtaining a plea offer from the State. It is equally obvious from this record that petitioner chose to reject the offer

and proceed to trial. Prior to proceeding to trial, at the urging of the assistant state's attorney, the trial court re-admonished petitioner that by going to trial, he risked being sentenced to life in prison. As his attorney confirmed, petitioner was well aware of the risks he faced by going to trial, as opposed to accepting the State's plea offer. We will not speculate as to what the offer might have been, but we are satisfied that counsel was not ineffective for failing to pursue plea discussions.

¶ 40 It is clear from the record that counsel left the decision as to whether or not to accept the State's offer up to petitioner. It is equally clear that by the time trial began, any plea offer that had been outstanding had been withdrawn, which is solely the prerogative of the State. Unless petitioner gave up a constitutionally protected right by pleading guilty or confessing, as the purported agreement called for petitioner to do, no court would be in a position to enforce the agreement. See *Mabry v. Johnson*, 467 U.S. 504 (1984); *People v. Navarroli*, 121 Ill. 2d 516 (1998). Even liberally construing petitioner's allegation, the record in this case establishes that petitioner's claim is clearly baseless and fully justified the trial court's summary dismissal.

¶ 41 In evaluating petitioner's ineffectiveness claim, we are mindful of our obligation to judge the reasonableness of counsel's challenged conduct on the facts of this case, viewed as of the time of the alleged action or inaction. At the same time, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). By the time attorney Caulk became assigned to the case, approximately seventeen months had passed since the time of the purported plea offer conveyed by Detectives Heatherington and Bruno. Counsel was no doubt made aware of petitioner's problems with both attorneys who had previously been assigned to the case. As the record establishes, Caulk for a short time also had problems with petitioner because petitioner did

not trust Caulk due to the fact that Caulk had been an assistant state's attorney early in his career. On March 8, 2006, the trial court admonished petitioner that if he had problems with Caulk he should "put it in writing so I can look at it." Petitioner obviously did not have any problems with Caulk because on March 31, 2006, he reported to the court that they were "okay." Petitioner made no complaint to the court regarding any alleged deficiencies in Caulk's performance when given the opportunity to do so. Viewed in this light, petitioner's current attack on Caulk is wholly without merit.

¶ 42 III. CONCLUSION

¶ 43 The petition for post-conviction relief was insufficient as a matter of law and his allegation of ineffective assistance of counsel was completely contradicted by the record of the trial court proceedings. Therefore, we affirm the trial court's order summarily dismissing the post-conviction petition.

¶ 44 Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

¶ 45 Affirmed.