2013 IL App (2d) 120030-U
No. 2-12-0030
Order filed August 12, 2013
Modified upon denial of rehearing October 3, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ABDUL M. LOVE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 05-CF-3811 Honorable Fred L. Foreman, Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The postconviction petition does not state an arguable claim that appellate counsel was ineffective for failing to argue on direct appeal that defendant was denied his right to present witnesses; affirmed. The mittimus must be amended to reflect the proper crime for which defendant was convicted.

¶ 2 Following a stipulated bench trial, defendant, Abdul M. Love, was found guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2004)), and he was sentenced to 15 years' imprisonment. We affirmed defendant's conviction. *People v. Love*, 2011 IL App (2d) 091274. Defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (725 5/122-1 *et seq*. (West 2010)), which was summarily denied.

Defendant argues on appeal that the postconviction petition states an arguable claim that appellate counsel was ineffective for failing to argue on direct appeal that defendant was denied his right to present witnesses. Defendant also contends that the mittimus must be amended to reflect the correct offense of possession of a controlled substance with intent to deliver. We affirm the denial of the postconviction petition and direct the clerk of the circuit court of Lake County to amend the mittimus to reflect the correct conviction.

¶ 3 I. BACKGROUND

¶ 4 On October 5, 2005, defendant and Silas Peppel drove from Champaign, Illinois, to Waukegan, Illinois, to sell cocaine to Peppel's cousin. While driving in Waukegan, defendant was pulled over by the police, arrested, and charged with the possession of 900 or more grams of cocaine with intent to deliver. While in jail awaiting trial on the possession charge, defendant was charged with the solicitation of murder for hire of his co-defendant, Michael Nelson, and Sergeant Cappelluti, one of the officers involved in defendant's arrest for possession with intent to deliver. The trials on the two charges were conducted separately.

¶ 5 Prior to his trial on the possession with the intent to deliver charge, defendant filed a motion to suppress evidence, a motion to suppress confession, and a motion for supplemental discovery. Defendant also issued a subpoena to Peppel to testify at the trial.

¶ 6 On July 9, 2007, the court held a hearing on defendant's motion to quash arrest and suppress evidence. At the hearing, Sergeant Scott Chastain, detective Dominic Cappelluti, and detective Michael Reed testified that, on October 5, 2005, they were patrolling Waukegan on a robbery detail when they saw a Ford Taurus driving at a high rate of speed. Chastain saw the car "pull out, change lanes without signaling, and then pull into the BP without signaling and had tinted windows."

Cappelluti spoke with the other officers on the radio and subsequently, four unmarked squad cars followed the Taurus. After the Taurus pulled into the BP station, the squad cars surrounded the Taurus. Defendant was driving the Taurus and Nelson was sitting in the front passenger seat.

¶ 7 As Reed was speaking with defendant, Chastain and detective Arturo Flores looked inside the car to make sure there were no other passengers traveling with defendant and Nelson. In the back seat, Chastain saw an open child's toy box with an item sticking out of it that was wrapped in clear plastic. The wrapped item appeared to be the same size and shape as a kilogram of cocaine. Reed noted that there was a warrant for defendant's arrest, and defendant and Nelson were arrested. Chastain found two more items wrapped in clear plastic inside of the child's toy box.

¶ 8 The trial court denied the motion to quash arrest, finding there was probable cause to stop defendant due to the traffic violations and the warrant for his arrest. The court further found that the white bricks of suspected cocaine were in plain view.

¶ 9 At the hearing on the motion to suppress confession, the parties stipulated to the testimony that had been presented at the motion to quash arrest. In regards to the confession, Cappelluti testified that he and Chastain interviewed defendant after his arrest, that Chastain read defendant his *Miranda* rights, and that defendant signed a rights waiver form.

¶ 10 Defendant then told Cappelluti and Chastain the following. Defendant was a college student in Carbondale, Illinois, and had a friend named Silas (Peppel), who called him and asked if he could sell his cousin $75,000 worth of cocaine. Defendant knew a man named "G" in Waukegan who could get two and a half kilograms of cocaine for $75,000. Defendant took a train from Carbondale to Champaign and met with Peppel, and together they drove to Waukegan to find "G." While driving, Peppel and defendant got into an argument. Defendant left Peppel, and defendant met up

with another man, who told him to drive the Taurus and look for Peppel. While driving, defendant was pulled over and arrested. Cappelluti testified that defendant agreed to provide a handwritten statement. Defendant signed the rights waiver form and his handwritten statement. The court found that defendant knowingly and intelligently waived his rights and gave a voluntary statement, and it denied the motion to suppress confession.

¶ 11 In defendant's motion for supplemental discovery, he requested that the State disclose whether Peppel was an informant and disclose Peppel's last known address and phone number. Defendant stated that he believed Peppel was an informant who was cooperating with the police and he was the reason that defendant was pulled over and his car was searched. Defendant asserted that the drugs were not in plain sight but were found based on a tip or some confidential informant. After a hearing on the motion, the court ordered the State to determine whether there was, in fact, an individual named Peppel.

¶ 12 The State filed a motion to reconsider the ruling on defendant's motion for supplemental discovery, citing Illinois Supreme Court Rule 412(j)(ii) (eff. March 1, 2001), which pertains to the confidential informant privilege. During a subsequent court date, defense counsel informed the court that the defense investigator had Peppel's phone number and that he had phone contact with Peppel.

¶ 13 Upon reconsideration of the State's motion to reconsider, the court acknowledged that "it is not a question of Mr. Peppel's identity. They have identity." The court explained that all of the information the court had was defendant's statement that Peppel was involved "and nothing to back that up." The court stated that it would reconsider its ruling if defendant obtained more information as a result of dealing with Peppel.

¶ 14 As to the subpoena issued to Peppel, defendant argued that Peppel was a necessary witness to impeach the arresting officers about the circumstances of defendant's arrest. Peppel's counsel filed a motion to quash the subpoena, arguing that Peppel's anticipated testimony was irrelevant to defendant's case, and his presence would endanger Peppel's welfare. The court denied Peppel's motion to quash.

¶ 15 Peppel filed a motion to reconsider the ruling, once again asserting that his testimony would be irrelevant and immaterial and would jeopardize his safety. Peppel made an offer of proof by way of a sealed affidavit detailing his participation and anticipated testimony.

¶ 16 The court reviewed the sealed affidavit, *in camera*, and thereafter, granted Peppel's motion to quash. The court explained that, having reviewed the affidavit and some of the transcript from co-defendant Nelson's case, it did not believe that Peppel's testimony would assist the court on the question of defendant's guilt since Peppel neither participated nor witnessed the offense. The court further explained that it did not find that Peppel assisted in setting up the offense. The court relied on *People v. Orsby*, 286 Ill. App. 3d 142 (1996), observing that the case is "a very similar case to what we have here."

¶ 17 On July 15, 2009, defendant agreed to a stipulated bench trial on the possession charge. The parties stipulated to essentially the same evidence that had been admitted at the hearings on the motions to quash arrest and to suppress confession. The parties further stipulated that Peppel dropped off defendant at an apartment complex in Waukegan after defendant and Peppel had argued. There, defendant met Nelson, who was working under the direction of "G." Nelson was to either collect the money for the cocaine or bring the cocaine back after they showed it to Peppel. Nelson told defendant the cocaine was in the Taurus and told defendant to drive to meet Peppel, who

defendant said was waiting at the gas station on Belvidere Road. Defendant and Nelson planned to show Peppel the cocaine so that Peppel could call his cousin to bring the purchase money. Defendant started to drive to the BP station when he was pulled over by the police and arrested.

¶ 18 Following his arrest, defendant was taken to the Waukegan police department and interviewed by Cappelluti and Chastain. The parties stipulated that Cappelluti was the supervisor of the robbery detail on October 5, 2005. Cappelluti would testify that he also interrogated defendant at the station and that defendant provided a written, voluntary statement about his involvement in the offense.

¶ 19 The parties stipulated that officer Flores would testify that he also was working the robbery detail and participated in the traffic stop. During the traffic stop, Flores saw the open box with the white brick-like object wrapped in plastic lying partially out of the box in the back seat of the car.

¶ 20 Garth Glassburg of the Northeastern Police Crime Laboratory would testify that he tested three packages that were recovered from the Taurus, and all three tested positive for the presence of cocaine. In all, the cocaine weighed more than 2,000 grams. The court found defendant guilty of the possession of 900 or more grams of cocaine with the intent to deliver.

¶ 21 On November 20, 2009, defendant filed separate motions for a new trial in the possession and solicitation cases. The trial court denied both motions. On November 23, 2009, the trial court sentenced defendant to concurrent prison terms of 25 years on each of the solicitation convictions, to be served consecutive to a 15-year sentence on the unlawful possession conviction.

¶ 22 Defendant's cases were consolidated on direct appeal. Defendant argued on appeal that the self-incriminating statements made during the police investigation of the solicitation charge should be suppressed as they were taken without his counsel's presence in violation of his sixth amendment

rights. We disagreed and affirmed defendant's convictions for solicitation and possession. *Love*, 2011 IL App (2d) 091274, ¶ 33.

¶ 23 On October 6, 2011, defendant filed a *pro se* postconviction petition. He alleged, *inter alia*, that his appellate counsel was ineffective for failing to raise any challenges to his possession conviction and sentence and that the trial court abused its discretion for quashing the subpoena on Peppel. Defendant asserted that Peppel's testimony was important to his possession case because Peppel drove with defendant to Waukegan prior to defendant's arrest, and Peppel initiated the drug deal by initially contacting defendant about purchasing cocaine. Defendant believed that Peppel was an informant "from the inception of this case." Defendant further alleged that Peppel's testimony would have impeached the State's witnesses, Chastain and Cappelluti.

¶ 24 In support, defendant attached to the petition a report from the Carbondale police department, which indicates that Peppel and defendant were implicated in a counterfeiting scheme in Carbondale in 2005. Five months prior to defendant's arrest, Peppel was questioned by the Carbondale police and volunteered to help the police in the counterfeiting investigation. The report states that "Peeble (*sic*) told me that he did not make the money. He told me that he knows who mad (*sic*) the fake money. Peeble (*sic*) told me that he wanted to talk to the secret service to provide any information. He told me that he wants to know the circumstances and/or repercussions of his testimony."

¶ 25 Defendant also attached to the petition a letter that he wrote to the trial court judge on June 6, 2008, in which he asserts that Peppel's testimony was necessary to his possession case because "he was in contact with law enforcement officials."

¶ 26 On December 12, 2011, the court summarily dismissed defendant's *pro se* postconviction petition. The court found that defendant's claims that the State should have disclosed Peppel as an

informant, that Peppel's subpoena should not have been quashed, and that appellate counsel was ineffective for not raising these issues, were without merit because no evidence from a confidential informant was used, or necessary, to prove defendant's guilt as the record shows that defendant was arrested as the result of a routine traffic stop, independent of any information provided by a confidential informant. "No evidence from a confidential informant was used, or was necessary, to prove defendant's guilt." Therefore, the claims that the State should have been compelled to disclose Peppel as an informant, that the subpoena requiring Peppel to testify should not have been quashed, that defendant's confrontation rights were violated because he was not able to cross-examine Peppel, and that it was prosecutorial misconduct for the State to fail to disclose Peppel as an informant, are completely without merit. In addition, the court concluded that the contention that these arguments should have been raised in defendant's direct appeal fails to state the gist of a claim of ineffective assistance of appellate counsel because the arguments could not have provided the basis for a successful appeal.

¶ 27 After considering the Carbondale police department report discussing Peppel's offer to help the authorities, the court found nothing in that report to indicate Peppel actually worked as a confidential informant for anyone and it does not provide any information about defendant's possession case. The report details a preliminary investigation concerning the use of counterfeit money at a Carbondale bar in April 2005. The court concluded that the report offered no basis for finding that Peppel should have been allowed to testify at defendant's trial or that the police officers that testified at defendant's trial could have been impeached by Peppel's testimony. Defendant timely appeals.

¶ 28 II. ANALYSIS

¶ 29 A. Dismissal on the Failure to Verify the Postconviction Petition

¶ 30 We initially address the State's contention that, although the trial court did not dismiss the petition for lack of a verified affidavit, we should affirm the first-stage dismissal of defendant's postconviction petition on the basis that the petition has not been verified by affidavit. The State contends, citing *People v Carr*, 407 Ill. App. 3d 513, 515 (2011), and *People v. McCoy*, 2011 IL App (2d) 100424, ¶10, that a petition filed under the Act must be verified by affidavit (725 ILCS 5/122-1(b) (West 2010)), and the failure to do so requires dismissal.

¶ 31 In *People v. Boclair*, 202 Ill. 2d 89, 98 (2002), the supreme court held that it was improper for the trial court to summarily dismiss a petition as untimely at the first stage of the postconviction proceedings. The court reasoned that, since the burden was on the State to argue that a petition is untimely, the State could forfeit that claim by failing to raise it at the second stage of the proceedings. *Id*. Because the State was not entitled to any input at the first stage of proceedings, the court found it would be improper for a trial court to summarily dismiss the petition based on a ground that could only be raised by the State. *Id*. at 98-102.

¶ 32 Recently, in *People v. Cruz*, 2013 IL 113399, a postconviction petition initially had been summarily dismissed as untimely, but following an appeal, the supreme court remanded for further proceedings in light of *Boclair*. On remand, the petition proceeded to second-stage proceedings. Cruz, who had waived counsel, filed a supplemental petition addressing his lack of culpable negligence in filing an untimely petition, but he did not attach a notarized verification affidavit to the petition. *Id*. ¶ 9-12, 19. The State responded, arguing against the merits of Cruz's claim of lack of culpable negligence. The State did not argue that the petition was deficient for failing to include

a notarized affidavit or verification. However, on appeal it did raise this claim, and the appellate court agreed, affirming the dismissal of the petition on the new ground raised by the State. *Id*. ¶ 16.

¶ 33 The supreme court held that the State forfeited its argument regarding the failure to attach a notarized verification affidavit by not raising that issue in the trial court. *Id.* ¶ 20. The court favorably cited *People v. Turner*, 2012 IL App (2d) 100819, ¶¶ 42, 43, where we applied *Boclair* to hold that a lack of a notarized verification affidavit is a non-jurisdictional procedural defect that may be easily remedied if raised in a timely manner in the trial court and thus, could not be raised for the first time by the State on appeal. *Cruz*, 2013 IL 113399, ¶¶ 20-21, citing *Turner*, 2012 IL App (2d) 100819, ¶ 41. The *Cruz* court then similarly held that the State's failure to claim error from the unnotarized verification affidavit in the trial court also deprived Cruz the opportunity to correct the "alleged pleading deficiency," and deprived the trial court of the opportunity to consider the issue. *Cruz*, 2013 IL 113399, ¶ 22.

¶ 34 The supreme court's comparison to the timeliness argument advanced in *Boclair* and its holding that the State forfeited its right to make the argument on appeal, instructs that an argument that a petition was not properly verified or notarized is not a proper ground for dismissal at the first stage of postconviction proceedings. See *People v. Cage*, 2013 IL App (2d) 111264, ¶ 14 (holding that defendant's failure to attach a notarized affidavit to his postconviction relief petition was not an appropriate reason to summarily dismiss the petition at first stage of postconviction petition and rejecting *Carr*, *McCoy*, and *People v. Hommerson*, 2013 IL App (2d) 110805 (appeal allowed (May 29, 2013)). In this case, the trial court summarily dismissed the petition at the first stage of the postconviction proceedings based on its conclusion that the petition was frivolous and patently without merit; it did not dismiss the petition on the basis of a lack of a verified affidavit. Because

the State is not entitled to any input at the first stage of proceedings, it would have been improper for the trial court to dismiss the petition based on a ground that could only be raised by the State at a later stage in the proceedings. Accordingly, we reject the State's argument that the dismissal of defendant's petition may be affirmed on the basis that his petition was not verified.

¶ 35 B. Ineffective Assistance of Appellate Counsel

¶ 36 Turning to the issues raised by defendant, we address the contention that the trial court erred in summarily dismissing his postconviction petition because he raised arguable claims of ineffective assistance of appellate counsel.

¶ 37 A trial court may summarily dismiss a *pro se* postconviction petition at the first stage pursuant to section 122-2.1(a)(2) only if the petition has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). 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 a fanciful factual allegation. *Id*. An example of an indisputably meritless legal theory is one which is completely contradicted by the record. *Id.* at 16-17 (citing *People v. Robinson*, 217 Ill. 2d 43, 61-63 (2005)) (rejecting claim that appellate counsel was ineffective for failing to argue on direct appeal that out-of-court identification of defendant was inadmissible hearsay, where record showed that statement at issue fell within the hearsay exception for spontaneous declarations).

¶ 38 We are guided by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), for determining whether appellate counsel's assistance was ineffective. To prevail on a claim of ineffective assistance under *Strickland*, a defendant must show both that counsel's performance "fell below an objective standard of reasonableness" and that the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687-88. In evaluating sufficient prejudice, "[t]he 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. If a case may be disposed of on the ground of lack of sufficient prejudice, that course should be taken, and the court need not ever consider the quality of the attorney's performance. *Strickland*, 466 U.S. at 697; *People v. Scott*, 2011 IL App (1st) 100122, ¶ 27.

¶ 39 A defendant who claims that appellate counsel was ineffective for failing to raise an issue on appeal must allege facts demonstrating such failure was objectively unreasonable and that counsel's decision prejudiced defendant. *People v. Rogers*, 197 Ill. 2d 216, 223 (2001). Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong. *People v. Simms*, 192 Ill. 2d 348, 362 (2000). Thus, the inquiry as to prejudice requires that the reviewing court examine the merits of the underlying issue, for a defendant does not suffer prejudice from appellate counsel's failure to raise a nonmeritorious claim on appeal. *Simms*, 192 Ill. 2d at 362. Appellate counsel's choices concerning which issues to pursue are entitled to substantial deference. *Rogers*, 197 Ill.2d at 223.

¶ 40 Defendant contends that his appellate counsel was ineffective for failing to raise a claim on direct appeal that defendant was denied his constitutional right to present witnesses. Defendant argues that the trial court's actions of considering Peppel's affidavit *in camera* and quashing defendant's subpoena that would have required Peppel to testify at trial were improper and this prejudiced him because Peppel's testimony might have supported an entrapment defense and impeached the arresting officers' testimony. Alternatively, assuming that the trial court properly

reviewed Peppel's affidavit *in camera*, defendant argues that appellate counsel was ineffective for failing to argue that this court should have reviewed Peppel's affidavit to determine whether the trial court's quashing of the subpoena was improper.

¶ 41 1. Entrapment

¶ 42 Defendant has no viable entrapment defense and has failed to explain how Peppel's testimony would have established such a defense. Section 7-12 of the Criminal Code of 1961 (Code) provides:

> "A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was predisposed to commit the offense and the public officer or employee, or agent of either, merely affords to that person the opportunity or facility for committing an offense." 720 ILCS 5/7-12 (West 2005).

¶ 43 Entrapment requires that a defendant show both that the State improperly induced him or her to commit a crime and that he or she was not otherwise predisposed to commit the offense. *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006). When raising entrapment as an affirmative defense to a criminal charge, the defendant necessarily admits to committing the crime, albeit because of improper governmental inducement. *People v. Bonner*, 385 Ill. App. 3d 141, 145 (2008).

¶ 44 If the government merely affords the defendant the opportunity to commit the offense, there is no entrapment. Entrapment does not exist as a matter of law merely because a government agent initiates a relationship leading to a drug transaction. *People v. Rivas*, 302 Ill. App. 3d 421, 433 (1998). But the inducement prong is met when the course of criminal conduct for which the

defendant was convicted originated in the mind of a government agent who arbitrarily engaged in a relationship with the defendant and purposely encouraged its growth. *Bonner*, 385 Ill. App. 3d at 145.

¶ 45 The factors to consider when determining whether a defendant was predisposed to commit the crime include: (1) defendant's initial reluctance or readiness to commit the offense; and in drug cases, (2) defendant's familiarity with drugs; (3) defendant's willingness to accommodate the drug user's needs and to make a profit from the illegal conduct; (4) whether defendant had a ready source to supply the drugs; (5) defendant's own prior or current use of illegal drugs; and (6) defendant's participation in testing or cutting the drugs. *Rivas*, 302 Ill. App. 3d at 433.

¶ 46 In defendant's written statement to the police, he wrote:

¶ 47 "[Peppel] called me a few weeks back asking me if I could possibly find out anything about coke[.] I told him that I could make a couple of phone calls and find out. I did and told him I could get him some[.] Supposedly his cousin was going to meet us at [Jewel] on [Green Bay]. When shit didn't happen the way it was suppose[d] to[,] [Peppel] told me to make the exchange [at] the BP on [Green Bay] and Belvider[e]. The amount was suppose[d] to be $75,000, upon returning to BP to make the exchange, I was pulled over by officers patrol[l]ing for possible gas station robberies."

¶ 48 Assuming, *arguendo*, that Peppel was a government informant, defendant stated unequivocally that he would make the calls to find some cocaine. Defendant also located a source of cocaine and contacted Peppel to tell him that defendant could procure the cocaine for him. These factors indicated defendant's willingness to accommodate Peppel's needs and show that defendant had a "ready source to supply the drugs." After defendant and Peppel drove to Waukegan, they

parted company without having concluded the transaction. However, defendant attempted to close the transaction on his own. All of this evidence suggests that defendant was predisposed to selling the cocaine and to making a profit from the illegal conduct. Defendant did not refuse to participate or display any reluctance to help Peppel. Peppel did not "constantly" solicit defendant to get involved. Although Peppel may have initiated the transaction, defendant's voluntary, written statement substantiates that defendant was "pre-disposed to commit the offense" and that the agent of the government "merely afford[ed]" defendant the opportunity to commit the offense.

¶ 49 We have reviewed Peppel's affidavit, which was part of the appellate record, and had Peppel testified consistent with his affidavit, it would not have supported an entrapment defense.

¶ 50 2. Impeachment

¶ 51 As to defendant's assertion that, had Peppel testified, defendant could have impeached the testimony of Chastain and Cappelluti at the suppression hearing, defendant does not indicate what testimony could have been impeached. In any event, even had the officers been impeached on why they were in the area of the stop and why they stopped defendant, it would not have changed the outcome of the case because the police found two kilograms of cocaine in the Taurus that defendant was driving and defendant confessed to setting up the transaction.

¶ 52 In sum, defendant cannot establish the prejudice prong of *Strickland*. Accordingly, his postconviction petition does not state an arguable claim that appellate counsel was ineffective.

¶ 53 Although we need not address the other issues raised by defendant as it does not affect the outcome of this appeal, we conclude that the trial court's ruling on the motion to quash clearly was not an abuse of discretion, given all of the evidence presented to it, including Peppel's affidavit. However, contrary to defendant's assertion, the trial court's decision was not based "entirely on *in*

camera inspection" of Peppel's affidavit; rather, the trial court determined that the record showed that defendant was arrested as the result of a routine traffic stop, independent of any information provided by a confidential informant and therefore, "[n]o evidence from a confidential informant was used, or was necessary, to prove defendant's guilt."

¶ 54 C. Correction of the Mittimus

¶ 55 Defendant last contends that the mittimus must be corrected to reflect the proper crime for which he was convicted. Defendant was convicted of possession of a controlled substance with intent to deliver. The mittimus incorrectly states that defendant was convicted for "MANU/DEL 900+ CR COCAIN/ANLG," which does not correspond with the charge or the court's findings. The State asserts that the mittimus cannot be corrected on appeal because it is an appeal from a summary dismissal of a postconviction petition. We disagree with the State.

¶ 56 Case law uniformly holds that a reviewing court may correct the mittimus at any time. See*, e.g.*, *People v. Latona*, 184 Ill. 2d 260, 278 (1998); *People v. Whitfield*, 366 Ill. App. 3d 448, 451 (2006) *rev'd on other grounds* 228 Ill. 2d 502 (2007); *People v. Davis*, 303 Ill. App. 3d 684, 688 (1999). Although there is no published case addressing the correction of an offense on the mittimus on appeal from the summary dismissal of a postconviction petition, the correction at issue is no different than an appeal from the summary dismissal of a postconviction petition in which the reviewing court corrected the number of counts of the convicted offense or corrected a single conviction for an offense when it had been merged with other offenses. See, *e.g.*, *People v. O'Connell*, 227 Ill. 2d 31, 34 (2007) (correction of mittimus to reflect single conviction for first-degree murder)*; People v. Gholston*, 297 Ill. App. 3d 415, 422 (1998) (correction of mittimus on

appeal from denial of postconviction petition to reflect proper number of counts of indecent liberties with a child and aggravated battery).

¶ 57 Accordingly, because the mittimus in this case does not correctly state the crime for which defendant was convicted, we direct the clerk of the circuit court of Lake County to correct the mittimus to reflect the conviction for the possession of a controlled substance with the intent to deliver, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan.1, 1967).

¶ 58 III. CONCLUSION

¶ 59 For the reasons stated, the judgment of the circuit court is affirmed. Mittimus is corrected.

¶ 60 Affirmed; mittimus corrected.