2016 IL App (4th) 140225-U

NO. 4-14-0225

FILED
March 28, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
JOSHUA D. MEYERS,	)	No. 03CF866
Defendant-Appellant.	)	
	)	Honorable
	)	Matthew J. Maurer,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in granting the State's motion to dismiss defendant's amended postconviction petition.

¶ 2 In October 2004, a jury found defendant, Joshua D. Meyers, guilty of first degree murder. In November 2004, the trial court sentenced defendant to 60 years in prison. This court affirmed defendant's conviction and sentence as modified. In March 2008, defendant filed a *pro se* postconviction petition. In January 2014, postconviction counsel filed an amended petition, and the State moved to dismiss. In March 2014, the trial court granted the State's motion to dismiss.

¶ 3 On appeal, defendant argues postconviction counsel provided unreasonable assistance. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2003, the State charged defendant with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2002)) in connection with the death of Tyrone Jones. The State alleged, *inter alia*, defendant knowingly and without lawful justification, and with the intent to kill or to cause great bodily harm, shot Jones multiple times. Defendant pleaded not guilty.

¶ 6 In April 2004, defendant filed a motion to suppress. He alleged Springfield police detectives Paul Carpenter and James Graham obtained written statements from him in violation of his constitutional rights. In September 2004, the trial court denied the motion.

¶ 7 In September 2004, defendant's jury trial commenced. Springfield police sergeant Chris Mueller testified he conducted an investigation of a male lying in the roadway on August 8, 2003, at approximately 10:30 p.m. The male, identified as Tyrone Jones, had been shot twice and later died at the hospital.

¶ 8 Springfield police detective Rick Dhabalt testified he attended an autopsy of Jones, known as "T-bone," and gathered two bullets that had been recovered from his body. On August 9, 2003, Detective Dhabalt interviewed Don Molton, who indicated he had been with T-bone the previous night when he was shot. Molton was shown a photographic lineup, and he identified defendant as the man who shot T-bone. Dhabalt obtained a search warrant for a house at 912 East Reservoir Street, owned by Brian Bauman. A search of the residence revealed no firearms, but a shell casing was recovered. Dhabalt also obtained an arrest warrant for defendant.

¶ 9 Don Molton, a convicted felon, testified he ran into T-bone at approximately 6 p.m. on August 8, 2003. T-bone asked him if he wanted to "make a little money" by purchasing some items from drug stores. They stole "some pills" from Osco Drugs and then went to a house

on Reservoir Street to see the man who wanted the pills. T-bone walked into the house at 912 East Reservoir Street while Molton stayed outside. A "guy and the girlfriend" came out of the house and drove T-bone and Molton to CVS Pharmacy to get "some more medication." When Molton and T-bone exited the store, the man and his girlfriend had left. They walked back to the man's house, and he stated he did not want the medication. T-bone and the man got into an argument about T-bone getting "a little something" for his theft of the pills. T-bone stood "halfway off [his] bike" while the other man, identified as defendant, was standing on the porch before he went back inside. When defendant returned, he yelled, "you MF," and "appeared to pull up a gun and chase T-bone and shot him twice." After the first shot, T-bone ran, and defendant ran behind him. Molton did not see a weapon in T-bone's hand during the argument. He also did not see T-bone grab, hit, or place his hands on defendant. When defendant returned and told Molton to "get the [']you know what off['] his property," Molton took off running. Molton later gave a statement to the police and viewed several photographic lineups.

¶ 10 On cross-examination, Molton testified he and T-bone were mad after defendant left them at CVS without a ride. Upon returning to the house on Reservoir Street, T-bone went inside for about 10 minutes. When he came out, he was still mad and showed Molton a white substance in a Baggie. Molton stated T-bone was not happy with the amount of money and drugs he received for his efforts. At one point, defendant gave Molton $50 and told him and T-bone to leave. Molton and T-bone stood by a car, which contained a stereo and compact discs (CDs). A girl came out of the house and told them to get away from the car. Defendant then came out of the house. Although T-bone was yelling and screaming at defendant, Molton never heard T-bone say he was going to kill him. After defendant shot at T-bone, Molton was "in a state of shock." On redirect examination, Molton testified T-bone was sitting on his bicycle

when defendant fired the first shot. He then jumped off, and defendant chased him.

¶ 11 Dr. Travis Hindman testified as an expert in forensic pathology. He conducted the autopsy of Jones and observed two gunshot wounds. One bullet entered the abdomen "above the belly button" on a downward angle. The other bullet entered the back and struck Jones's left lung. Dr. Hindman opined the cause of death was a large quantity of blood in the abdominal cavity and chest cavity caused by the two bullets.

¶ 12 Brian Bauman testified he lived at 912 East Reservoir Street with his girlfriend, Sherri Folder, defendant's mother; defendant; his granddaughter; and his stepdaughter, Brandi King. He stated he had known T-bone for six months and had used drugs with him. T-bone stayed at the residence for two nights prior to the shooting. On August 8, 2003, T-bone and another individual came to the house. T-bone talked with defendant and left. T-bone returned on his bike with packages of cold medicine. Bauman believed T-bone wanted someone to make methamphetamine for him. Later in the evening, T-bone and defendant got into an argument because T-bone had brought back the wrong kind of pills. T-bone then demanded defendant give him a ride to get the correct pills. Defendant and King gave T-bone a ride, and defendant and King returned about 20 to 30 minutes later.

¶ 13 T-bone came back to the house and started "pounding on the table and screaming" at defendant because he left him at the drug store. Bauman told T-bone to "take it outside." Bauman walked outside and saw defendant hand T-bone a $50 "crack rock." Bauman and defendant walked back into the house. Defendant went back outside because Bauman wanted him to get rid of T-bone, who was "beating on the side of the house." T-bone also stood at the door telling defendant he was going to get "big guns" and kill defendant. Bauman went outside and saw T-bone "straddling" his bike and "screaming and hollering" at defendant. T-bone

insisted the crack rock was not enough payment, and defendant handed Molton a $50 bill. T-bone continued screaming that he wanted more money and if he did not get it he was "going to beat the hell out" of defendant. After defendant told T-bone he was not going to deal with it right then, T-bone "threw the bike down and came at [defendant] in an aggressive manner." T-bone reached toward his pocket or belt, and defendant "brought the pistol up and clicked it once and then the second time it went off." After the first shot, T-bone "turned like he was going to jump behind the truck." Defendant fired again, and T-bone "took off running down the road."

¶ 14 In his statement to police, Bauman never indicated T-bone slammed doors, pounded furniture or the house, came at defendant aggressively, or reached for his pocket. Initially, Bauman told police he did not see anything, and then in his second statement, he stated he went inside and shut the door before the shots were fired.

¶ 15 On cross-examination, Bauman testified he never saw T-bone with a gun in his hand. However, T-bone had been over before and "talked about having weapons." When T-bone came back into the house after defendant left him at the drug store, T-bone was "screaming" and "banging on the table." After Bauman told T-bone to leave, he stood at the door and said, "I got big guns. I will come back and kill your little white ass." After defendant gave him the crack rock, T-bone continued cursing and stated he was not leaving until he got what he deserved. Defendant went back into the house and returned to give Molton $50. Later, Brandi King went outside to get her CDs and lock her car. T-bone was on his bike, circling King and her car. When defendant came outside with the pistol, T-bone threw down the bike and walked aggressively in defendant's direction "with his hands down at his sides down there in his pockets." Defendant then shot at T-bone. Thereafter, defendant and King left.

¶ 16 Springfield police officer Steve Dahlkamp testified he is a member of the

emergency-response team. On August 11, 2003, he reported to a situation at 624 South Glenwood Avenue, where defendant was wanted on a murder warrant and the house was said to contain a methamphetamine lab. Dahlkamp stated he and other officers engaged in a six-hour standoff with the individuals inside. At one point, officers threw in a phone for communication and broke out the windows to "let all the fumes out in case the meth lab was still active." Defendant eventually came out, but after refusing to step off the porch, Dahlkamp fired two rounds from a beanbag gun to subdue defendant.

¶ 17 Sherri Folder, defendant's mother, testified she did not see defendant shoot T-bone. She acknowledged giving a statement to the police, wherein she said she was standing in the doorway and saw defendant shoot at T-bone from the porch. In her statement, Folder also indicated T-bone was about 10 feet away on his bike. After defendant fired two shots, T-bone jumped off the bike and ran. On cross-examination, Folder stated she was high on crack cocaine on August 8, 2003.

¶ 18 Springfield police detective George Bennett testified as an expert in methamphetamine-lab investigations. On August 12, 2003, Bennett investigated the residence at 624 South Glenwood Avenue and observed numerous items used in methamphetamine labs, including glass jars, coffee filters, empty packets of pseudoephedrine tablets, Coleman fuel, and liquid drain cleaner. Samples taken from the scene tested positive for methamphetamine. The State called Kristin Stiefvater, a forensic scientist with the Illinois State Police, who testified her testing of various samples revealed methamphetamine.

¶ 19 Springfield police detective James Graham testified he took a statement from Sherri Folder on August 11, 2003. In the statement, Folder stated T-bone wanted to be in on the deal to make some money with the pills. T-bone was angry at defendant after being left at the

drug store, and they started arguing in the front yard. T-bone was straddling his bike 10 feet away from where defendant was standing on the porch. Defendant raised a small handgun and shot at T-bone from the porch while T-bone was still on the bike. T-bone then jumped off the bike and started running.

¶ 20 Detective Graham also obtained a statement from defendant on August 13, 2003. In that statement, defendant stated he bought a gun from T-bone for $50. On August 6, 2003, defendant gave the gun to T-bone, who had to "do some kind of deal." T-bone returned the gun and later threw a shell casing at defendant, stating, "See if you can catch the next one." On August 8, 2003, defendant and T-bone made a deal to steal 20 boxes of pseudoephedrine pills, and defendant would pay him with five grams of methamphetamine. After T-bone stole the wrong pills and defendant left him at the drug store, an angry T-bone returned to the house. When T-bone would not leave, defendant retrieved his gun. When defendant walked outside, T-bone threw his bike down and ran toward him. T-bone had his hand in his pocket, and defendant did not know "if he was messing around with the crack [defendant] had just given him or what." Defendant pulled the gun out and fired. Defendant did not know whether he hit T-bone. Defendant read the statement but stated he did not feel comfortable signing it.

¶ 21 Defendant testified on his own behalf. When T-bone threw the empty shell casing at him and said, "See if you can catch the next one," defendant took it to mean "being shot." When T-bone came back "ranting" and "raving" after being left at the drug store, he told defendant he was going to "fuck [him] up." After T-bone kept pounding on the house, defendant gave Molton $50 in hopes they would leave. T-bone got "really bad" and tried "running upstairs" to get defendant. T-bone then said he would come back, "bring his guns," and kill defendant. While T-bone was yelling outside, defendant went to retrieve his gun because he was

scared. When defendant stepped outside, he saw T-bone sitting on his bike. T-bone then threw down the bike, called defendant a "motherfucker," reached in his pocket, and started running at defendant. Defendant pulled his gun up and fired. He did not chase T-bone down the street.

¶ 22 On cross-examination, defendant testified T-bone threw down his bike and ran at him with his hand in his pocket. Defendant stated he did not see a gun.

¶ 23 Following closing arguments, the jury found defendant guilty. Defendant filed a posttrial motion, which the trial court denied. In November 2004, the court sentenced defendant to 60 years in prison, which included a 25-year sentence enhancement imposed under section 5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2004)) for personally discharging a firearm that proximately caused T-bone's death. The court credited him with 439 days for time spent in custody.

¶ 24 Defendant appealed, arguing (1) he presented sufficient evidence of self-defense, (2) the trial court erred in allowing evidence of his arrest and methamphetamine production, (3) the prosecutor committed prejudicial error in closing argument, (4) he received ineffective assistance of counsel, and (5) he was entitled to additional credit against his sentence. This court, with one justice dissenting, affirmed defendant's conviction and sentence as modified and remanded with directions that defendant receive additional sentence credit. *People v. Meyers*, No. 4-05-0291 (Feb. 1, 2007) (unpublished order under Supreme Court Rule 23).

¶ 25 In March 2008, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2008)). Defendant alleged (1) trial counsel was ineffective for failing to investigate and litigate claims he was interrogated without counsel; (2) trial and appellate counsel were ineffective for failing to appeal the trial court's denial of his right to present evidence of Jones's aggressive and violent behavior;

(3) a claim under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), as to the firearm enhancement; (4) a constitutional challenge to the firearm enhancement; and (5) appellate counsel was ineffective for failing to raise the firearm-enhancement issue. Defendant also alleged the State violated the discovery rule in *Brady v. Maryland*, 373 U.S. 83 (1963), by knowingly withholding investigative reports concerning a pattern of misconduct by Detectives Carpenter and Graham that was also present in his case, specifically that the detectives lied to Folder to illegally seize a tackle box in which defendant had kept the revolver and which was presented at trial. Defendant attached "appendix F," two undated newspaper articles reporting Graham and Carpenter may have violated departmental policies during investigations and engaged in misconduct. One of the articles indicated the state appellate prosecutor and the United States Attorney's office had declined to pursue charges against Graham and Carpenter.

¶ 26 The petition advanced to the second stage, and the trial court appointed counsel in April 2008. In May 2008, the State filed a motion to dismiss the petition. In December 2013, counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. Apr. 26, 2012). Counsel also filed an amended postconviction petition. Counsel raised three issues, including the *Brady* claim regarding the State's failure to disclose investigative reports concerning misconduct by Graham and Carpenter.

¶ 27 In January 2014, defendant filed a *pro se* motion to withdraw the amended postconviction petition, claiming the December 2013 petition was an earlier draft that was not meant to be filed. Defendant also filed a *pro se* motion for leave to amend the postconviction petition and an amended petition, which raised six issues. One of those issues involved a *Brady* claim, focusing on the detectives' credibility and the weight given to the statement they took from defendant. In January 2014, counsel filed a copy of defendant's preferred petition and a

second Rule 651(c) certificate. In the amended petition's *Brady* claim, counsel noted "See Exhibit F." Exhibit F was not attached to the amended petition.

¶ 28 Also in January 2014, the State filed a memorandum in support of its motion to dismiss the amended petition. On the *Brady* claim, the State noted "Appendix F" was a newspaper article detailing the investigation of Carpenter and Graham. The State argued the investigation into misconduct by the detectives began on or about February 25, 2005, well after defendant's September 2004 trial. Since there was no investigation for the prosecutor to disclose, the State argued there could be no *Brady* violation.

¶ 29 In March 2014, the trial court held a hearing on the State's motion to dismiss. At the hearing, defense counsel admitted the official police investigation of Carpenter and Graham took place after defendant's trial but stated "there were allegations being thrown at them, publicly and within internal affairs, [and] there were complaints." Counsel contended the allegations and investigations of Carpenter and Graham "went to their ability to be honest and truthful." When the court asked counsel if he had "anything independent in the record or affidavits" to support the claim, counsel indicated he did not.

¶ 30 The trial court found defendant failed to establish a substantial deprivation of his constitutional rights based on the allegations in his petitions. The court granted the State's motion to dismiss. This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Defendant argues postconviction counsel provided unreasonable assistance when he affirmatively advanced defendant's *Brady* claim but did not amend the petition to include supporting evidence. We disagree.

¶ 33 The Act "provides a mechanism for criminal defendants to challenge their

convictions or sentences based on a substantial violation of their rights under the federal or state constitutions." *People v. Morris*, 236 Ill. 2d 345, 354, 925 N.E.2d 1069, 1075 (2010). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *People v. English*, 2013 IL 112890, ¶ 21, 987 N.E.2d 371. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights. *People v. Caballero*, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008).

¶ 34 The Act establishes a three-stage process for adjudicating a postconviction petition. *English*, 2013 IL 112890, ¶ 23, 987 N.E.2d 371. At the first stage, the trial court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2012). If the petition is not dismissed at the first stage, it advances to the second stage. 725 ILCS 5/122-2.1(b) (West 2012).

¶ 35 At the second stage, the trial court may appoint counsel, who may amend the petition to ensure defendant's contentions are adequately presented. *People v. Pendleton*, 223 Ill. 2d 458, 472, 861 N.E.2d 999, 1007 (2006). Also at the second stage, the State may file an answer or move to dismiss the petition. 725 ILCS 5/122-5 (West 2012). A petition may be dismissed at the second stage "only when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *People v. Hall*, 217 Ill. 2d 324, 334, 841 N.E.2d 913, 920 (2005). If a constitutional violation is established, "the petition proceeds to the third stage for an evidentiary hearing." *People v. Harris*, 224 Ill. 2d 115, 126, 862 N.E.2d 960, 967 (2007). In this case, the State filed a motion to dismiss, and the court granted that motion. We review the trial court's second-stage dismissal *de novo*. *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008.

¶ 36 In postconviction proceedings, a defendant is not entitled to the effective

assistance of counsel. *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987). Instead, state law dictates the sufficient level of assistance, and our supreme court has held the Act entitles a defendant to reasonable representation. *People v. Guest*, 166 Ill. 2d 381, 412, 655 N.E.2d 873, 887 (1995). To ensure counsel provides that reasonable level of assistance, Illinois Supreme Court Rule 651(c) (eff. Apr. 26, 2012) imposes specific duties on postconviction counsel. *People v. Suarez*, 224 Ill. 2d 37, 42, 862 N.E.2d 977, 979 (2007). The rule requires postconviction counsel to (1) consult with the defendant to ascertain his contentions of the deprivation of constitutional rights, (2) examine the record of the proceedings at trial, and (3) make any amendments to the defendant's *pro se* petition that are necessary for an adequate presentation of his contentions. Ill. S. Ct. R. 651(c) (eff. Apr. 26, 2012). "The purpose of the rule is to ensure that postconviction counsel shapes the defendant's claims into a proper legal form and presents them to the court." *People v. Profit*, 2012 IL App (1st) 101307, ¶ 18, 974 N.E.2d 813. Compliance with Rule 651(c) is mandatory and may be shown by the filing of a certificate representing that counsel has fulfilled his or her duties. *People v. Perkins*, 229 Ill. 2d 34, 50, 890 N.E.2d 398, 407 (2007).

¶ 37 When a Rule 651(c) certificate is filed, the presumption exists that the defendant received the representation that the rule required him to receive during second-stage proceedings under the Act. *People v. Jones*, 2011 IL App (1st) 092529, ¶ 23, 955 N.E.2d 1200. The defendant has the burden to overcome this presumption by demonstrating postconviction counsel failed to substantially comply with the duties required by Rule 651(c). *Jones*, 2011 IL App (1st) 092529, ¶ 23, 955 N.E.2d 1200. Whether counsel substantially complied with Rule 651(c) is also reviewed *de novo*. *Jones*, 2011 IL App (1st) 092529, ¶ 19, 955 N.E.2d 1200 (citing *Suarez*, 224 Ill. 2d at 41-42, 862 N.E.2d at 979).

¶ 38 In the case *sub judice*, postconviction counsel certified his compliance with Rule 651(c), which raises a rebuttable presumption he provided defendant with the reasonable level of assistance to which he was entitled under the Act. We find defendant has not rebutted the presumption that counsel complied with Rule 651(c).

¶ 39 In his original *pro se* petition, defendant set forth a *Brady* claim, alleging the State knowingly withheld investigative reports concerning police misconduct by Graham and Carpenter. He attached "appendix F," the newspaper articles detailing the allegations of misconduct against the two detectives. Defendant claimed the alleged incidences of misconduct were of a similar nature to the alleged misconduct in his own case and the State had a duty to disclose the information so he could prepare a meaningful and adequate defense.

¶ 40 In *Brady*, 373 U.S. at 87, the United States Supreme Court held the prosecution violates a defendant's constitutional right to due process by failing to produce evidence favorable to the accused and material to guilt or punishment. See *People v. Beaman*, 229 Ill. 2d 56, 73, 890 N.E.2d 500, 510 (2008). "To comply with *Brady*, the prosecutor has a duty to learn of favorable evidence known to other government actors, including the police." *Beaman*, 229 Ill. 2d at 73, 890 N.E.2d at 510.

> "A *Brady* claim requires a showing that: (1) the undisclosed evidence is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence was suppressed by the State either wilfully or inadvertently; and (3) the accused was prejudiced because the evidence is material to guilt or punishment. [Citation.] Evidence is material if there is a reasonable probability that the result of the proceeding would have

> been different had the evidence been disclosed. [Citations.] To establish materiality, an accused must show ' "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." ' [Citation.]" *Beaman*, 229 Ill. 2d at 73-74, 890 N.E.2d at 510.

¶ 41 In the amended petition, postconviction counsel alleged the State failed to disclose to the defense all material evidence favorable to the accused. Counsel set forth the *Brady* rule as well as other cases in support of the claim. He stated, "Detective Carpenter and Detective Graham were alleged to have violated departmental policies, cut corners, used questionable investigative methods, and might have been actively involved in intentional police misconduct and criminal violations." Counsel also noted "See Exhibit F." Counsel argued the evidence was material and there existed a reasonable probability that the result of the proceeding would have been different had defendant been able to impeach the detectives' testimony with the ongoing investigative reports.

¶ 42 Here, we note "Appendix F," or "Exhibit F," was not attached to the amended petition. However, it was attached to the original petition, and the State referenced it at the hearing on the motion to dismiss. Thus, counsel set forth defendant's *Brady* claim in appropriate legal form such that the trial court could determine whether a substantial showing of a constitutional violation had been alleged to justify an evidentiary hearing. While counsel did not attach affidavits to the amended petition, "a trial court ruling upon a motion to dismiss a post-conviction petition which is not supported by affidavits or other documents may reasonably presume that post-conviction counsel made a concerted effort to obtain affidavits in support of the post-conviction claims, but was unable to do so." *People v. Johnson*, 154 Ill. 2d 227, 242,

609 N.E.2d 304, 311 (1993). Based on these facts, it was not unreasonable for counsel not to provide additional supporting evidence for defendant's *Brady* claim. Moreover, defendant has not established counsel failed to present evidence or supporting documentation of which he was aware or should have been aware when he filed the amended petition.

¶ 43 Also, because the presumption is present, "the question of whether the *pro se* allegations had merit is crucial to determining whether counsel acted unreasonably" in not further amending the petition. *Profit*, 2012 IL App (1st) 101307, ¶ 23, 974 N.E.2d 813. At the time of defendant's trial, only rumors and allegations existed as to the detectives' misconduct. "Mere allegations of misconduct, without evidence the officer was disciplined, are not admissible as impeachment *** and do not raise an inference of bias or motive to testify falsely." *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶ 20, 996 N.E.2d 54. Moreover, this court found the evidence "was not closely balanced but sufficiently established defendant, and only defendant, had a gun, he fired at T-bone hitting him in the abdomen, and he then fired another shot hitting T-bone in the back as he ran away." *Meyers*, No. 4-05-0291, at 15 (Feb. 1, 2007) (unpublished order under Supreme Court Rule 23). Thus, even if defendant had evidence of the misconduct allegations, defendant's postconviction claim still would not show the result of his trial would have been different. Accordingly, we find the trial court did not err in dismissing defendant's amended postconviction petition.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 46 Affirmed.