NOTICE
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2020 IL App (4th) 190132-U

NO. 4-19-0132

FILED
October 15, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Menard County |
| JEFFREY D. HAYNES, | ) | No. 15CF23 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Alan D. Tucker, |
| | ) | Judge Presiding. |

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's first-stage dismissal of defendant's postconviction petition.

¶ 2 In November 2015, defendant, Jeffrey D. Haynes, pleaded guilty to drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2014)) as part of a fully negotiated plea in exchange for the State's dismissing a charge of delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)) and a sentence of 15 years in prison.

¶ 3 In October 2018, defendant filed a petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)), alleging plea counsel was ineffective for failing to (1) inform defendant of critical discovery and (2) investigate a potential defense. In January 2019, the trial court summarily dismissed the petition, finding it was "patently without merit."

¶ 4 Defendant appeals, arguing the trial court erred by dismissing defendant's petition

because it stated the gist of a constitutional claim of ineffective assistance of plea counsel. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In June 2015, the State charged defendant with drug-induced homicide (720 ILCS 5/9-3.3(c) (West 2014)) and delivery of a controlled substance, namely, less than one gram of a substance containing heroin. 720 ILCS 570/401(d) (West 2014). The State alleged defendant delivered heroin to Brent King in violation of section 401(d) of the Controlled Substances Act and King died because he ingested that heroin.

¶ 7 In November 2015, the trial court conducted a guilty-plea and sentencing hearing. In exchange for defendant's pleading guilty to drug-induced homicide, the State agreed to dismiss the remaining charge and defendant would receive a prison sentence of 15 years. (We note that the State and trial court consistently informed defendant that the statutory minimum for drug-induced homicide was 15 years. However, drug-induced homicide is a simple Class X felony unless the defendant violated subsections 401(a) or (c). Nonetheless, neither defendant before the trial court nor OSAD on appeal raise any argument that defendant was improperly charged, admonished, or sentenced.)

¶ 8 As a factual basis for the plea, the prosecutor stated the following:

> "Should this matter proceed to trial, the State would call officers of the Menard County Sheriff's Department and the Central Illinois Enforcement Group who would testify as to an investigation relating to the death of Brent King. Mr. King died of a drug overdose including heroin. It would be the State's evidence that the heroin was provided through the [d]efendant herein on or about April 7, 2015. That once Mr. King was found and pronounced dead, an autopsy was conducted. The

> autopsy revealed that the cause of death was in fact due to the drug overdose including heroin. Judge, in a recorded conversation, the [d]efendant herein provided a statement indicating that he in fact was the person who delivered the heroin to Mr. King. On or about June 3, 2015 the [d]efendant was brought in, interviewed by agents of the Menard County Sheriff's Department of Central Illinois Enforcement Group and, I believe, by the DEA. During those interviews the [d]efendant did admit to his involvement and admitted to delivering heroin and cooperated with the investigation.
>
> Mr. King did die in Menard County, State of Illinois, but the delivery did take place in Menard County, State of Illinois." [The remainder of the sentence suggests counsel meant to say, "King did *not* die in Menard County."]

¶ 9 The trial court admonished defendant of his rights, confirmed that defendant was satisfied with his counsel, and found defendant's plea to be knowing and voluntary.

¶ 10 In October 2018, defendant *pro se* filed a postconviction petition pursuant to the Act, alleging, in relevant part, that his plea counsel provided ineffective assistance by failing to inform defendant of all the information relevant to his case. Specifically, defendant asserted that counsel failed to (1) review the autopsy report with defendant, (2) find an expert who would testify that King's ingestion of heroin did not cause his death, and (3) inform defendant that King's fiancée, Terry Whitehurst, gave conflicting stories to the police about King's drug use and reported that she ingested the same amount of heroin at the same time without suffering any unintended effects. Defendant attached police reports and a copy of the autopsy report in support of his petition.

¶ 11 The police reports stated that, on the date of the incident, Whitehurst first told the

responding officer that King had not taken any controlled substance other than cannabis prior to his overdose. Shortly thereafter, Whitehurst stated King had reported he used heroin at work that day. The reports further showed that Whitehurst gave subsequent recorded interviews in which she admitted (1) she ingested heroin with King and (2) King acquired the heroin from defendant. The autopsy report stated that King was an obese, 47-year-old male who "died as a result of the combined toxic effects of heroin, ethanol, and hydrocodone."

¶ 12 In January 2019, the trial court entered an order summarily dismissing defendant's postconviction petition, finding "the Petition is patently without merit."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant appeals, arguing the trial court erred by dismissing his petition because it stated the gist of a constitutional claim of ineffective assistance of plea counsel. We disagree and affirm.

¶ 16 A. The Applicable Law

¶ 17 The Act provides a criminal defendant the means to redress substantial violations of his constitutional rights that occurred in his original trial or sentencing. *People v. Fathauer*, 2019 IL App (4th) 180241, ¶ 40, 146 N.E.3d 175; 725 ILCS 5/122-1 (West 2016). The Act contains a three-stage procedure for relief. *Fathauer*, 2019 IL App (4th) 180241, ¶ 40 (citing *People v. Allen*, 2015 IL 113135, ¶ 21, 32 N.E.3d 615); 725 ILCS 5/122-2.1 (West 2016). Within the first 90 days after the petition is filed and docketed, the trial court shall dismiss a petition summarily if the court determines it is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). A petition may be dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. *Fathauer*, 2019 IL App (4th)

180241, ¶ 40 (citing *Allen*, 2015 IL 113135, ¶ 25). Because most postconviction petitions are drafted by *pro se* defendants, "the threshold for a petition to survive the first stage of review is low." (Internal quotation marks omitted.) *Id.* ¶ 40. If a petition alleges sufficient facts to state the gist of a constitutional claim, first-stage dismissal is inappropriate. *Id.* This court reviews first-stage dismissals under a *de novo* standard of review. *Allen*, 2015 IL 113135, ¶ 25.

¶ 18 To establish a claim of ineffective assistance of guilty-plea counsel, the defendant must show that counsel's performance (1) fell below an objective standard of reasonableness and (2) was prejudicial. *People v. Brown*, 2017 IL 121681, ¶ 25, 102 N.E.3d 205. A defendant's failure to satisfy either prong negates a claim of ineffective assistance of counsel. *People v. Jackson*, 2020 IL 124112, ¶ 91; see also *People v. Palmer*, 162 Ill. 2d 465, 475, 643 N.E.2d 797, 801 (1994) (holding the same with respect to guilty pleas).

¶ 19 "[A] defendant may attack the *knowingness* or *intelligence* of the guilty plea by showing that the advice defense counsel gave, and upon which the defendant relied in pleading guilty, was not within the range of competence demanded of attorneys in criminal cases." (Emphasis in original.) *People v. Watkins*, 2019 IL App (4th) 180605, ¶ 30, 145 N.E.3d 450. To establish prejudice, a defendant " 'must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.' " *Brown*, 2017 IL 121681, ¶ 26 (quoting *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985)). When the ineffective assistance claim relates to a defendant's prospects at trial, the Illinois Supreme Court has required "a claim of innocence or a plausible defense to establish prejudice." *Id.* ¶ 45 (citing *People v. Hall*, 217 Ill. 2d 324, 335-36, 841 N.E.2d 913, 920 (2005)). When the claim relates to advice concerning the consequences of a plea, a petitioner "must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." (Internal

quotation marks omitted.) *Id.* ¶ 40.

¶ 20 Even in the context of guilty pleas, "counsel's strategic decisions are virtually unchallengeable. [Citation.] Further, the fact that another attorney might have pursued a different strategy is not a factor in the competency determination." *Palmer*, 162 Ill. 2d at 476. When assessing counsel's performance, a reviewing court is required "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." (Internal quotation marks omitted.) *People v. Ramirez*, 2018 IL App (1st) 152125, ¶ 16, 127 N.E.3d 146.

¶ 21 "[A] defendant does not have a constitutional right to read discovery materials and an attorney's decision as to whether to provide his or her client with such materials is a matter of trial strategy and is within counsel's discretion." *People v. Savage*, 361 Ill. App. 3d 750, 757, 838 N.E.2d 247, 254 (2005). "[A] defendant may be able to rebut [the] presumption [of trial strategy] by showing that counsel withheld discovery information that cast doubt on the State's ability to prove him guilty or was otherwise particularly relevant to his decision to plead guilty." *People v. Walker*, 2019 IL App (3d) 170374, ¶ 18, 131 N.E.3d 136.

¶ 22 A person commits drug-induced homicide when (1) he unlawfully delivers a controlled substance to another and (2) any person's death is caused by the ingestion of any amount of that substance. 720 ILCS 5/9-3.3(a) (West 2014). The State is required to prove that (1) a defendant's acts were a contributing cause of the death and (2) the death did not result from a cause unconnected with the defendant. *People v. Nere*, 2018 IL 122566, ¶ 32, 115 N.E.3d 205. However, the defendant's acts need not be the sole and immediate cause of death. *Id.*

¶ 23 B. This Case

¶ 24 Defendant first argues that plea counsel was ineffective for failing to show

defendant the autopsy and police reports, which contained information that would have influenced defendant's decision to plead guilty. This court has consistently held that a criminal defendant is not entitled to view every piece of evidence and defense counsel is not required to inform a defendant about every piece of evidence. *Savage*, 361 Ill. App. 3d at 757, *People v. Davison*, 292 Ill. App. 3d 981, 988-89, 686 N.E.2d 1231, 1236 (1997). This court has also explained the myriad of reasons why trial counsel may choose not to show a defendant certain discovery. *Davison*, 292 Ill. App. 3d at 989. Instead, defense counsel merely needs to provide sufficient information for defendant to enable him to appreciate the case against him. *Id.* at 989-91.

¶ 25 Here, plea counsel had a reason for not sharing the information about which defendant complains. To prove the offense of drug induced homicide, the State merely needed to show the drugs were a *contributing* cause of death. The autopsy unequivocally concludes that the heroin was a contributing cause of King's death. The fact that heroin combined with other substances to cause the overdose is at best irrelevant and at worst distracting. This is a situation familiar to all seasoned defense attorneys—some facts, if shown to the untrained eye, appear as though they might have an impact on the case, but the attorney knows that this is legally impossible. Rather than informing the client and setting off a wild goose chase that cannot possibly help the client, the attorney makes the strategic decision to not explain that particular fact to the client. That course of conduct, exemplified in this case, is entirely appropriate.

¶ 26 Further, the inconsistencies defendant notes in Whitehurst's testimony are not valuable for impeachment. Whitehurst initially told the police that King ingested only cannabis when he overdosed. Shortly thereafter, however, Whitehurst tearfully admitted that King stated he had taken heroin at work that day. Whitehurst subsequently gave much more detailed statements to the police. Whitehurst's motives for initially lying to the police are obvious, and she shared

them. She had minor children in the home—who were taken into protective custody by the Department of Children and Family Services—and was worried that the police would find heroin on King. Defendant claims Whitehurst also told police that King took a different drug that day before overdosing. However, as we just noted, the fact that multiple drugs interacted to cause the overdose is irrelevant because the heroin was a contributing cause.

¶ 27 Similarly, the fact that Whitehurst admitted to taking the same heroin at the same time as King does not indicate the heroin was not a cause of death. King was an obese 47-year-old man who had overdosed on opioids in the past. Even if Whitehurst had similar characteristics (and we have no evidence that she does), the fact that she did not overdose on heroin says nothing about whether the heroin was a contributing cause of King's death. The autopsy concluded that King died from a combination of drugs in his system at the time. King is a unique individual. Defendant's argument is clearly nonsensical when applied in other contexts. If two people ingested the same amount of poison and one lived when the other did not, one person's living does not change the fact that the poison killed the other. Or, suppose two people eat sandwiches with peanut butter and strawberry jelly. One dies and the other is completely fine. We might surmise that the deceased was allergic to peanuts, strawberries, or both, but the other's complete lack of "adverse consequences" tells us nothing about the cause of death.

¶ 28 Given that we conclude that each of defendant's claims is irrelevant to the ultimate issue, plea counsel's decision not to share the information with defendant was reasonable, not error.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment.

¶ 31 Affirmed.